

Congress.

IN SENATE OF THE UNITED STATES

On the bill for the protection, and indemnification of American seamen.

Mr. WRIGHT—Mr. President—As introductory to the consideration of the merits of this bill, I feel it my duty to call the attention of the Senate, to the present degraded state of impressed American seamen, thousands of whom have been pressed on board British ships of war, and, compelled by whips and scourges, to work like galley slaves, whither they have been forced by the hand of violence, from on board our own ships, sailing on the high seas, under the flag of the U. S. carrying the spare productions of the toil of the American planter and merchant, to a foreign market, or returning with their proceeds.

In doing this, I wish not, to enlist your sympathies, but only to present to you a correct state of the facts on which this bill is predicated; facts that stand recorded in the official reports of the Secretary of State—the black catalogue of impressments.

I will next present to your view the measures adopted by the legislative and executive departments of the government of the United States, for their redress.

In the year 1796 Congress by laws (3 vol. 322) directed agents to be appointed, to reside in Great Britain, and in such foreign ports, as the President might direct, whose duty it should be, to enquire into the situation of such American citizens, or others, sailing conformably to the law of nations, under the PROTECTION of the AMERICAN FLAG, who had been, or should be impressed, by any foreign power, and to endeavor by all legal means to obtain their release; and to render an account of all impressments and detentions, to the executive of the U. States.

They also directed the collector of the several ports, on proof being made of the citizenship of any seamen, to give him a certificate thereof, under a hope, that it would have been respected in foreign ports, and have protected him from impressment. This certificate acquired the name of a protection.

They also directed, "That every captain of a vessel, in case of any of the crew being impressed, shall enter his protest at the first port he shall arrive, with the name and residence of the person, and transmit immediately by post a duplicate of such protest, to the nearest agent, minister, or consul resident in such country, and also on his arrival in America, to the secretary of state."

"And that every captain on his arrival at any port of the United States, before he shall be admitted to any entry of his vessel, shall be required by the collector to declare on oath, whether any of the crew have been impressed, which he shall take under the penalty of 100 dollars, and the collector is bound to return a list of all impressments, so communicated to him, to the secretary of state."

In 1799, the secretary of state is directed by law (4 vol. 503.) "To lay before Congress annually, a statement of all impressments reported to him, that they might be officially, and precisely informed of the state of our impressed seamen."

Under these legislative provisions and the intervention of our agents appointed for that purpose, hundreds of our seamen no doubt have been discharged by the board of admiralty, while at the same time, and under the same authority, the impressments kept pace with the discharges, so that instead of redressing the wrong, it was only inflicted in routine, thereby adding insult to injury. This all important subject, from its commencement, has also been particularly attended to by the executives of the U. S. Our ministers at London, during three successive administrations, have been specially charged with it, and we have witnessed their diplomatic exertions to bring this lawless and cruel practice to an end, but all to no effect. And now we are informed by the President of the U. States, in his message of the 17th Jan. last, that "On the impressment of our seamen, our remonstrances have never been intermitted, a hope existed at one moment, of an arrangement that might have been submitted to, but it soon passed away, and the practice, though relaxed at times in the distant seas, has been constantly pursued in those in our neighborhood."

This, Mr. President, is the prospect presented to our view, whereby thousands of our unfortunate seamen, that hardy and invaluable class of citizens, are consigned to the most intolerable bondage (by the imperious mandate of a British naval officer, whose word is the supreme law, from which there is no appeal,) and which gloomy prospect we are now informed,

med, by the highest authority, there is not a spark of hope left to enlighten.

Sir, I have invited you to investigate this subject with the eye of temper, but at the same time, I trust, that the nation's justice will not be compromised, by exceeding the bounds of moderation; for it has its limits; and we are informed by the law of nations [Vol. 433 § 352] "That the true and just welfare of the nation is the grand rule: Moderation is always laudable in itself, but the conductors of nations ought to make use of it, only so far, as it is consistent with the happiness and safety of the people." Under this view of the subject, can we submit to this state of things? That is the question. I have presumed not: and under that presumption, I have brought the subject before this Senate in the shape it is presented in this bill. Sir, I wish it to be recollected that the infant state of our navy suppresses every hope of redress on the element of our wrongs, and that this is a measure of necessity, not of choice. Wherefore I trust it will not be thought too nervous, when it is considered, that we have just cause of war. I will therefore, now, sir, proceed to the consideration of the merits of this bill.

