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TUESDAY, FEBRUARY 25, 1806

Congress.

SENATE OF THE UNITED STATES.

THURSDAY, February 13.

Debate on the following resolution.

2. Resolved, That the President of the U. S. be requested to demand and insist upon the restoration of the property of their citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations: and to enter into such arrangements with the British government, on this and all other differences subsisting between the two nations, (and particularly respecting the impressment of American seamen) as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves and their citizens by amicable negotiation, that justice to which they are entitled.

Mr. ISRAEL SMITH said that he was extremely sorry that he could not bring his mind to assent to the second resolution; because he viewed it of great importance that there should be unanimity upon a subject of this nature. He was not opposed to it from any constitutional objection, arising from a belief that the Senate had no right to give their advice and consent to the Executive, as to the course and conditions upon which they desired that an accommodation might be brought about; but he was opposed to it from the peculiar impropriety of so doing, deduced from the whole circumstances of the case, as it now presented itself for consideration. It would be recollected by the Senate, that many of our complaints against the British government were of long continuance; that they had been the subject of pointed and repeated remonstrances, and in a particular manner the impressment of our seamen; that on a former occasion they had committed vast spoils on our commerce, not under the sanction of the laws of nations, as their subsequent transactions with our government have acknowledged; but under the authority of the particular orders of their government, thereby subjecting the property of our merchants upon the high seas, not only to the restrictions and forfeitures incurred by the law of nations, but also exposing it to all the vexations and forfeitures growing out of the caprice of British orders of capture. The late encroachments on our rights as a neutral nation, and which are now the subject of consideration, are of a nature similar to those we have before experienced, and proceed from the same unwarrantable cause; and further, are continued in full force and operation at the very moment our government is pressing upon their consideration, the injustice of their proceedings, by argument, too strong and convincing to admit of doubt. And how are they answered? By procrastination and hints, that the necessity of the case is a sufficient justification. The Executive, indignant at this evasion, and despairing of redress by any further appeal to their justice and magnanimity, has turned to the national legislature, and informed them that what remained to be done on this interesting subject must rest on the wisdom and firmness of Congress. We have already unanimously resolved, that the conduct of the British government is an "unprovoked aggression on our neutral rights." What, then, he asked, would be the measures looked for from this body, as proper to repel this outrage? Could any one expect that the first thing suggested to their mind would be, that the Executive should again immediately renew the negotiation? Has he not already told us, that he despairs of obtaining redress by a simple appeal to their justice and magnanimity? Or is this resolution to be understood as speaking to the Executive a language like this?—You have not ably, zealously and preserveringly exercised the powers vested in you by the constitution, to bring about an adjustment of the difficulties and misunderstandings subsisting between the two governments; or you are not sufficiently impressed with the importance of stipulating an indemnification for the losses our merchants have already sustained. Or, that there is some avenue to a sense of justice in this nation, which you have not sufficiently attempted. Surely language like this is disrespectful. We ought not to adopt a resolution on a subject, as important as the present, without being able to assign a substantial reason. Are we fearful that the Executive, after we have afforded the necessary legislative impulse to this negotiation, will be slack or unskillful in the application of it? Or do we, by these officious instructions, wish to derogate

