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CONGRESS.

HOUSE OF REPRESENTATIVES.

FEBRUARY 19.

Debate on Mr. Broom's resolution for the better protection of the writ of Habeas Corpus.

(CONTINUED.)

Mr. ELLIOT. A gentleman from Tennessee (Mr. G. W. Campbell) whom I do not at this moment observe in his place, but will presume that he is attending his duty as a member of the *House*, and to attract whose attention I will "lift up my voice," in both of his speeches of yesterday certainly entitled the House to some additional, at least to some explanatory remarks from me; and although the House would be very willing to relinquish its right, I cannot, as an individual member, consent to part with my portion of the claim.

In the first place that gentleman seemed disposed to announce to the House that I was not so well versed in the law of treason as himself. He said that in treason all are principals, and of course that there can be no accessaries. It is very true. The general principle is correct. It has long been settled as a principle of English law, that acts, which, in felony, would make one an accessary before the fact, in treason, as well as in trespass, render him a principal offender. But there is a humane and liberal principle in the English law upon this subject, which those exclusive republicans who are ready to justify general Wilkinson, by considering the persons accused by him guilty of the actual commission of the crime of treason, either do not know, or are not disposed to adopt. The general principle is subject to this qualification, except in treason touching the death of the king, &c. In every other kind of treason, it is admitted that offences of an accessorial nature may exist, and that they are of a derivative character; some act must be done, to which the offender must be accessory, and from which his guilt is derived; some original and principal traitor may exist, to whom another may be considered, in the first instance, as subservient. Although in the event of the prosecution such an offender may be considered as a principal, yet, *in his progress towards conviction*, which is the case now existing in our own country, he ought, from a principle of natural justice, to be considered merely *as in the nature of an accessory*, before or after the fact. Otherwise, if the person accused as an auxiliary, were tried before the person who actually committed the act, the very great absurdity and injustice might result, that the accessorial agent might be convicted, and he who did the act, and from whose guilt alone that of the actual accessary could flow, might be acquitted. This principle is to be found in Foster, Hale, and Hawkins, who may be considered as the classical writers upon criminal jurisprudence in Great Britain.

Of the insinuation that I was ignorant of the law, I should, however, have had but little reason to complain. I do not recollect that any one adopted the expression, "champion of the constitution," but myself, and the gentleman spoke of those who announce themselves to the public, as the champions of the constitution and the cause of liberty, merely for the purpose of making a great noise, and of displaying "pictures," calculated to attract the attention, and delude the imagination, of the people. I will not presume, although I could wish the gentleman were present to give a serious explanation, that he intended to impeach my motives. But something must be said on the subject of pictures and painting. From the extreme difficulty with which the gentleman managed his metaphor, it was obvious to us all that he was no great proficient in the art. And yet he is unquestionably the very best painter of the particular school to which he happens to belong. There is more animation in his figures, there is more nerve in his attitude, there is more glow in his features, there is more grace even in his coloring, than are to be found in the best productions of his associate artists. We have lately heard and read much of what are called, in the newspaper cant of the day, a republican majority and a republican minority; of republican majority men, and republican minority men. The gentleman, probably, wishes to be considered as the "champion" and leader of the majority, composed of profound statesmen and logicians, while the minority consists of mere painters and declamatory orators. Be it so. Yet I would not ensure, at the rate of ten guineas per cent. which we are told is the price of insurance of American property in London, since the publication of the famous imperial decree, the final triumph of the school of logicians over that of painters.

But I did not arrogate to myself, the distinction of a "champion of the constitution" in the proper sense of the term. It must be within the recollection of all, that I said I was the champion of the constitution only *as every member of the House was bound by oath to be*; its defender against usurpation and unauthorized military power.

