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Remarks of Mr. Conrad,

(OF LOUISIANA,)

Delivered in Senate May 18, 1842 on the bill for refunding General Jackson's Fine.

The Senate having resumed (as in Committee of the Whole) the consideration of the bill to refund General Jackson the fine inflicted on him by Judge Hall—

Mr. CONRAD, being entitled to the floor, addressed the Senate for upwards of an hour, in a speech of which the following is a condensed outline. He observed that if the object of the bill were merely to refund to General Jackson a sum of money, if Congress had been asked to remit this fine on the grounds that fines are frequently remitted, not only by Congress, but by the Secretary of the Treasury, to wit, that there had been a violation of law, unaccompanied by any evil intention, or the result of error and mistake; or if called on to make an honorary donation to General Jackson, as an additional mark of our gratitude for his military services, he would cheerfully have voted for the bill. But this money was not claimed on either of these grounds; on the contrary, the gentlemen who had advocated it had, one and all, disclaimed putting the claim on either of these grounds. They had said the money was no object; that the object of the bill was merely to vindicate the character of General Jackson—to wipe off, as the gentleman from Missouri had said, "the last stain or censure upon his fair fame." Other gentlemen had also used similar language; and the gentleman from Pennsylvania in particular, (Mr. Buchanan) who never met a difficulty without at once grappling it by the horns, had made an elaborate and able argument to prove that the proceedings of General Jackson had been strictly conformable to law, and, as a necessary consequence, that the sentence pronounced on him for those acts was illegal and unjust, and the Judge who pronounced it was deserving of censure.

The question, then, was one of *principle*; and, after a lapse of a quarter of a century, Congress is called upon to reverse a judgment of a competent tribunal, on the ground of its illegality.

Gentlemen had said that this was no party question, and deprecated the introduction of party topics into this debate. He had no doubt of their entire sincerity in these professions; but they must at the same time candidly admit that this very question had always been one of controversy. In his own State, in particular, it had given rise, at the time the events occurred, to an angry discussion. He was, himself, too young at that time to take any part in this discussion, or to entertain any other feeling for Gen. Jackson than that of unqualified gratitude for his great military achievement; a feeling which ten or twelve years of political opposition had damped, but not extinguished.

There was another circumstance which stared us in the face, and to which he could not shut his eyes; and this was, that this claim was not presented by Gen. Jackson, but emanated from two Democratic Legislatures—those of Ohio and New York. Now, whatever respect he might entertain for the opinions of two such distinguished bodies, he doubted their peculiar fitness to determine this question, and could not help suspecting that party considerations were lurking at the bottom of this disinterested movement. Although he had always entertained the opinion that the imprisonment of Judge Hall, and the resistance of Gen. Jackson to the process of his court, were acts of arbitrary power, entirely unjustifiable in themselves, and not excusable on any plea of *public necessity*, he had tried not to be impervious to conviction. He had listened attentively to the arguments of gentlemen vindicating these acts; but they had not convinced him, but, on the contrary, confirmed the opinion he had always entertained.

Keeping in view, then, that the only point at issue was the legality of these acts, let the facts of the case be examined. It was necessary for every gentleman to do this, because every gentleman who had spoken had supposed, and based his argument on, a different state of facts. They did not even agree on the cause for which the fine was imposed. One says it was inflicted on Gen. Jackson because he declared martial law; another, because he refused to obey the writ of habeas corpus; another, because he offered a personal indignity to the Judge; and all concur in censuring the Judge and in supposing he was actuated by personal resentment alone.

He did not profess to have any personal knowledge of these facts. Since the last debate, however, he had consulted a work in which they were narrated with great perspicuity and minuteness of detail. He alluded to the history of Louisiana by Judge Martin. He did not vouch for the accuracy of this work; but he could vouch that the author was a man of great learning, industry, and research, who was in 1815, and still is, one of the judges of the supreme court of his State, distinguished for his impartiality as a judge; and it was fair to presume that he did not lay aside this quality in assuming the character of an historian. The work is not of a partisan or political character, but embraces the history of Louisiana from its discovery to the battle of New Orleans; and the author was an eye witness of, and an actor in, the scenes which he describes.