from his merit, by arrogating to ourselves that applause to which, upon a successful and satisfactory negotiation, he will be justly entitled? Mr. Smith hoped that no consideration of this sort would influence the Senate. He believed there was a disposition in the Executive, when furnished with the necessary aid, to pursue negotiation so long as the least gleam of hope of success remained. Beyond that, no one could ask him to persevere. He believed that each member of the Senate, extorted the same opinion. Where then, he asked, is the use of this requisition to the Executive? Is it to be understood, as has been partially hinted by one honorable member, that there is no legislative aid which the Executive or this nation can wisely resort to on this occasion? Are we to be told that Congress has no power to lay duties on exports, or in short that our powers are insufficient; or that we are too weak, or too dependent as a nation, to contend for our rights? We therefore recommend it to the Executive, (after having secured our merchants for past depredations) to enter into such arrangements and stipulations upon points in controversy, by mutual sacrifices; such as shall be likely to meet and promote the views of both parties, and thus recommend justice to be sacrificed to peace. For, he asked, what encroachment upon the rights of that nation, or depredations upon the property of its subjects have we to give up, for the purpose of this our indubitable right as a neutral nation, which they have so flagrantly and frequently violated. He hoped there was no disposition in the Senate to commute any of our rights as a nation, by sacrifices to any of the considerations before mentioned, and in a particular manner, by any abandonment of principles. And yet it appeared to him, if there is any pertinency in the resolution, this must be the interpretation. He observed it was extremely unwise to speak this language, both as it related to our own government, and that with which we have to contend. The latter will easily read in this resolution, the course which the Senate wish to pursue; and efforts will be made accordingly. Should it not be in unison with the views of the Executive of our own government, it will weaken instead of strengthen his exertions for the public good. We have already experienced the evils resulting from too great an anxiety to enter into commercial regulations with that nation. A former treaty stipulated an indemnity to our merchants for similar depredations: that indemnity has ultimately devolved on our own government. We purchased the miserable commercial privileges of that treaty, (if it contained any) at the expense of our neutrality; and by doing violence to the obligations imposed upon us by that neutrality, drew down upon ourselves the resentment of a powerful nation, which involved an expense of more than 10 millions of dollars. He observed it would be better for the government, in his opinion, to insure our merchants against any depredations, which the utmost rapacity of the British would be likely to invite; than again to enter into the unequal, the shameful, and wicked stipulation of the former treaty. He said gentlemen were not to understand that he was for actual hostilities against Great Britain. He deprecated war as much as any man.—If mild measures are adopted, the more certain will be the calculation of a perseverance in them; and without a spirit of perseverance little can be hoped from any measure. He hoped that Congress would be disposed on this occasion, to wield the only weapon which could promise success; that they may take such measures as will prove to Great Britain, that the United States will ultimately have no commerce with them, but upon terms of the most perfect reciprocity. This ground, if once taken, will be easily maintained; it is recommended by being both peaceable and effectual, while all others are doubtful and unequal. He concluded by hoping, that the resolution would be rejected, as it appeared to him disrespectful to the Executive, unnecessary, and inconsistent with the public good.

Mr. ANDERSON.—Mr. President.—The honorable member from Vermont (Mr. Smith) seems to entertain an opinion, that it will be indelicate toward the President of the U. States to adopt the resolution now under consideration. Having been a member of the committee, who reported it, I feel somewhat bound, to endeavor to obviate this objection, having done which I shall then proceed to answer some other objections, and offer some reasons in favor of adopting the resolution. I expect it will be conceded, that if it be constitutional to pass this resolution, it cannot be indelicate toward the President. Let us examine the language of the constitution upon this point. The constitution says, that the President shall have power, by and with the advice and consent of the Senate, to make treaties. Now I contend that the true meaning of this clause is, that the advice should precede the making of the treaty, and that it was couched in the language in which we find it, for the purpose of obtaining the opinion of the Senate, as to the principles upon which the treaty should be made. And upon examining your executive journal, you will find that this construction was given to the constitution by General Washington; who, having been the President of the convention, must reasonably be supposed to have understood the true intent and meaning of the constitution in all its parts. And so far did he extend the construction for which I contend that the executive journal will show, in order to ask the advice of the Senate, relative to a treaty he contemplated making, that in the year 1790, he actually took his seat, in the President's chair of this body, and asked the advice of the Senate upon sundry articles, which he proposed making the basis of the treaty. Thus, it would seem, that the first President of the United States, in discharge of his duty, had given the foregoing construction to the con-

stitution. Some inconveniences having however been found to arise from this mode of asking the advice of the Senate, it has since fallen into disuse. But the latter practice cannot, nor ought not to be considered, as condemning the construction of which I conceive the constitution is fairly susceptible. Because the construction given by the first President, so immediately after the adoption of the federal constitution, must be considered as proceeding from the true sense and correct opinion, which he then entertained of the respective rights of the treaty making power.

In support of this construction, Mr. President, I can also show, from your executive journals, so late as last session, that the Senate passed a resolution, requesting the President to make a treaty with the Creek nation of Indians. And although it may be said, that the Creeks not being a foreign nation, it is not an apposite case, I however conceive the principle to be precisely the same. For we have always treated the Indians as independent nations, and the same proceedings and formalities, have uniformly been had in making the treaties, and ratifying them, as have been had, with other nations. So much Mr. President, I have thought proper to say, in order to shew, that if we pass this resolution, we do not offer any indelicacy to the President. But on the contrary, will only exercise our constitutional power, which the peculiar and perilous situation of our country, seems imperiously to demand. I should not have taken up so much time, upon this point, had not the constitutionality of passing the resolution been also objected to by the other honorable member from Vermont, (Mr. Bradley.)