Mr. EPPES said that when on a former day this resolution had been before the House, he had declared himself in favor of committing it for discussion. Discussion however has been had in a different form—the original motion has been withdrawn and the question is now to be taken on the resolution. He agreed perfectly in opinion with the gentleman from Virginia who had said that a postponement of the resolution was in substance a rejection. He should vote for the postponement because he was opposed to the resolution. We have been told by a gentleman from Massachusetts (who on this occasion disclaims all party feelings) that the common law of England is not in force in this country—that the statute of Charles the 2d was not in force in this country; and that to the penalties of this statute the English nation owes the security of this privilege. The gentleman has enumerated the penalties of the statute, and asks whether we are less attached to this privilege than the English nation. We are not less attached to the privilege, our mode of inforcing it is different. In England if the writ is disobeyed it can only be inforced by the fines and penalties of the statute of Charles the 2d.—In this country the judge can call in the aid of the nation to inforce the law. In England the penalties of that statute are necessary to wrest its victims from an executive armed with prerogative and privilege. In England the minister being a conservator of the peace throughout the kingdom, may commit in any part of it. In this country no man can be legally committed or detained in custody but by the civil authority. The penalties of the statute of Charles the 2d never were in force in the commonwealth of Virginia. The judge is subject as under the constitution of the U. S. to the action of the party, to impeachment and removal. Mr. E. said he agreed with the gentleman from Massachusetts in another point, viz. "That the common law of England was not in force in this country, except so far as it has been adopted by the constitution and laws of the U. S. or of the individual states." He for one when brought in jeopardy would never consent to look for his rights either in the immemorial usage and custom of England, or in its statute book. He would appeal to the constitution and laws of his country, and by them alone would he be tried. If by them alone, without the aid of the English law, this right was not sufficiently secured to the citizen, he should be willing to make any additional legal provisions that were necessary. The privilege of the writ of Habeas Corpus is as well secured as any other right under the constitution of the U. S. Freedom of speech—freedom of the press—freedom of conscience—trial by jury stand all on the same foundation. The constitution secures these rights to the citizen, and judges, who ought to be honest, are appointed to protect them. If we are not secure in this right, where, he asked, do gentlemen find the security for any other—can law render more secure a right derived from the constitution?—Or can it be necessary to place this right, important as it is, on a different basis from other rights equally dear to the American people and essential to the existence of a free government. The security for this right is ample, if your judges are honest and independent. The penalties of the statute of Charles the 2d could only add a pecuniary fine to removal from office, as he apprehended no judge could be suffered to disgrace our bench after being subjected to pecuniary fine for denying to a citizen a constitutional right which he is sworn to support.

The recent occurrences at Orleans have been principally relied on to shew the necessity of additional provisions for securing this right. Even on this occasion, however, there was no want of power to inforce the writ. The writ was obeyed, the reason of the detention of the persons returned and the return accepted by the court. He agreed perfectly in opinion with the gentleman who thought all the civil officers of the territory implicated in these transactions. They must certainly have had the same ideas of the public danger with the commander in chief, and either approved of or connived at the seizure and shipment of these persons. It is impossible that such an act of power could have been exercised in any part of the U. S. without the approbation of the civil authority of the state or territory. The only instance in which the writ of Habeas Corpus was disobeyed was at Charleston. In this instance it is justified by the principle of the gentleman from Virginia.

[Here Mr. J. RANDOLPH interrupted Mr. Eppes, and said he had not justified the act.]

Mr. EPPES continued. If the gentleman from Virginia will have patience he will understand correctly how far it is supposed he has justified this refusal of the officer at Charleston.—He understood the gentleman from Virginia as saying that an inferior officer was bound to obey his superior. The case of captain Murray had been cited. In that instance the law was violated, and captain Murray reimbursed the damages sustained by him on the ground of his having obeyed his instructions.

Mr. J. RANDOLPH explained. He said he would ask the gentleman, if because an inferior officer, the commander of a frigate for instance, is justified in obeying the orders of the President touching the construction of an elaborate law, which he can scarcely be presumed capable of expounding, it followed that an inferior officer was to be justified in every possible case in obeying the orders of a superior commander from any other motive than that of self-preservation, in which case he ceases to be a rational being. Does he mean to say that if the officer of a ship of war is justifiable in obeying the President in a particular and minor instance, he would be justified in obeying such orders to elevate him to a dictatorship?

Mr. EPPES in continuation observed that he had no wish, and certainly he could have no interest in misstating the ideas of the gentleman from Virginia. He considered the two cases however as varying only in this:—In the case of captain Murray the right of property only had been violated. In the other the personal right of the citizen. Both acts were illegal. Both were a violation of rights secured by the constitution and laws. Mr. E. however thought that gentlemen had mistaken the proper remedy for such a violation of the right of the citizen. No Habeas Corpus law could guard against a case where a citizen was kidnapped and conveyed out of the jurisdiction of a court. A law to operate not on the military only, but on every other person who should without legal authority, arrest or convey from his residence a citizen of the U. S. would be better calculated to embrace such a case. Mr. E. said that having on a former occasion delivered his sentiments on this subject he should not again have troubled the House but from a wish it should be clearly understood that he did not mean to avoid any portion of his responsibility by voting for the postponement instead of a rejection of the resolution.

Mr. D. R. WILLIAMS called for the Yeas and Nays.