Mr. C. here referred to various passages in the work, to show that when General Jackson arrived in Louisiana he was indeed, by the representations of persons who enjoyed his confidence, to entertain suspicions of the fidelity of a large portion of the inhabitants of Louisiana—particularly those of French extraction; that, under the influence of this feeling, he recommended to the Legislature, then in session, that the *habeas corpus* act should be suspended—which, however, they refused to do; that Louallier, a member from one of the interior parishes, was one of those who warmly opposed this measure, as unnecessary, and dangerous to the liberties of the citizens of the State. The battle was fought and won; and whatever might have been the suspicions of General Jackson *before*, they ought now to have been dispelled—they were nobly refuted at the cannon's mouth. It was a remarkable fact, (and one he took pleasure in recurring to,) that, though Louisiana had been but recently admitted to this great American family of States; although the attachment of her citizens to this Government had hardly time to mature, and to acquire that strength it had since attained; although her population was of a very heterogeneous character, and many of them natives of foreign countries; although placed in the most discouraging circumstances, there was not, as far as he knew, one single instance of treachery, cowardice, or even faltering in the ranks.

The sequel is known. The enemy was defeated. On the 23d January solemn thanksgivings were offered up for the deliverance of the country from the eminent perils that had environed it. On the 12th of February the enemy were at Mobile, 150 miles off. On the 20th General Jackson received unofficial intelligence that a treaty of peace had been negotiated. This intelligence was communicated by the commander of the enemy's forces. But one the 22d it was confirmed from another quarter. No one doubted the fact, although it might not have been prudent for the commander in chief to have acted on it, and disbanded his forces.

Among those who had borne an active part in the campaign, were a number of emigrants from France. Their own country was then at peace with Great Britain; and they were not bound to take up arms against her in defence of the United States. But they rushed voluntarily to the conflict, and not only displayed that martial spirit which is the characteristic of their nation, but many of them having served under Napoleon, possessed a scientific knowledge in which the United States' forces were deficient. The blood of Frenchmen and American once more mingled in the same stream against the enemy of this country. After these rumors of peace had reached New Orleans, anxious to return to their homes and their civil occupations on which many of them depended for their livelihood, many of them prayed to be discharged, on presenting the consular certificates of their national character. These discharges were at first granted without difficulty; but, as their number increased, General Jackson issued an order that all those who presented such certificates, and claimed their discharge, should forthwith be sent to Baton Rouge, a small town on the Mississippi, about 150 miles above New Orleans.

It may well be imagined that such an order—implying suspicion of their fidelity, which they were not conscious of deserving—was considered by those brave people as harsh and rigorous in the extreme, and as a poor return for the signal services they had rendered to the country. This was towards the end of February or early in March. On the 3d of the latter month, Mr. Louallier (the same individual who, as a member of the Legislature, had so warmly opposed the suspension of the *habeas corpus* act) published an article, in which this act of General Jackson was severely commented on as an unjustifiable exercise of arbitrary power. General Jackson immediately issued an order for his arrest, and ordered him to be tried by a court martial, for exciting mutiny, for a libel, and as a spy!

He (Mr. C.) would not undertake to discuss the question of the propriety of General Jackson's arrest of Louallier. The publication was certainly an indirect one. But how could a court martial take cognizance of a prosecution for a *libel?* And how could an American citizen—a member of the Legislature—be tried as a spy? If he had leagued with the enemy—if he had, in any manner, given them aid and comfort—his crime was that of a traitor, not a spy; and he was amenable to the civil tribunals for high treason.

Louallier, finding himself arrested, and about to be tried by a court martial, for a crime involving not only his character, but his life, applied to the judge of the district court of the United States for a writ of *habeas corpus*. Now, what was the effect of the writ? Gentleman on the other side had argued as if it had the effect of instantly and *per se* setting Louallier at liberty. But every lawyer knows that it had no such effect, that its sole object and effect, is to compel the production of the prisoner, in order that the judge may inquire into the *cause of his commitment*; that he may ascertain by what authority he is imprisoned. If, upon that investigation, it turns out that he is imprisoned by a warrant issued by a competent authority, and the proceedings, on their face, are regular, he is remanded to prison, to undergo his trial; otherwise, he is discharged. Could Judge Hall, with any propriety, have refused, in the present instance, to issue this writ? He could not. The writ of *habeas corpus* is a writ of right. The very statute which wrested it from the first Charles declares it shall issue for any one, on the application of his counsel. It is this writ which overleaps the walls of the prison—which unbocks the iron-barred door of the dungeon—which penetrates the ranks of an armed soldiery, surrounding the victim of military violence with drawn swords and pointed bayonets. How, then, can a judge, in any case, refuse to issue this writ, where even probable cause is shown for his interference?