The first clause states, that in violation of the treaty of amity, commerce, and navigation, made at London on the 19th Nov. 1794, his Britannic majesty had caused the impressment of our seamen sailing under the flag of the U. States.—The treaty [2 vol. L. U. S. 464] secures the inviolability of the citizens, and subjects of the respective powers, and we are informed by the law of nations (Vol. 655, § 39.) "That a nation acts against the nature and essence of every treaty of peace, nay, against peace itself, by deliberately, and wantonly offending him, with whom peace has been made, and treating him or his subjects incompatible with peace, and which he cannot suffer without being wanton to himself." But it may be said that this has not been authorized by the British government. Let us examine that fact. It is declared by the law of nations, (Vol. 252 § 73, 74, 76.) "That however as it is impossible, for the best regulated state, or for the most vigilant and absolute sovereign, to model at his pleasure, all the actions of his subjects, and to confine them on every occasion, to the most exact obedience, it would be unjust to impute to the nation or to the sovereign, all the faults of the citizens, we ought not then to say in general that we have received an injury from a nation, because we have received it from one of the members."

But if a nation or its leader approves and ratifies the fact committed by a citizen, it makes the act its own: the offence ought then to be attributed to the nation as the author of the true injury, of which the citizen is perhaps only the instrument.

"If a sovereign disavows the act he ought to inflict on the offender exemplary punishment."

So far I have called in aid the law of nations: I will now refer to the form of the authority in the case of impressment, which is in these words, (Fost. C. L. 156) "In pursuance of his majesty's order in council, dated the 19th day January 7, 1742, We do hereby empower you to impress or cause to be impressed "so many seamen, &c.—and I will refer you to the facts in your own possession, that his Britannic majesty approves the act, both by continuing the impressments, and by his lately promoting the captain of the Cambrian frigate (whom he recalled to appease our complaints on that head) to the command of a ship of the line; so that in form, in law and in fact, his Britannic majesty has caused the impressment of our seamen, or he must have punished, and not promoted so notorious an offender. On this point I presume then there can be no doubt.

Mr. President—I have thought it neither unprofitable nor irrelevant to the present subject, to examine the right of impressing British subjects.

British jurists have more than questioned this right, and the British parliament have, I presume, decided the question.

Sir Ewd. Coke (2 inst. 47) says—The king cannot send any subject against his will out of the realm, not even in Ireland, for then under pretence of services, he might send him into banishment. (H. H. P. C. Notes, 679) In Hales H. P. C. it is declared "repugnant to the liberty of an Englishman and irreconcilable to the established rules of law, that a man without any offence by him committed, or any law to authorise it should be hurried away like a criminal from his friends and family, and carried by force into a dangerous service."

That the common law did not admit of such a practice, must have been the opinion of the British parliament, who in the time of Charles I. passed a statute [16 C. 1, c. 5] "to authorise the impressment of soldiers and seamen for sea service or service beyond sea," which soon after expired, being of short duration. They might also have been of the same opinion in the time of [2 and 3 Ann. c. 19, 3 and 4 Ann. c. 11, 4 Ann. c. 10, 5 Ann. c. 15, 6 Ann. c. 10] Queen Ann, when a number of statutes of a very short duration passed in parliament, in the same terms as the statute of Charles above stated. I presume they would never have passed laws to have authorized a proceeding that was justifiable by the common law. Judge Foster, who is quoted by Britons as an authority on this point, shall be examined. [Fos. C. L. 157] He states in the case

