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Resistance to law in Boston.

A message was received from the President of the U. States, in response to Mr. Clay's resolution, calling for certain information in regard to the rebent case of resistance to the law in Boston. The message was read as follows:

EXECUTIVE DEPARTMENT,
February, 19, 1851.

To the Senate of the United States:

I have received the resolutions of the Senate of the 19th instant, requesting me to lay before that body, if not incompatible with the public interest, any information I may possess in regard to an alleged recent case of a forcible resistance to the execution of the laws of the United States in the city of Boston, and to communicate to the Senate, under the above conditions, what means I have adopted to meet the occurrence; and whether, in my opinion, any additional legislation is necessary to meet the exigency of the case, and to more vigorously execute existing laws.

The public newspapers contain an affidavit of Patrick Riley, a deputy marshal for the district of Massachusetts, setting forth the circumstance of the case, a copy of which affidavit is herewith communicated. Private and unofficial communications concur in establishing the main facts of this account, but no satisfactory official information has yet been received, and in some important respects the accuracy of the account has been denied by persons whom it implicates. Nothing could be more unexpected than that such a gross violation of law, such a high-handed contempt of the authority of the United States should be penetrated, by a band of lawless confederates, at noonday, in the city of Boston, and in the very temple of justice. I regard this flagitious proceeding as being a surprise, not unattended by some degree of negligence; nor do I doubt that, if any such act of violence had been apprehended, thousands of the good citizens of Boston would have presented themselves voluntarily and promptly to prevent it; but the danger does not seem to have been timely made known, or duly appreciated by those who were concerned in the execution of the process. In a community distinguished for its love of order and respect for the laws; among a people whose sentiment is liberty and law, and not liberty without law, nor above the law, such an outrage could only be the result of sudden violence, unhappily too much unprepared for to be successfully resisted. It would be melancholy, indeed, if we were obliged to regard this outbreak against the constitutional and legal authority of the Government, as proceeding from the general feeling of the people, in a spot which is proverbially called "the cradle of American liberty."

Such, undoubtedly, is not the fact. It violates, without question, the general sentiment of the people of Boston, and of a vast majority of the whole people of Massachusetts, as much as it violates the law, defies the authority of the Government, and disgraces those concerned in it, their aiders and abettors.

It is, nevertheless, my duty to lay before the Senate, in answer to its resolutions, some important facts and considerations connected with the subject.

A resolution of Congress, of September 23, 1789, declared:

"That it be recommended to the Legislature of the several States to pass laws, making it expressly the duty of the keepers of their jails to receive and safe keep therein, all prisoners committed under the authority of the United States until they shall be discharged by the course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such States respectively; the United States to pay for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner, that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offences."

A further resolution of Congress, of the third of March, 1791, provides that "whereas Congress did, by a resolution of the 23d day of September, 1789, recommend to the several States to pass laws making it expressly the duty of the keepers of their jails to receive and safe keep therein all prisoners committed under the authority of the United States; in order, therefore, to insure the administration of justice.

"*Resolved by the Senate and House of Representatives of America in Congress assembled*, That, in case any State shall not have complied with the said recommendation, the marshal in such State, under the direction of the judge of the district, be authorized to hire a convenient place to serve as a temporary jail and to make the necessary provision for the safe keeping of prisoners committed under the authority of the United States, until permanent provision shall be made by law for that purpose; and the said marshal shall be allowed his reasonable expenses, incurred for the above purposes, to be paid out of the treasury of the United States."

And a resolution of Congress, of March 3, 1821, provides that "where any State or States, having complied with the recommendation of Congress in the resolution of the twenty-third day of September, 1789, shall have withdrawn or shall hereafter withdraw, either in whole or in part, the use of their jails for prisoners committed under the authority of the United States, the marshal in such State or States, under the direction of the judge of the district, shall be, and hereby is, authorized and required to hire a convenient place to serve as a temporary jail, and to make the necessary provision for the safe-keeping of prisoners committed under the authority of the United States until permanent provision shall be made by law for that purpose; and the said marshal shall be allowed his reasonable expenses incurred for the above purposes, to be paid out of the treasury of this United States." These various provisions of the law remain unrepealed.

By the law of Massachusetts, as that law stood before the act of the Legislature of that State of the fourth of March, 1843, the commonjails in the respective counties were to be used for the detention of any persons detained or committed by the authority of the courts of the United States, as well as by the courts and magistrates of the State. But these provisions were abrogated and repealed by the act of the Legislature of Massachusetts, of the 24th of March, 1843.

