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Congress
OF THE
United States of America.

HOUSE OF REPRESENTATIVES.

THURSDAY DECEMBER 6.

DEBATE

On the bill for protecting the ports and harbours of the United States and preserving peace on the waters within their jurisdiction

Concluded from yesterday's American

Mr G. W. Campbell—This fectio.. confains a principle of much importance, though not yet touched upon by any of the gentlemen who have engaged in the diſcuſſion; and the manner in which the Houſe may now decide thereon will go to fix a precedent upon which the freedom and independence of the individual ſtates may be placed in jeopardy.

The firſt object in the ſection is to authoriſe a ſtate officer, acting under the ſtate authority to go beyond the limits of ſuch, and of c urſe beyond its juriſdiction, to execute ſtate proceſs upon an offender eſcaping from juſtice He did not believe that the United States were competent to give ſuch authority, or that the United States could extend the laws of the ſeveral ſtates beyond the boundaries of the ſtate for which they had been enacted. For this reaſon he meant to oppoſe giving this authority to a ſtate officer but he would be clearly in favor of making ſuch proviſion as would more effectually preſerve peace in the ports and harbours and waters of the United States, and at the ſame time remove the doubts ſuggeſted by gentlemen on both ſides. He would be for introducing into the bill, inſtead of the preſent ſection, a proviſion, that when ſuch a crime ſhall have been committed, and the party charged had eſcaped into the United States juriſdiction, the ſtate officer having received the ſtate proceſs might exhibit the ſame to a proper officer of the United States who ſhould iſſue a new warrant, and upon ſuch warrant the offender eſcaping ſhould be arreſted This he conceived to be the only mode in which congreſs had a conſtitutional right to reach their objects, or to aid the ſtate government in apprehending offenders. He was clearly of opinion that the powers of a ſheriff could only correſpond with thoſe veſted by the writ, which never did more than command the perſon to be taken if he be found within your bailwick or county if you extend his powers in the manner contemplated in the bill the ſtate officers of Philadelphia will be diſpatched with ſtate proceſs to execute in Charleſton.

He had always been of opinion that each ſtate had a right to call out its own militia, to carry into effect their own laws, and that the United States cannot require it of any ſtate officer to call forth the militia to carry into effect the laws of ſuch ſtate; but he was alſo of opinion that Congreſs may authoriſe a ſtate officer to call upon the United States officers to aid in the apprehenſion of fugitives from juſtice; but here we could only authoriſe them, and not compel them to make ſuch call; if we could we ſhould annihilate the very exiſtence of the ſtate governments. This proviſion being made he would go further, though he was not willing to authoriſe every juſtice of peace to call to his aid the military and naval forces of the United States, yet he was inclined to draw out this force whenever it became neceſſary, under the direction of a proper officer to carry into execution a ſtate proceſs, where a ſtate was incompetent to that object

He would briefly mention another objection. It was to that part of the ſection which relates to puniſhment in caſe of reſiſtance. He conceived this to be altogether unneceſſary. When the United States authoriſe their officer to execute a proceſs he is armed with all the requiſite power for its accompliſhment, and as long as he acts within the authority given to him he will be juſtified in his conduct, and all who oppoſe him will be guilty of ſuch a crime as is known to the laws in the quarter where oppoſition may be given. This part of the bill appeared to him to be unneceſſary, and if unneceſſary it would be found alſo inconvenient. Whether the killing of the officer or his aſſiſtants was murder or man ſlaughter would be determined by the facts, and the puniſhment in either caſe would be found under the ſtate law, adopted from the Engliſh law to which a court would have to turn for its deciſion.

Mr. Nicholſon wiſhed that gentlemen before they found fault with the bill would pay a more particular attention to its proviſions. The gentleman laſt up had ſuppoſed this bill enjoined upon the ſtate officer, as a duty, that he ſhould call in the aid of a military force to execute the ſtate laws. That was not the caſe; the bill only ſays it ſhall be lawful for him ſo to do. It was obſerved ſome days ſince that our ſtatutes affixed a puniſhment to the offence of reſiſting a civil proceſs conſiſting of fine and impriſonment; but this being a different crime when attended with killing it became neceſſary in order to remove doubts as to what puniſhment ſhould be inflicted, that it be ſimpliſied and expreſſed in the law itſelf. He held himſelf ready to agree to the amendments ſuggeſted by the gentleman from Pennſylvanea, (Mr. Clay) which he expected would ſatisfy every member, except the gentleman laſt up from Tenneſſee.