Mr. J. CLAY said before the question was taken, he would mention one or two points, that went to shew the necessity of a reference. He understood that one of the persons arrested by gen. Wilkinson had been landed on an island near Charleston, and on the issuing of a writ, the officer had refused to obey it. He would ask whether this was not a violation of the writ of habeas corpus that required a remedy by law? Mr. Clay said, he always viewed it as a matter of regret that questions of this kind should be taken up on party ground. He considered such a suggestion on the present occasion as a mere trap to get a few votes. They were told of the dark times when alien and sedition laws were passed.—If, however, under the alien law, men might be deported, gentlemen should recollect that it was according to law—that there was an express statute that justified the measure. Mr. C. said he considered the kidnapping, alluded to by gentlemen, as a gross violation of the privilege of the habeas corpus, and would be glad to know whether sending a man to Baltimore from Orleans were not as gross a violation of principle as sending him from this place to Orleans? Mr. C. concluded by observing, that he considered it a very unfortunate thing for any gentleman of talents to be educated to the bar: so many distinctions were there taken, that a man of his plain mind could scarcely see any thing. He should however adhere to the constitution, and would ask if a military arrest was not a gross violation of it, and whether there ought not to be some exemplary punishment provided to guard against it?

Mr. ELMER said he should vote for the postponement of the resolution. It had been under discussion for three days; and he did not perceive they were nearer a result than on the first day. Was it discreet to refer this resolution to a committee, when it was manifest they could not go through the business, without neglecting important business already before them. He should also vote for the postponement, as although three days had been taken up in the discussion, he had not heard any one gentleman urge a single reason to shew the necessity of any additional provisions. This very transaction, he believed, would ultimately turn out beneficial to the U. S. notwithstanding the arts of ambitious men; it would display such a striking regard of the people to the government of their choice as to prevent any like attempts in future.

Mr. Elmer said he did not know whether gen. Wilkinson was a conspirator, but in this case he did not see that the constitution had been so flagrantly violated. Take the case of a conspiracy against the constitution—to level and destroy the constitution altogether, and directed towards the garrison which Wilkinson commanded, in a remote part of the U. S. distant from any strength to support him. If we consider the question in this view, that the lives and property of the people were at stake, and even the judges engaged with the conspirators, was it improper to take up these men and send them to a place where they could be impartially tried? Let gentlemen, said Mr. C. pass as sanguinary laws as they please, if I considered the judges concerned, and were satisfied there were conspirators within, I would arrest them though death were the consequence; and I am persuaded every officer faithful to his trust, would do the same thing, I admit, that in all cases except of the greatest emergency, the military ought to give way to the civil power. With regard, however, to what gentlemen call the audacity of sending these people here in the face of the legislative body, I confess I entertain a different opinion. In cases of military arrest I am most afraid of secrecy.—Does not publicity, as far as it goes show a good conscience? Does it not show the wish of the commander in chief, that his conduct should be examined in the face of the nation, conscious that on a full examination, he will appear to have acted as a good officer and an honest man? As I have said before, I do not know that he is honest: I know that he has been charged with being a conspirator, but on this point we have no proof before us.

In the circumstance I have mentioned, it would be the duty of a man to violate the law, and no penalties ought to prevent him. I shall always think it better for one or two men to suffer than the whole nation; and rather to authorize the violation of one part of the constitution, than permit the whole to be overthrown. Let gentlemen put the case of the judges being concerned in this plot, and of a great army coming down, and the effects which might have flowed from not arresting these men. Could the commander in chief have been justified? If he has excited unnecessary alarm, and arrested individuals on light and improper grounds, let him suffer.—In this case it appears that he had the judges on his side. What better could he do to answer the purposes of justice than to send these people to the seat of government? A circumstance that may turn out highly advantageous to the accused.

Unless this temporary violation of the constitution be authorized in a case of extreme necessity, the constitution might be trampled on, and our liberties destroyed; and a civil war ensue.—Suppose Burr had overcome Wilkinson? What then would have been the avail of your writ of habeas corpus?—It would not have been of the least consequence.

Considering all circumstances, I coincide with the gentleman from Virginia in one point—I would make a sweep of all the officers of the territory of Orleans, so that there should be no difference between the governors and the governed. I believe the disaffection that exists there is confined to a few, who wish to raise a clamor for personal purposes. Still for the reasons I have mentioned, I would make a general sweep.