In discussing the merits of the resolution now under consideration, it will be necessary that we keep constantly in view the great principle of the one, which has already passed this House, by a unanimous vote, because this second resolution is predicated upon the principle of the first. In the first we declare, that the capture and condemnation, under the orders of the British government, and adjudication of their courts of admiralty, of American vessels and their cargoes on the pretext of their being employed in a trade with the enemies of Great Britain, prohibited in time of peace, is an unprovoked aggression upon the property of the citizens of the United States, a violation of their neutral rights, and an encroachment upon their national independence.

In order to shew that the ground we have taken is correct, I will take leave to refer to a book (entitled an examination of the British Doctrine, which subjects to capture a neutral trade, not open in time of peace) ascribed to a gentleman high in office, who has deservedly acquired great celebrity in the political world. It will be found that the principle contended for in the resolution, I have cited, obtained as early as the first rise of regular commerce, and was even reduced to system, as early as 1338. To this doctrine Great Britain acceded by treaty with Sweden, in 1655, and afterwards, in 1674, she actually claimed and enjoyed the benefit of a free trade, she being at that time in peace, and the Dutch in war with France. With what kind of pretext can Great Britain pretend to deprive us of the exercise of the very rights which she herself had claimed and exercised upon precisely the same principles? Besides those neutral rights have, by constant and very long usage, become the established law of nations, and have from time to time been ingrafted into many treaties, even where Great Britain was herself a party. Upon this doctrine thus sustained, we request the President to demand and insist upon the restoration of the property of our citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace, and upon the indemnification of such American citizens for their losses and damages sustained by these captures and condemnations. It has been objected that the language of this resolution is too strong, that the words demand and insist go too far; and that the absolute restoration of our vessels, &c. will by these words being retained, he made the sine qua non of an accommodation with Great Britain. If, sir, we were to express ourselves, in less forcible language, we should, in my opinion, subvert our own principles, and recede from the high ground we have taken, which might eventually radically destroy our neutral rights, and completely paralyze our commerce.

The words demand and insist are diplomatic, and as such most proper to be used, and the more so, as they seem to be appropriate to the principle of the first resolution. But, Mr. President, the latter part of this resolution, by which indemnification may be made, and new arrangements entered into with Great Britain, so far ameliorate those precedent words that the President will possess ample powers, according to a true exposition of the whole taken together, and he will not, in my opinion, be trammelled in the manner the gentleman from Ohio conceives. In settling national differences, it has ever been necessary in some points to give a little, and in others to take, according as the peculiar circumstances, upon which the negotiation might happen to turn, either upon a point of national honor, or an interesting point of national commerce, or both so connected as not well to be severed. Upon the whole, Mr. President, I do believe it will be highly important that the Senate should, at this interesting moment, express their opinion upon our national concerns with Great Britain in such language, that the sense we entertain of our injuries cannot be mistaken. The principles and policy of our government require, that we should prefer negotiation in the first instance; and the adoption of the resolution, by a strong vote of this body, will doubtless add great weight to the object. If, however, we should unfortunately be driven to the dernier resort, I trust we shall never recede one point from the ground we have taken, as expressed in our first resolution. (To be continued.)

C. Ghequiere & H. Kunckel
Have received per schooner Fortitude, Captain Helms,
50 quarter casks Sherry WINE, of an excellent quality, which they offer for sale at a reasonable price and credit.
And from Richmond,
20 lbsds. prime Tobacco.
Lhds. February 24. d8t

Wanted to Purchase,
AN honest and industrious Negro GIRL, from 12 to 16 years old. Apply at this office.
N. B. One from the country will be preferred.
February 24. d6t

LOST,
LAST evening a pair of Topaz BRACELETS, set with pearls, with plates of black hair, pinned in a pair of plié mits—supposed to have been dropt between Gay-street and Thomas McElderry's.—A reward of four dollars will be given to any person who will leave them with the printer hereof.
February 24. d4t

LETTER FROM THE SECRETARY OF THE NAVY,
Enclosing an estimate of the annual expence of supporting in actual service, the whole of the frigates and smaller vessels now belonging to the navy of the United States; in pursuance of a resolution of the house of the 24th instant.