Mr. Nelson took this opportunity of expreſſing in the moſt public and moſt explicit manner, that he ſhould on all occaſions vote againſt every meaſure which went to aggrandize the power of the United States at the expence of the individual ſtate governments, or the authority of the people It is at this day admitted that the general government have no other powers or juriſdiction than what are granted by the people in the conſtitution: that the powers not delegated therein, or prohibited by it to the ſtates are reſerved to the ſtate reſpectively, or to the people The ſection before the committee contains two important regulations—one of which he conſidered as juſt and proper; the other not, as warranted by the conſtitution.—Nay it would be a direct infringement upon the rights of the individual ſtates The ſection contemplates giving authority to the ſtate officers to call out the militia of the ſtate to execute its own laws—and thereby take the command of that force out of the hands of the executive authority, where the ſtate conſtitutions generally placed it. He admitted the right of Congreſs to call forth the militia in caſes of inva ſion or inſurrection, and to execute the laws of the Union; but excluſively of theſe caſes authoriſed by the conſtitution, he was bold to ſay Congreſs had no right to interfere with calling the militia into ſervice—The command of the militia he conſidered as a ſovereign power, and as ſuch it could not be exerciſed by two ſovereign authorities; as that would deſtroy the very idea of ſovereignty, which was an excluſion of all other authority than one; the ſtate executive could not call forth the militia and the Congreſs exerciſe the like power at the ſame time.—He ſhould always hold up his hand againſt ſuch interference with the ſtate ſovereignties, or an aſſumption of power by Congreſs, in this caſe, as well as other analogous caſes

Some gentlemen have entertained doubts whether Congreſs have power to authoriſe a ſtate officer to execute proceſs within the United States juriſdiction; if Congreſs have excluſive juriſdiction, it is competent for them to point out the manner in which it ſhall be conducted, and the perſons by whom.—The ſtates of New York and Connecticut may mutually agree that the proceſs of each ſtate may take effect in the other This is a principle ſo plain, that it cannot be doubted and never ought to have been doubted but what Congreſs may in like manner permit a ſtate proceſs to be executed within its excluſive juriſdiction.

His colleague (Mr Nicholſon) had made a diſtinction, on enjoining it upon a ſtate officer to call out the militia, and ſaid that only gave him the power to do ſo, if he deemed it requiſite. It is true, that it is not enjoined as a duty, but it is nevertheleſs equally true, that you aſſume to take away the power of a governor of a ſtate, and give the authority to a juſtice of peace, intended by the ſtate conſtitutions to be excluſively within executive and legiſlative controul.—He ſhould therefore vote in favor of ſtriking out that part of the ſection, giving to judges or juſtices the power of calling out the militia, while he meant to favor that part extending the power to the civil officer of the ſtate to make an arreſt within the territory of the United States or waters under its juriſdiction, in caſes of fugitives from juſtice.