Suppose that Judge Hall had refused to issue this writ, and that Louallier had been convicted and sentenced to death, and the sentence carried into execution—the supposition is not improbable, because the sequel showed that General Jackson was in earnest, and that Louallier owed his life to the court martial presided over by General Gaines, who had the honesty and firmness to acquit him, in opposition to the opinion and wishes of their commander—what would have been the consequence? Why, Hall would have been universally execrated. The tables of the other House would have been loaded with petitions for his impeachment. He would have been impeached: and if it had been our lot to try that impeachment, who among us would have dared to say that a judge who had refused to discharge a sacred duty—to stretch forth his arm to save an unfortunate man from an ignominious death, unlawfully inflicted, ought not to be hurled from a seat which he had disgraced by his imbecility or his cowardice?

But Judge Hall did not refuse it. Mr. C. here passed a warm eulogium on the character of Judge Hall, and proceeded to remark that, in granting it, he exacted a promise on the part of Mr. Morel, a distinguished lawyer, who had applied for it in behalf of Louallier, that he should apprize General Jackson that the writ had issued, in order that he might appear in person or by counsel to oppose the discharge of Louallier, if he thought proper so to do. Mr. Morel fulfilled this pledge; and General Jackson adopted a more sure and summary method of preventing the discharge. He arrested and imprisoned the Judge!

The Senator from Pennsylvania has observed that the Judge was only imprisoned in a technical sense. He was confined within the four walls of a room; and that is imprisonment, in every sense of the word. It is true, it was not that species of imprisonment which is practised in the gentleman's own State; it was not solitary confinement. The spy, and the Judge who had endeavored to screen him from punishment were deemed worthy associates, and were confined in the same apartment; and thus the writ of habeas corpus, instead of bringing the prisoner before the Judge, produced the very opposite effect of carrying the Judge to the prisoner. The General then sent an officer to demand from the clerk of the court the record containing the application for the writ, and the proceedings consequent thereon. The clerk refused to surrender it, on the score of official duty; but offered to carry it to the General for his inspection. He did so, and delivered the record to General Jackson, and the latter retained possession of it; and intimated in no very ambiguous terms, both to the clerk and the marshal, that if they in any manner interfered in the matter, they should fare no better than the Judge.

In the meantime official intelligence arrived of the restoration of peace. By a singular mischance the package transmitted from the War Department, communicating this information, was exchanged for another; and the error was not discovered by the messenger despatched with it until he had reached New Orleans. Other documents brought by him, however, left no doubt of the fact, and it was shortly after announced in general orders. It was not until five days after this, and when the militia had been disbanded, that Judge Hall was released from actual confinement; and even then he was not set at liberty. He was put under a guard of soldiers, who conducted him beyond the limits of the city, with a positive injunction not to re enter it until official intelligence arrived of the treaty of peace, or until the enemy had left the Southern coast. Thus, when it was thought that the military force might safely be disdained it was not thought safe for a helpless old man to take part in the general rejoicings in which his fellow citizens were indulging.

A few days after the return of Judge Hall, Dick, the United States district attorney, moved for an attachment against General Jackson, to answer for *a contempt of court*. The contempt charged against him was in *obstructing the process* of the court,

1 By imprisoning the *Judge*, and thereby preventing him from discharging his official duties,

2 By violently taking possession of a record of the court.

3. By threatening the officers of the court.

For this *contempt of court*, and for nothing else, was this fine imposed. The imprisonment of Louallier, the declaration of martial law, the suspension of the *habeas corpus* act, were not the acts for which General Jackson was fined. However illegal those acts might be in themselves, it was not the province of the court to determine in that form; but it *was* the province of the court to vindicate its own dignity by punishing an open and avowed resistance to its authority, accompanied with the most wanton and unnecessary violence and insult to the person of the Judge.