of Broadfoot, who was indicted for the murder of Calahan, "That by pressing mariners on one hand, a very useful body of men seem to be put under hardships inconsistent with the temper and genius of a free government, on the other the necessity of the case seemeth to entitle the public to the service of this body of men, whenever the safety of the whole calleth for it. "I think the crown has a right to command the service of these people whenever the public safety calleth for it, the same right that it hath to require the personal service of every man able to bear arms in case of a sudden invasion or formidable insurrection. "The right in both cases is founded on one and the same principle, the necessity of the case, in order to the preservation of the whole." But he adds, [Fost. C. L. 154] "If it be asked where are the adjudged cases, on which he groundeth his opinion? He freely confesseth that he hath not met with one in which the legality of pressing for the sea service hath directly come in question. He states that according to his best apprehension, (having thought much upon the subject) the right of impressing mariners for the public service, is a prerogative, inherent in the crown, grounded upon the common law, and recognized by many acts of parliament." With great deference to his honor, I would ask if any thing can be evidence of the common law, but judicial decisions on the point which he admits are not to be found?—I will also examine the statutes on which he relies as recognizing this right. I would here observe that he holds the soldier and seaman alike bound by the same law, and it would [Fost. c. 1. 166] seem by Adm. Seymour's commission, that his power extended to impress ships, captains, masters, pilots and seamen, as well as all other persons fit for the purpose. This was for the sea and foreign service, and did not extend to land soldiers, as till the 24th year of Charles II, all the lands were held by military tenures, whereby the tenants were obliged to furnish soldiers and every thing necessary for them in war, but by 24 C. II. [24 C. II. c. 12] these tenures were abolished, and I question much whether the stat. Charles I. extended to the feudal tenants, who were bound to serve only in England. By a statute of Henry VII. [7 H. 7. c. 1] it is enacted, that if any soldier being no captain immediately retained with the king which shall be in wages, and retained, or take any *prest* to serve the king upon the sea or upon the land beyond sea, depart out of the king's service without licence from the captain, it shall be adjudged felony.

The stat. of Henry VI. [118 H. 6. c. 9] against desertion was construed to extend to soldiers found by *tenure* or *covenant* to serve on land—and a question was made whether soldiers who had taken *prest* to serve against the rebels in Ireland, were liable to the penalties of that law, which was cleared up in parliament in these words, "That the said stat. Hen. VI. in all pains, forfeitures and penalties, did, doth, and hereafter shall extend as well to every mariner and gunner having taken, or who hereafter shall take *prest* or wages, to serve her queen's majesty, as it did, or doth, to soldiers, any opinion to the contrary notwithstanding." These are the statutes from whence the right is pretended to be inferred; which, I presume, go to shew that the mariner and soldier must be enlisted before they are liable to the penalties of desertion, and that it is by *contract* and not by *force*, the soldier becomes bound to serve, and that the right is founded in the prostitution of the sound of the word [Boy. D. Cow. Inst. J. L. D.] *prest* for the sense, which word means "money paid to the soldier or sailor to enlist"—nor is it at all to be wondered at, that a right founded in necessity, the tyrant's plea, should rest on a pretext so flimsy, or that the barriers of etymology should not be able to withstand, as necessity has no law, the physical force of a press gang. And although this right of the seaman to be exempt from service but on their enlistment, has been under the claim of prerogative substantially violated, yet the form of the commission to impress retains the evidence of this violation. It is in these words: (Fost. C. L. 15 c.) "We do hereby empower and direct you to impress or cause to be impressed so many seamen, &c. giving unto each man one shilling for *press money*," &c. Thus I have shewn, that British subjects are not legally bound unless they receive *prest*, or bounty to enlist. And to avoid imposition it is provided by stat. (5 and 6 W. and M. c. 15) "that no person shall be enlisted for the land service, who did not in presence of a magistrate, high constable, &c. declare his free consent to be enlisted as a soldier."

Can we then submit to the exercise of this royal prerogative right, to be enforced on those sailing under the flag of the U. States, without the limits of the British empire. A practice, judge Blackstone informs us, Britons have submitted to with great reluctance; and will it not be said "that we are wanting to ourselves" if we should not guard our seamen against this outrage by all the means in our power? But it may be said the British government have a right to the service of her own subjects—I have shewn, not by impressment, and I will now shew that they have the right of becoming American citizens, and being protected in that right. [Tuck. Black. 1 vol. p. 145] "By the law of nature man is subject to no restraints and may pass into any region.—[Vol. 173 sec. 225.] By the law of nations every subject has a right to expatriate him-

self and seek his fortune where he can best promote his interest. [1 Blac. Com. 265. F. N. B. 85.] And by the common law every Englishman may go out of the Realm, without the king's leave for any cause he pleaseth. And so far has Britain recognised this right, in others by Parliament—that by the navigation act, one fourth of every ship's crew may be foreigners—[6 Ann. c. 37.] By the statute of Ann three fourths may be foreigners, and by the statute of Geo. 2d [13 Geo. 2, c. 3.] it is provided "that any foreigner serving on board of any merchant ship or ship of war for two years in time of war, shall ipso facto become a British subject, entitled to all the privileges of a native born subject." Thus we see Britain invites foreigners into her service, and secures them in all the *privileges* of her native subjects, among which, *protection*, is the most important. Can it be then that Britain will exercise a right that is not legitimate? Or claim for herself what she will deny to others? If not, then she admits the right of expatriation, which is established by the law of nature, of nations, and the common law, and tested by the authority of the British Parliament. Can we then feel ourselves at a loss for authority to protect those who sail under the flag of the U. S. when we see Britain not only inviting foreigners into her service, but securing them *protection* by the solemnity of a statute? Can we then, I say, want authority or zeal to protect our citizens in their rights secured to them by the solemnity of a Constitution under the solemnity of an oath.