That act declares that "no judge of any court of record of this commonwealth, and no justice of the peace, shall hereafter take cognizance, or grant certificate, in cases that may arise under the third section of an act of Congress passed February 12, 1793, and entitled "An act respecting fugitives from justice and persons escaping from the service of their masters" to any person who claims any other person as a fugitive slave within the jurisdiction of the Commonwealth." And it further declares, that "no sheriff, deputy sheriff, coroner, constable, jailor, or other officer, of this Commonwealth, shall hereafter arrest or detain, or aid in the arrest, or detention, or imprisonment in any jail or other building belonging to this Commonwealth, or to any county, city, or town thereof of any person for the reason that he is claimed as a fugitive slave."

And it further declares that "any justice of the peace, sheriff, deputy sheriff, coroner, constable, or jailor, who shall offend against the provisions of this law, by in any way acting directly or indirectly under the power conferred by the third section of the act of Congress aforementioned, shall forfeit a sum not exceeding one thousand dollars for every such offence, for the use of the county where said offence is committed, or shall be subject to imprisonment not exceeding one year in the county jail.

This law, it is obvious, had two objects: the first was to make it a penal offence in all officers and magistrates of the commonwealth to exercise the powers conferred on them by the act of Congress of the 12th of February, 1793, entitled, "An act respecting fugitives from justice, and persons escaping from the service of their masters," and which powers they were fully competent to perform up to the time of this inhibition and penal enactment; second, to refuse the use of the jails of the State for the detention of any person claimed as a fugitive slave.

It is deeply to be lamented that the purpose of these enactments is quite apparent. It was to prevent, as far as the Legislature of the State could prevent, the laws of Congress, passed for the purpose of carrying into effect that article of the Constitution of the United States, which declares that "no person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due," from being carried into effect. But these acts of State legislation, although they may cause embarrassment and create expense, cannot derrogate either from the duty or the authority of Congress to carry out fully and fairly the plain and imperative constitutional provision for the delivery of persons, bound to labor in one State and escaping into another, to the party to whom such labor may be due. It is quite clear that, by the resolution of Congress of the 3d of March, 1821, the marshal of the United States, in any State in which the use of the jails of the State has been withdrawn in whole or in part from the purpose of the detention of persons committed under the authority of the United States is not only empowered, but expressly required under the direction of the judge of the District, to hire a convenient place for the safe keeping of prisoners committed under the authority of the United States. It will be seen, from papers accompanying this communication, that the attention of the marshal of Massachusetts was distinctly called to this provision of the law by a letter from the Secretary of the Navy of the date of October 28th last. There is no official information that the marshal has provided any such place for the confinement of his prisoners. If he has not, it is to be regretted that this power was not exercised by the marshal, under the direction of the District judge, immediately on the passage of the act of the Legislature of Massachusetts, of the 24th March 1843; and especially that it was not exercised on the passage of the Fugitive Slave law of the last session, or when the attention of the marshal was afterwards particularly drawn to it.

It is true that the escape from the deputy marshals in this case was not owing to the want of a prison, or place of confinement, but still it is not easy to see how the prisoner could have been safely and conveniently detained, during an adjournment of the hearing, for some days without such place of confinement. If it shall appear that no such place has been obtained, directions to the marshal will be given to lose no time in the discharge of this duty.

I transmit to the Senate the copy of a proclamation issued by me on the 18th instant, in relation to these unexpected and deplorable occurrences in Boston, together with copies of instructions from the Department of War and Navy relative to the general subject. And I communicate also copies of telegraphic despatches transmitted from the Department of State to the district attorney and marshal of the United States for the district of Massachusetts, and their answers thereto.