Mr. SLOAN. Nothing but imperious necessity can justify a member rising at so late an hour of the day. I promise the House, however, not to take up much of their time. Allusions and insinuations have been made throughout the whole of his speech by the gentleman from Virginia against the commander in chief of the army of the U. S. He has indeed insinuated a belief that he has been concerned in a treasonable combination for some time past. Admit, for a moment, that this is the case; and then let me ask whether there is not cause to rejoice, that he has in this instance deserted his party; let me ask, if in this case it was not in his power, to have carried on a treasonable conspiracy to the ruin of his country? Again—what use is there in throwing out such aspersions, against a man who is not here to defend himself. The whole subject is reduced to this point—was there sufficient cause to justify Gen. Wilkinson in the measures taken by him. I deem it my duty to shew the House the inconsistency of the gentleman who has thrown out these insinuations. I shall, therefore, from his own speeches shew that he once thought this a matter of considerable magnitude.

Here are the expressions as given by the stenographer—

1st. Speaking of the conduct of Spain, "It appears indeed that she never has lost sight of this object; and I believe she never will lose sight of it so long as she shall find materials to work upon, or a shadow of hope that she will succeed. It appears to me that she has found these materials; that they are of the most dangerous nature; that they are now in operation, & that perhaps, at this moment while I am addressing you, at least for a time, the fate of the western country may have been decided."

2d. "Is there a man in this House who at this day doubts, that if the government—I mean the Executive and Legislature, had taken a manly and decisive attitude towards Spain, and instead of pen, ink, and paper, had given men and arms—is there a man who disbelieves that not only Spain would have been overawed, but that these domestic traitors would also have been intimidated and overawed, whose plans threaten to be so dangerous?"

3d. "A spectator not in the habit of reading our public prints, or of conversing with individuals out of doors, but who should draw his ideas of the situation of the country from the proceedings of this House during the present session, would be led to infer that there never existed in any nation a greater degree of peace, tranquility, or union at home or abroad, than in the U. S. at this time; and yet what is the fact? That the U. S. are not only threatened with external war, but with conspiracies and treasons the more alarming from their not being defined. And yet we sit and adjourn, adjourn and sit, take things as schoolboys, do as we are bid, and ask no questions."

[*Mr. Quincy* asked whether it was proper to read the speeches of a gentleman as given by a stenographer—a member may refer to them on his own recollection.

The *Speaker* said he was of opinion the gentleman from New Jersey was in order.]

Mr. *Sloan* proceeded—

4th. "I again invite the House to draw a proper inference from the indecent, insulting, outrageous demeanor of the minister of Spain. I did understand that he was to have been deported—shipped off—on the contrary I find him still here; and is not the inference of my friend from Pennsylvania irresistible, that, considering the crowd of memorials presented by him to the government in the case of Miranda, and that no remonstrance has been made against this pretended expedition against Mexico; that he is acquainted with it; that he knows it is ostensibly for Mexico, but really for Orleans—for the severance of the Union."

5th. "Some gentlemen make extremely light of this conspiracy. I cannot, however, conceive, how a man in a state of ignorance respecting its nature or extent can make light of it. The very circumstance of not knowing the extent of danger, has a tendency to magnify it beyond its natural size. But there is one fact, which has come so direct, that it cannot be doubted. I believe it will altogether depend upon the circumstance of the conspirators getting to Baton Rouge before the troops of the U. S. arrive there, whether New Orleans shall fall; and the waters of the Red river are so low, that we cannot decide when our troops will arrive—they will get possession of the ordnance, and nothing can prevent the reduction of Orleans but a pitched battle."

6th. "If I could triumph at the calamitous situation of my country, there is ample cause indeed for triumph."

7th. "No sir, I cannot take a retrospect of the past without feeling a degree of conscious pride that my aid was not given, that I had no hand in the acts of commission or omission that have brought us to this deplorable state of things."

7th. "I believe the militia as adequate to the protection of New Orleans, as the Cape of Good Hope; and after paying fifteen millions for the Mississippi and its delta, shall we be so penurious as not to defend this important point—this key to our strong box."

8th. "But I cannot draw so favorable an inference of the public sentiment in any country, when I see a most extraordinary and ramified combination, composed of the most leading characters, and the most flaming patriots too, for the express purpose of severing the union."—

9th. "I do not conceive it to be a thing of yesterday; but an affair of long standing. Look back to the times when the character implicated in this conspiracy first began to move in that country. It was at least cotemporaneous with the disappointment of his ambition."

Contrast the foregoing with that member's declaration in the debate upon the suspension of the Habeas Corpus, wherein he asserted that Burr's conduct did not merit the name of a conspiracy—it was only a trifling intrigue, that might have been suppressed by the militia of a county; and then in his own language let me ask, "Will logic of this kind go down with the House, or the Nation."

Mr. KELLY said the manner in which the subject had been discussed by many gentlemen could not fail to excite sensations of an unpleasant nature. Observations were made which had no relation to the question tending