This, said Mr. C. is the sentence we are now called upon to reverse as unjust, erroneous, and illegal. However willing he might be to return this money to General Jackson *ex gratia*—however anxious he might be to do any thing consistent with truth and principle, to gratify Gen. Jackson or his friends on this floor and elsewhere—he could not do this: he could not do it, because he believed the judgment conformable to law and justice: he could not do it, because he would thereby sanction a dangerous precedent that might hereafter be invoked by some chieftain less magnanimous than General Jackson, to the subversion of the liberties of his country: he could not do it, because he would thereby contribute to receive an exploded calumny against a portion of his own constituents: he could not do it, because he would, in so doing, affix an unjust stigma upon the character of the upright magistrate by whom this sentence was pronounced. That Judge is, long since, consigned to that tomb to which, we are told, General Jackson is fast hastening. No sculptured marble marks the spot where his ashes repose. Pilgrim patriots do not resort to *his* tomb, as they will one day to General Jackson's, to breathe the inspiration that hovers around the grave of a departed hero.

But for the accident that has connected his name with this historical incident, it would ere long be forgotten; and if that name is to be rescued from oblivion, let it not be "damned to everlasting fame."

Gentlemen have attempted to justify these proceedings by the declaration of martial law. Now, if the declaration of *martial law* necessarily involves the suspension of the *civil* laws of a country, it is clear that none but the sovereign power of a country can establish it.

In the present case, Congress had not exercised the power vested in it by the Constitution of suspending the writ of *habeas corpus* "when the public safety may require it," and the Legislature of Louisiana had refused to do it.

In point of fact, then, martial law, in the sense in which these words are used, was not established. Will gentlemen contend that the commander of an army can, at his own discretion, invest himself with absolute authority over the lives and liberties of the citizens? can arm himself with the powers of a Roman dictator?—Would such a doctrine as this be sanctioned in this country and in this Hall? He for one would not countenance it. He would not, it was true, hold a gallant and patriotic officer, who, at a time of great public emergency and danger, and to avert a great public calamity, would overstep the boundaries of the law. But the officer who does this, does it at his peril, and must be prepared to show the necessity which he invokes as the justification of his conduct. He must make out a clear case. Now, he would not speak of the arrest of Louallier, because that he knew was a debatable point; though he must be permitted to say that, even supposing that the *arrest* of Louallier was a measure of prudence, it would have been sufficient to have detained him in close custody. He could not perceive the necessity of trying him for his life by a military tribunal, and for an imaginary offence; for, whatever may have been Louallier's misdeeds, he certainly was not a *spy*. But the imprisonment of the Judge, his subsequent ignominious banishment from the city, the seizure of the records of his court, where was the necessity of these acts? And these, he repeated, were the acts for which the fine was imposed.

We have been told by the Senator from Missouri that the ladies of New Orleans considered this sentence as erroneous, inasmuch as they had raised the amount of the fine by a contribution among themselves, and offered to refund it; but the offer was declined. No one was more ready to bow to the authority of his fair countrywomen, in all matters within their appropriate sphere, than himself. But he must be permitted to doubt their competency to decide questions of law. He assured the gentleman from Missouri they had not attempted anything of this sort. They did not trouble their heads with such knotty questions: they had listened only to the suggestions of their hearts, overflowing with gratitude for their deliverer. It was this that prompted them to raise this money by contribution, and, sir, if the matter was put on that ground, they would do it again; and not only they, sir, but the *gentlemen* too. He would contribute himself to any such voluntary aid to an old soldier. But when it was asked as a right, and we are called on, not to aid him in complying with a judgment, but to reverse that judgment as erroneous, and condemn the Judge, the question assumes a different aspect.