In regard to the last branch of the inquiry made by the resolution of the Senate, I have to observe that the Constitution declares that "the President shall take care that the laws be faithfully executed," and that "he shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States," and that "Congress shall have power to provide for calling forth the militia to execute the laws of the Union suppress insurrection, and repel invasions." From which it appears that the army and navy are by the Constitution, placed under the control of the Executive, and probably no legislation of Congress could add to or diminish the power thus given, but by increasing or diminishing or abolishing altogether the army and navy. But not so with the militia. The President cannot call the militia into service, even to execute the laws or repel invasions, but by the authority of acts of Congress passed for that purpose. But when the militia are called into service, in the manner prescribed by law, then the Constitution itself gives the command to the President. Acting on this principle, Congress by the act of February 28, 1795, authorized the President to call forth the militia to repel invasion, and "suppress insurrections against a State government, and to suppress combinations against the laws of the United States, and cause the laws to be faithfully executed." But the act proceeds to declare that whenever it may be necessary, in the judgment of the President, to use the military force thereby directed to be called forth, the President shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time. These words are broad enough to require a proclamation in all cases where militia are called out under that act, whether to repel invasion or suppress an insurrection, or to aid in executing the laws. This section has, consequently created some doubt whether the militia could be called forth to aid in executing the laws without a previous proclamation. But yet the proclamation seems to be in words directed only against insurgents, and to require them to disperse, thereby implying, not only an insurrection but an organized, or at least an embodied, force. Such a proclamation in aid of the civil authority would often defeat the whole object by giving such notice to persons intended to be arrested that they would be enabled to fly or secrete themselves. The force may be wanted to make the arrest, and also sometimes to protect the officer after it is made, and to prevent a rescue. I would therefore suggest that this section be modified by declaring that nothing therein contained shall be construed to require any previous proclamation, when the militia are called forth, either to repel invasion, to execute the laws, or combinations against them; and that the President may make such call and place such militia under the control of any civil officer of the United States to aid him in executing the laws or suppressing such combinations; and, while so employed, they shall be paid by and subsisted at the expense of the United States.

Congress, not probably adverting to the difference between the militia and the regular army, by the act of March 3, 1807, authorized the President to use the land and naval forces of the United States for the same purposes for which he might call forth the militia, and subject to the same proclamation. But the power of the President, under the Constitution, as commander of the army and navy, is general; and his duty to see the laws faithfully executed is general and positive; and the act of 1807 ought not to be construed as evincing any disposition in Congress to limit or restrain this constitutional authority. For greater certainty, however, it may be well that Congress should modify or explain this act in regard to its provisions for the employment of the army and navy of the United States, as well as that in regard to calling forth the militia. It is supposed not to be doubtful that all citizens whether enrolled in the militia or not, may be summoned as members of the posse comitatus, either by the marshal or a commissioner according to law; and that it is their duty to obey such summons. But perhaps it may be doubted whether the marshal or a commissioner, can summon as the posse comitatus an organized militia force, acting under its own appropriate officers. This point may deserve the consideration of Congress.

I use this occasion to report the assurance, that, so far as depends upon me, the laws shall be faithfully executed, and all forcible opposition to them suppressed; and to this end I am prepared to exercise, whenever it may become necessary, the power constitutionally vested in me to the fullest extent. I am fully persuaded that the great majority of the people of this country are warmly and strongly attached to the Constitution, the preservation of the Union, the just support of the Government, and the maintenance of the authority of law. I am persuaded that their earnest wishes and the line of my constitutional duty entirely concur; and I doubt not firmness, moderation, and prudence, strengthened and animated by the general opinion of the people, will prevent the repetition of occurrences disturbing the public peace and reprobated by all good men.

MILLARD FILLMORE.

The message, after considerable debate, was referred to the Committee on the Judiciary, but no report has yet been made on the message.

RARE CURIOSITY.

The editor of the Honolulu (Sandwich Island) Friend has been presented with an English Bible, printed in the year 1599, and translated from the Latin by Beza, who died in 1605, aged eighty-six. The reprint on the title page of the New Testament is as follows:

THE
NEW TESTA.
ment of our Lord IESVS
CHRIST, Translated out of
Greeke by *Theod: Beza:*
With brief Summaries and expositions vpon the
hard places by the said Authour *Ioac: Camer*
and *P. Lofeler Villerius*
Englished by L. TOMSON.
Together with the Annotations of Fr: Iunius
vpon the Revlation of S. IOHN.
¶ IMPRINTED AT LONDON
by the Deputies of Christopher Barker,
Printers to the Queenes most
Excellent Maiestie.
1599.

This copy anticipates by several years the translation made by King James's authority, and was published twenty years prior to the landing of the Pilgrims. Such a curiosity should not be allowed to moulder among the dusky Sandwich Islanders but should be transferred to some one of the large libraries in this city, where it would meet the inspection of hundreds who know how to appreciate a literary windfall.