January 28th, 1806—Read, and committed to a committee of the whole house on the state of the union.

NAVY DEPARTMENT, 27th January, 1806.

SIR,
IN obedience to the resolution of the house of representatives of the 24th Inst. I have the honor to enclose, for their information, paper A. which is an estimate of the annual expence of supporting, in actual service, the whole of the frigates, and smaller vessels, now belonging to the United States.

I have the honor to be,
Respectfully, sir,
Your most obedient servant.
ROBERT SMITH.
N. Macon, Esq. Speaker of the house of representatives.

NAME OF VESSELS.	For pay & subsistence of officers & pay of the seamen.	For provisions.	For medicine, hospital stores &c.	Repairs & contingent expences.	TOTAL AMOUNT.
Frigate Presid. U. States	52,561	31,655 23	1,000	30,000	115,214 25
Constitucion	50,965	31,653 23	1,000	30,000	113,618 25
Chesapeak	50,965	31,653 23	1,000	30,000	113,618 25
Constellation	44,293	26,959 76	1,000	30,000	102,252 76
Congress	44,293	26,959 76	1,000	30,000	102,252 76
New York	44,293	26,959 76	1,000	30,000	102,252 76
Essex	35,173	20,633 86	800	25,000	81,606 86
Adams	35,173	20,633 86	800	25,000	81,606 86
J. Adams	35,173	20,633 86	800	25,000	81,606 86
Boston	35,173	20,633 86	800	25,000	81,606 86
Brig Syren	19,746	9,534 20	600	12,000	41,880 20
Hornet	19,746	9,534 20	600	12,000	41,880 20
Argus	19,746	9,534 20	600	12,000	41,880 20
Vixen	15,989	7,171 13	500	8,000	31,610 13
Schr. Nautilus	15,989	7,171 13	500	8,000	31,610 13
Enterprise	15,989	7,171 13	500	8,000	31,610 13
Gun boat, No. 1	6,441	3,648 46	200	750	11,039 45
No. 2 to 10 inc.	57,969	32,836 14	1,800	6,759	99,355 4
Two bombs.	12,882	7,296 93	400	1,500	22,078 92
Dollars,	663,374	383,923 23	15,900	379,000	1,442,129 2

N. B. The expence of marines not included, excepting in the item of provisions.

NEW YORK, Feb. 22.
The census of the city and county of New York, was completed yesterday; from which it appears that there are 75,770 inhabitants, 26,000 of whom removed from their usual residence during the sickness of last summer. This will give to the city and county two representatives in Congress, without including the county of King's and Staten Island, as heretofore has been the practice.

We are informed, by a gentleman, who came passenger in the brig Achilles, from St. Johns, Porto-Rico, that a Danish vessel arrived there on the 22d January, from the city of St. Domingo, where she was detained in coming out of the harbour 34 hours by a French fleet of 10 sail of the line and 24 frigates, which had arrived there from Brest, and had landed 1500 troops.

Our informant adds, on the authority of the secretary of the government, that the Danish Captain had informed the Governor of Porto Rico of the above intelligence.

Captain Hooper, arrived at Boston on Saturday from Martinico, informs, that on the 17th January, in lat. 19,40, N. long. 63, 13, W. he was boarded by a French 84 gun ship, then in company with 5 other ships of the line, and 2 frigates. He was told by the officers, that the fleet was direct from Brest; that they had been out 31 days, and were bound to St. Domingo.

Captain Hooper, left St. Pierre's [Mar] on the 15th January and says, there was not a single prize lying there when he sailed.

The brig Active, Rutherford, of Newburyport, in 21 days from Point Petre, Guadeloupe, with sugar, coffee and molasses, to Ebenezer Stevens, Lawrence & Whitney, and Joseph Marcadier, was cast away on the night of the 18th instant, after a successive fog of three days 20 miles east of Sandy Hook. The vessel has bilged; the cargo, it is supposed, will be saved.

[Anticipated—from our correspondent.]
Extracted from a Postscript to the Kingston Royal Gazette of the 25th ult.

Under the regulations adopted for the two Cork fleets, each vessel had her number painted in large white figures under her main chains; they were directed to proceed in three columns, agreeably to the numbers they bore at the distance of two cables length from each other, and the space of a mile and a half to be preserved between the respective columns.