Mr. Dana had no objection to the ſecond part of the claus, ſo far as it went to preſerve peace in our ports and harbors, or maintain the rights of a ſtate againſt every foreign aggreſſion whatever The general idea of combining the force of the United States and the force of an individual ſtate, he thought unobjectionable as to its principle, and gentlemen differed merely as to the detail. True, the manner of conducting this operation was important, and required deliberation in order to avoid the eſtabliſhment of a precedent, which might hereafter be drawn out to ſupport an unconſtitutional authority—In reſpect to the firſt point, calling forth the militia to execute the ſtate laws, he did not ſee that it need be conſidered as an inſuperable impediment; becauſe although the United States could not call them forth to execute a ſtate law, yet the ſtates themſelves poſſeſſed the power, and would no doubt provide for its efficacious exerciſe in carrying their reſpective laws into full effect.—But a doctrine, that had been broached for the firſt time in the courſe of this debate, was a ſubject of an alarming tendency, and in his opinion was contrary to the whole ſcope of the conſtitutional powers granted to the general government of the Union—It is ſaid that the laws of particular ſtates are laws of the United States, becauſe the ſtates are a part of the Union. The conſtitution declares it to be the duty of the Preſident to take care that the laws be faithfully executed, and he is to commiſſion all officers of the United States Is it meant that the Preſident ſhall ſee to the execution of the laws of each particular ſtate? This will give a vaſt range to Preſidential authority- But this is not all; for if you extend your view to the end of this conſtruction, it will be found that the judicial authority is co-extenſive, and they will paſs judgement of right upon the ſtate laws—It is very well known that the laws of the ſeveral ſtates are of two kinds; part ſtatute and part common law; and this will extend their juriſdiction to all caſes ariſing at common law. Grant this ſweeping clauſe ſes with it, and it will enable the courts of the U. States to draw every litigated ſubject within their own cognizance, a ſtep which ſurely gentlemen are not prepared to take at this time.

With reſpect to the latter part of the ſection, he was prepared to go the whole length. He would furniſh the whole force of the United States to ſupport the peace and independence of the ſtates, and to vindicate lawful commercial purſuits, againſt any or every nation that dare attack them. He aſſented to the poſition of the gentleman from Virginia. (*Mr J. Randolph*) and was willing to riſk the queſtion of peace or war upon the iſſue. He was not anxious to ſtrike out the ſection; he did not know but it might be as well to re-commit it.

Mr G. W. Campbell explained in what he conceived he had been miſtaken by Mr Nicholſon, and declared his willingneſs to go as far in the protection of our commerce, and preſerving peace within our waters as any gentleman on the floor; the only point in variance was as to the mode He wiſhed it might be done in conformity to eſtabliſhed principles in law and in right reaſon, keeping altogether clear of conſtitutional embaraſſment.

The queſtion on ſtriking out the ſecond ſection of the bill was carried in the affirmative, 61 being in favor of, and 41 againſt it.

A motion was then made by Mr. R. Griſwold for the committee to riſe and report the bill, with a view to its recommitment to a ſelect committee. This being negatived,

The committee continued diſcuſſing the details of the bill.

Mr J Gray propoſed to amend the bill by declaring that all unlawful ſearch, or other vexation, or impriſonment of any of the crew of trading veſſels coming to or going from the United States ſhould be puniſhed in the manner defined in the 5th ſection

Upon ſome deſultory converſation and it appearing that the idea embraced by the amendment was provided for by other words in the bill, the amendment was loſt.

Mr J Randolph obſerved that it was not ſurpriſing ſo much variation in ſentiment had been diſcloſed On the contrary he was ſurpriſed there had been ſo little. For he conceived it the moſt arduous taſk that had ever devolved upon a committee to report at once a bill perfectly ſatisfactory in its details on a ſubject as novel as it was important. The great difficulty was in providing againſt the claſhing of the two juriſdictions in the execution of a ſtate proceſs He thought it would be beſt to create the offence and leave, to the ſtate the mode of puniſhment in ordinary caſes; but where offences were committed by foreign armed veſſels he conceived the United States and the ſtates might have a concurrent juriſdiction.

The committee roſe and reported, and the buſineſs took the courſe marked in our regiſter.

MONDAY DECEMBER 10.

Debate on the bill for eſtabliſhing a Court for the adjudication of prize cauſes in certain caſes

Mr R Griswold ſaid there was ſome difficulty occurred to his mind in the very outſet of the bill. The conſtitution of the United States declares that all their judges ſhall hold their offices during good behaviour. Yet the firſt ſection of the bill declares that the judge of this court ſhall hold his office during the exiſtence of the war between the United States and any of the predatory powers of the ſtates of Barbary, and the 9th ſection goes ſtill further, in abridging the duration of the office by giving power to the Preſident to aboliſh the Court when he may think proper. By the conſtitution the Preſident is empowered to nominate, and by and with the advice of the Senate to appoint judges; but no where by that inſtrument, is he authoriſed to aboliſh a court or annihilate the office of a judge of the admiralty, as this ſection attempted to authoriſe him to do He aſked the gentleman who reported the bill to juſtify this arrangement of a judge of admiralty holding his office either during a war, or at the diſcretion of the Preſident. In order to try the principle he moved to ſtrike out the firſt ſection of the bill.