Mr. President, permit me here to observe, that all legitimate government is derived from the people, and is founded in compact only, and intended for the good of the whole, "that protection and allegiance are reciprocal obligations, each so important, that in all governments, in all ages they have been secured by the solemnity of an oath.

I ask then, is not the conduct of Britain a violation of the rights of our seamen? Are they not secured in those rights by the most solemn obligation to protect them to the utmost of our power? By the law of nations [Vol. 251. sec. 1.] "Whoever uses a citizen ill indirectly offends the state, which ought to protect their citizens, and his sovereign should revenge the injuries, punish the aggressor, and if possible oblige him to make *inter satisfaction*, since otherwise the citizen would not obtain the *great end* of the civil association, which is *safety*."

I cannot then permit myself for a moment to suppose that a right so important, secured by *ties so solemn*, and so palpably violated, will not be protected, to the utmost of the power of the Congress of the U. S. by all the legislative means they possess, consistent with the sound principles of legislation, and good government.

By the constitution, Congress are to define and punish piracy; in defining piracy, I wish them not to exercise a wild but legal discretion, which is itself defined, "to discern by law what is just." I will therefore call their attention to the subject, as it has been considered by the law of nations—the common and statute law of Great Britain. By the law of nations, [Mol. d. j. m.] "the attacking a ship at sea and taking away some of the men to make them slaves is piracy."

By the common law, [4. Blac. Com. 72—3. Inst. 109.] piracy consists in committing those acts of robbery and depredation upon the high seas which if committed upon land would be felony.

[4. Bl. C. c. 71] Every community have a right to inflict that punishment upon a pirate by the rule of self defence, which an individual would in a state of nature have been otherwise entitled to, for any invasion of his person or property. By the statute of Elizabeth, [43. Eliz.] it is enacted that whoever shall hereafter without *lawful authority* take any of her majesty's subjects against their will and detain them with force, or to make a prey or spoil of his person or goods upon deadly feud, or otherwise, should be adjudged and taken to be a felon, and taken to be a felon, and should suffer the pains of death without benefit of clergy.

(To be Continued.)

HOUSE OF REPRESENTATIVES.

MONDAY, Feb. 17.

Mr. John C. Smith from the committee of Claims, made a report on the petition of Oliver Pollock. The report states that the petitioner appears to be entitled to a part of his claim, which is cognizable by the treasury. They, therefore, recommend that he have leave to withdraw his petition.

Agreed to.

The House went into a committee of the whole—Mr. Varnum in the chair; on the report of the committee of Commerce and Manufactures on the petition of Nicklin and Griffiths. The report states the following circumstances. The petitioners bought from Joseph Anthony, and co. a vessel possessed of an American register. Some time after this purchase, it was disclosed that Joseph Anthony, and co. were indebted to—Coulon, a foreigner, for a part of this ship; in consequence of which the collector refused considering her an American ship. The petitioners pray that this vessel may receive an American register; in which the committee of Commerce and Manufactures concur.

Messrs. Crowninshield, J. Clay, Nicholson, and Ely, supported; and Messrs. Conrad and Macon opposed the report; which was agreed to—Ayes 56—Noes 31.

The committee rose and reported their agreement to the report of the committee of Commerce and Manufactures. The House immediately took up the report, concurred therein, and ordered a bill to be brought in. The bill declaring Jersey, in the state of New Jersey, a port of delivery, and for erecting a

light house on Wood Island, or Fletcher's Neck, in the state of Massachusetts, having passed through a committee of the whole, was ordered to a third reading to-morrow.

The House went into a committee of the whole—Mr. Varnum in the chair—on the bill authorizing George Rapp, and his associates, to locate a township of land in the Indiana territory.

On motion of Mr. Conrad, the first payment was required to be made in four, instead of six years.

On motion of Mr. Leib an amendment was made requiring the location to be made before the 1st day of January, next.

Mr. Clark, though opposed to the principle of the bill, thought, if it passed, the settlers should not be embarrassed by any obligation to cultivate the vine. He therefore moved to strike out that part of the bill which relates to this object.