In consequence of the intelligence brought by the Sea Horse, the Veteran and Malabar men of war have been anchored at the entrance of Port Royal harbor, and the following circular letter was yesterday issued by his honor the lieutenant governor to the custodes of the different parishes:

[CIRCULAR.]
King's House, Jan. 24.

SIR,
The lieutenant governor having received intelligence by his majesty's ship Sea Horse, captain Corbet, that 18 sail of French line of battle ships had been on the 16th of December, in lat. 46, long. 10, steering a course supposed for the West Indies, his honor thinks it necessary, as a measure of precaution, to acquaint you therewith, for the information of the parish of which you are chief magistrate. The commander in chief directs me to add, that he has caused circular letters to be written to the colonels and commanding officers of the militia re-

giments and troops of horse throughout the island, to have a general muster of their respective corps immediately, and to report for his excellency's satisfaction the state of their several commands, as it may be necessary to call them into action suddenly, at no distant period.

I have the honor to be, sir, your most obedient humble servant,
S. TYRRELL, Sec.

Custode or Chief Magistrate of —
Capt. Peile, of the Resolution, of Liverpool, which vessel arrived on Wednesday at Port Morant, has favored us with the following extract from his log-book, from which we have every reason to hope that a British squadron of equal force, is closely tracking on the heels of the enemy:

"On the 10th December, in lat. 35, 20, long. 11, at day light, perceived a French fleet, in two divisions, one in the S. E. quarter, the other in the N. W. About 8, A. M. the commodore (the Arethusa) made a signal for the fleet to heave to, which was immediately obeyed. At half past 8, the commodore stood in for the fleet with the signal to disperse, and for an enemy in sight. He then stood to the N. N. W. with about 10 sail, accompanied by the Boadicea frigate and the Wasp sloop. At 10, the whole of the enemy's squadron, consisting of 14 line of battle ships, a frigate, a sloop of war, and a brig, pursued the commodore. At 11, stood to the S. E. crossing the base of the enemy's leading ship, almost within gun shot to the leeward, when the admiral making a signal, two of the enemy's two deckers stood after us, and chased us till 3, P. M. only the sternmost ships of their fleet being in sight to the N. W. The two ships then, tacked, and joined their fleet; we steered a S. S. E. course till dark, and due W. all night. At day-light on the 17th, saw 14 or 15 sail of large ships astern, some lying to, and others steering different ways, apparently as if they had lost sight of their pursuit, which we conjectured to be the English fleet."

The Ellen is 45 days from Angola, and 18 from Dominica. She has 269 slaves on board and was bound to New Providence, but has put in here in distress. At Dominica she learnt, that in consequence of information of 14 sail of the line having escaped from Brest, martial law had been proclaimed, but on the day of the Ellen's departure it was taken off, two frigates having arrived at Prince Rupert's, with an account of the arrival of sir John T. Duckworth, at Barbados with five sail of the line and several frigates.

Vice admiral lord Collingwood, on the 11th ult. was off Carthagena; blockading the Spanish squadron in that port, with the following ships, viz.
Britannia, 100 guns, rear admiral W. Earl of Northesk, capt. C. Bullen; Queen, 98, vice admiral lord Collingwood, captain F. Pender; Dreadnought 98, capt. J. Corn; Prince 98, R. Gridall; Minotaur 74, C. J. M. Mansfield; Thunderer 74, lieutenant J. Stockham, (acting); another 74, name unknown; 2 frigates, and 2 sloops of war.

It is supposed that the ships that were off Cadix would proceed to join lord Collingwood off Carthagena.
In consequence of information received from captain Langford, of the Lark sloop of war, of the capture by the Rochefort squadron of the vessels for Africa, under his convoy, sir John T. Duckworth had sailed in quest of them, with the following ships of the line, viz.
Conopus, 80 guns, rear admiral T. Lewis, captain F. W. Austen; Domergue, 80 P. Malcorm; Tigre, 80, B. Hallowell; Powerful, 74, R. Plamph; Spencer, 74, hon. R. Stopford; Agamemnon, 64, sir E. Berry, Knt. and another 74, supposed to be the Ajax, lieutenant J. Ellford (acting).
This is the same squadron which called at Madeira for information prior to the sailing of the Defiance, which arrived here last week.