Mr Rodney did not know that he had it in his power to ſatisfy the ſcruples of the gentleman from Connecticut, but if he had, he would endeavour to remove them. He conſidered this caſe as one *ſui generis*, dependant upon its own peculiar circumſtances; and he ſhould not bring into view the queſtion extremely analogous, which had been ſo much controverted a few years back, but had been then ſet at reſt, namely, that judges appointed under the law of the United States when once the courts were aboliſhed, and their juriſdiction taken from them, ſhall not ſtill continue judges of the land, and receive a ſalary for being idle, or worſe than idle.

The caſe of laſt ſeſſion, in forming a temporary government for the Louiſiana territory, was preciſely on the principle of the bill, and the gentleman will find upon inſpecting the law that the judges in that territory only hold their offices for four years. The tenure in that caſe is a term of years and is ſurely as ſtrong a caſe as the one to be provided for by the bill, both courts being erected, or to be erected, out of the original limits of the United States at the time of adopting the conſtitution; and he believed the conſtitution when it declared that the judges of the ſupreme court and inferior courts ſhould hold their offices during good behaviour, confined itſelf to the then territory of the union, and not to judges out of the United States. There is another ſection of the conſtitution which gives to Congreſs the power to make all laws neceſſary for carrying into execution the other powers granted by that inſtrument, and under this power it became for Congreſs to make proviſionary regulations for temporary contingencies, and we are authoriſed to eſtabliſh a temporary judiciary out of the United States, becauſe the exigency occaſioned by the exerciſe of the conſtitutional power of declaring war imperiouſly calls for it. Without ſuch a proviſion as that contemplated in the bill our gallant tars would be fighting to little effect, if there was no judicial authority for the condemnation of Tripolitan veſſels after capture. The terms of the conſtitution do not apply to caſes of this kind. This queſtion was talked over in the ſelect committee and the committee were unanimous, that we were as much at liberty to fix the duration of the judge's office in this caſe, as we were to fix the term of four years as the period of the eſtabliſhment of the courts in Louiſiana

Mr. R. Griswold ſaid the caſe did not compare. The judiciary power veſted in the judges of the territory of Louiſiana, was not that judiciary power of the United States mentioned in the conſtitution, and therefore the variation of the tenure might be juſtified; but in the preſent caſe they were about to veſt a judge with the proper conſtitutional power of an United States' judge, exerciſing admiralty juriſdiction, which is a regular judiciary power of the United States; and although it was to be exerciſed out of the territory of the United States it was nevertheleſs the power alluded to in the conſtitution and an inferior court to be eſtabliſhed by congreſs the judge of which is to hold his office during good behaviour: and no gentleman on that floor could deny that this judge was bound in his deciſions by the laws of the United States binding on the diſtrict and other judges of the union. He did not ſee that the point he had made out on the preſent queſtion was the ſame as that alluded to in the repeal of the late judiciary law; what was then contended for was the repeal of the law, and not whether congreſs had the power of removing the judges The preſent was not repealing a law in order to abrogate the office, but it was creating a new court and providing for the appointment of a judge thereto, who by the conſtitution is to hold his office in that court during good behaviour. Yet this bill declares that the office ſhall be limited to the war with the Barbary powers.—He did not think that the meaſure was warranted by the conſtitution.

Mr. J. Randolph ſaid that this was an old queſtion in a new ſhape, it was not in the ſame words, but it turned upon the ſame pivot If congreſs poſſeſſed the power when a court became uſeleſs to aboliſh it certainly they had the power when creating a court for a particular purpoſe to declare, that when that purpoſe was anſwered, the court ſhould be diſcontinued. Where was the difference between creating a judicial court now and at the end of the Tripolitan war (or any definite period of time) annulling it, and ſpecifying in the law creating the court that it ſhould ceaſe and be diſcontinued at the end of the Tripolitan war, or at any definite time hereafter? So far as related to the judges there was more of ſpecioufneſs in the claim of him who entered into an office the term of whoſe exiſtence was not defined in the law creating it, than of him who knew when he accepted an appointment that on a certain contingency or at a certain time his office was to ceaſe and be diſcontinued.