Motion lost—Ayes 42—Noes 51.

Mr. Crowninshield moved so to amend the bill as to charge interest on the six last payments, from the expiration of the four years when the first payment is required to be made.

Motion lost.

After a variety of other motions to modify the provisions of the bill, most of which were negatived, the committee rose, and reported their agreement to the bill.

The House immediately took the report into consideration. After various motions to amend the bill, most of which were disagreed to, a motion, similar to that made in the committee by Mr. Crowninshield, was made—When, without deciding upon it the House about four o'clock adjourned.

TUESDAY, Feb. 18.

The House took up the unfinished business of yesterday. When the yeas and nays were taken on the amendment proposed to the bill authorizing George Rapp, and his associates, to locate a township in the Indiana territory—requiring the payment of interest on all the instalments except the first, which was carried—Yeas 60—Ayes 44. When the bill was ordered to be engrossed for a third reading to-day.

A message was received from the President of the United States, furnishing the information called for by a resolution of the 24th ult. relative to the expenditures on the various fortifications in the United States, and those on the navy yards; which was referred to a committee of the whole on the state of the union.

The House went into a committee of the whole—Mr. Dawson in the chair; on the bill to incorporate a Presbyterian church in George Town.

After making several amendments, the committee rose and reported their agreement to the bill.

The House immediately took up the report—Mr. Clark moved to strike out the first section. He said his object was to try the sense of the House on the principle of the bill. He was inimical to all incorporations, and particularly to those for religious purposes.

On this motion a debate ensued, which altogether turned on the policy of incorporating associations of individuals for any purposes, and especially for those of a religious nature.

As the arguments adduced on either side were the same with those usually urged on this point, we think it unnecessary to detail them.

Messrs. Clark, Sloan, and Rhea, supported; and Messrs. Findley, Southard, Smith, Elmer, and Nicholson opposed the motion, which was lost—Ayes 29.

That part of the bill, which authorises the raising 3,000 dollars by lottery, was struck out. Various other amendments were made, when the bill was ordered to a third reading to-morrow—Ayes 58.

A bill to empower George Rapp, and his associates, to purchase a tract of land was read the third time. On the question, shall the bill pass, the Yeas and Nays were called, and were Yeas 46—Nays 46.

The Speaker declaring himself to be with the Nays, the bill is lost.

NEW-YORK, February 18.

By the schooner John, from Antigua, the editors of the New-York Gazette received papers, from which the following interesting articles are extracted:

St. John, (Antigua) Jan. 14.—On Sunday arrived off this harbor, under poop of his majesty's ship Fisgard, that part of the Cork fleet bound to Jamaica, and proceeded immediately; at the same time his majesty's ship Northumberland, from whence admiral Cochrane landed at English harbor.

January 16.—Vice-admiral Duckworth and rear-admiral Louis, with 5 ships of the line, arrived at Barbadoes a few days past. The Sirius frigate being in lat. 46, fell in with 18 ships of war belonging to the enemy, and immediately hastened to vice admiral Collingwood with the intelligence, who dispatched admirals Duckworth and Louis in pursuit of them. Off the Cape de Ver. Islands, they chased 6 sail of the enemy's line, supposed to be a part of the force above-mentioned, and suspecting the remainder might be destined to the West Indies, made the best of their way to Barbadoes.

January 21.—His majesty's brig Hart, which arrived at English Harbor on Saturday evening last, has brought the following intelligence:

"On the 13th instant, to windward of Marigante, the Unicorn boarded an American, who informed him that two days before, when he was in lat. 17, long. 59, he fell in with 8 sail of the enemy's ships and a brig, steering westward; and that he was so close as to be certain they were all two deckers.

On Sunday last the British squadron under the command of admiral Duckworth, amounting to seven sail of the line, was discovered from the Shirley Heights, standing to the westward. And on Monday, six sail of the line, one of which bore a blue flag on her mizen top gallant-mast-head, were seen holding their course towards St. Kitts.

If the above reports be authentic, there can be little doubt that our gallant admiral is in pursuit of the enemy's fleet;—But, we fear, too far a-stern to justify a strong hope, of his being fortunate enough to overtake them.

The prince of Auersberg, who took Murat's word of honor that the preliminaries of Peace had been signed, and who desired, in consequence, from executing his orders to destroy the bridges in the neighbourhood of Vienna, has been sent to prison. [London paper.]