In regard to the ninth ſection, without ſeeing it in the very objectionable point of light in which it was viewed by the gentleman from Connecticut, he thought the bill would be as well without it. Whatever might be the relative ſituation which he might hold on that floor, he ſhould always be averſe to an unneceſſary accumulation of patronage and power in the hands of the executive. The ſalary bill the next ſeſſion of Congreſs, ſuppoſing peace in the mean time to be made with Tripoli, was no object.

Mr. Elliot did not view the ſubject in the ſame point of light as the gentleman who had preceded him. He did not conſider the firſt ſection as limiting the duration of the court, but merely authoriſing the President by and with the advice of the ſenate to appoint a judge of admiralty in the territory of ſome foreign nation at war with the ſame nation with which we are now at war. But the 9th ſection gave the President the power of abrogating this court after it ſhould be eſtabliſhed. He would never conſent to give the President the power to abrogate any judiciary tribunal whatever. He ſhould therefore vote for retaining the firſt ſection and ſubſequently for ſtriking out the 9th.

Mr. Nelson, as one of the committee who had reported the bill begged to be permitted to aſſign ſome reaſons in its defence He did not pretend to underſtand the forms of proceeding in this body. The ſhort time he had had the honor of a ſeat on this floor forbad his aſpiring to that knowledge; but in all the legiſlative bodies with which he was acquainted, it is not deemed parliamentary to argue againſt the firſt ſection of a bill that the laſt ſection is imperfect or incorrect. When a bill is to be conſidered by ſections, the merits or demerits of each is to be conſidered by itſelf, Now the firſt ſection does not fix the time at which the law ſhall expire or the office ſhall ceaſe; and although the conſtitution ſays that judges ſhall hold their offices during good behaviour, who is there here that can ſay that this office may not laſt during the life of the judge, nay, may not laſt to the end of time, for no man can ſay when the war will end. But admitting it to be in order to refer to the 9th ſection while diſcuſsing the firſt, he would aſk how did that infringe the conſtitution? The power to aboliſh the office is fixed ſomewhere, and when once aboliſhed, and the officer left with nothing to do; will it be yet contended that he ſhall ſtill be entitled to receive his ſalary? Does the conſtitution prohibit Congreſs from making a judge a juſtice, or a commiſſioner, call him what you pleaſe, on an extraordinary emergency, and inſiſt upon his holding ſuch office during good behaviour? He had always conſtrued differently. The idea of a tenure during good behaviour in the office of a judge was borrowed from England, and there it was conſidered as a great point gained over the crown by which they were appointed, and upon which they had heretofore been wholly dependent But was it ever contended that the Britiſh parliament, including king, lords, and commons, were incompetent to diſmiſs them from their ſeats; it never was ſo contended, nor it never can be ſo contended, with ſucceſs; & though here the President has not the power to remove inferior judges, yet the legiſlature may remove them with their offices, and the body of the people may remove them by an expreſſion of their ſovereign will; but perhaps theſe remarks are unneceſſary & need not be dwelt upon. He would vote againſt ſtriking out the clauſe.

The queſtion was taken on ſtriking out the firſt ſection, and loſt without a diviſion.

(To be Continued.)

From a late Charleston paper.

A letter from Columbia ſays, that the following gentlemen were nominated as electors of preſident and vice-preſident of the United States; that in all probability they would be elected, and would vote for Thomas Jefferſon, as preſident, and George Clinton, as vice-preſident:

John Blake, Arthur Simkins, Joſeph Blyth, William Hill, John Gaillard,* Thomas Taylor, Joſeph Calhoun, James Miles, Samuel Warren,* and John Taylor.

The above choice was made with a view to give each congreſſional diſtrict an elector, but there being two more electors to be choſen than there are diſtricts, the two gentlemen with this mark* were taken from Charleſton diſtrict.