Why should we interfere at all in this question, after such a lapse of time? Why should we usurp the functions of the historian, and anticipate the verdict of posterity? Gentlemen say it is necessary to wipe a stain from Gen. Jackson's character. Even if his character were involved in this question, he could not see the propriety of our interference. But he did not think so. He agreed with the Senator from South Carolina, that, viewed in all its bearings, Gen. Jackson's character would rather gain than lose by it. If he had violated the law, he had in some degree atoned for it by the promptitude with which he had afterwards submitted to the penalty imposed on him. There was something noble in this—something of the romance of history; something that could compare with the brightest pages of Grecian or Roman history. The story of Coriolanus, that had for ages been the theme of the historian, the painter, and the poet, was inferior to it in moral sublimity.

If the friends of General Jackson wished to testify to him that his country did not view this transaction in too severe and uncharitable a light, let them employ an artist to commemorate it by an appropriate painting, and place it in the rotunda of your Capitol. In this manner, while you honor the military chief, who, in the hour of his proudest triumph, did not forget his duty as a citizen, you will also commemorate the upright and inflexible Judge, who, unawed by power, unmoved by popular clamor, dared to vindicate the majesty of your laws. In this manner, instead of placing on your statute-book a melancholy memento of party spirit, you will transmit to posterity a lesson replete with moral and political wisdom.

From the Tuscaloosa Monitor.

How the Cause was produced.

For the two-fold reason that no distinct question of national policy was pending, on which the Whig and Democratic parties had joined issue, and that the social and agricultural interests were peculiary suitable for discussion at this time, we had forborne, in a great measure, to occupy our columns with political warfare. Our paramount aim and desire had been, to stir up the calm and rational energies of the people to what more directly concerned them. The fact that the Government had been unwisely administered for the last thirteen years, could not be reversed, or its disasters mitigated, by any amount of censure. The people had to look to their own recuperative faculties for extrication from the embarrassments into which the Government had betrayed them. To impress this truth clearly, we referred to the excess of foreign goods imported over the products sold from this country, from 1835 to 1839 inclusive, which averaged forty millions of dollars per annum, and operated as a drain of specie to that amount from our banks. Of course the withdrawal of so much coin, was, to business occupations, like the opening of the vital artery in the human system—neither could survive. Our article on the subject was wholly free from party allusions, and sought a higher mark. It was not however permitted to escape the animadversions of our neighbor of the Flag, from whose last editorial we select this unlucky paragraph:

Can any thing be more simple, more satisfactory than this? And what agency, we ask, had Gen. Jackson or Mr. Van Buren in causing this excess? We answer our own question by informing our readers that neither they, nor either of them, had any more agency in it than our neighbor of the Monitor himself had."

To the question propounded, we prefer giving an answer supported by official history, and not mere assertion, such as the Flag chooses to return. This necessity is imposed on us in self defence; for we are charged with having had as much "agency" in producing the evil referred to, as "Gen. Jackson or Mr. Van Buren." We shall begin by admitting a cardinal proposition of the party of which these two Ex-Presidents are the head, and the Flag a supporter, *i. e.* that the Banks have occasioned all the distress which now exists, and but for them, there would have been general and permanent prosperity. Let us examine.

Gen. Jackson was installed President, March 4, 1829. At that time there was a Bank currency in the United States, which was taken at par over the world. As the basis of our comments, we shall take the population of the United States in 1830; the number of banks then in existence, together with the amount of their capital, loans and circulation, and we have the following result: Total population 12,866,920; banks 330; bank capital $145,492,268; bank loans $200,451,244, and bank circulation $61,323,898. Were each item in the ratio of population, there would be for every individual $11,34 of bank capital; $15,60 of bank loans, and $4,80 of bank circulation.

In July 1832, President Jackson vetoed the bill to re-charter the Bank of the United States, and in September 1833, removed the deposites of public money from that institution, and placed it for safe keeping in the State banks. The order of the day then was, to furnish a better currency through the local institutions and an increase of banking capital. That such was the policy and design of the administration, we have a key from the Globe, confidential and official organ of Gen. Jackson. In that paper of March 23, 1833, was the following editorial paragraph:

"STATE BANKS.—It was anticipated from the zeal with which the respective Legislatures of Kentucky, Indiana and Ohio, entered upon the duty of establishing State institutions, to secure to the State Governments the emoluments growing out of the banking business, that each by this time, would have had a local system in full operation. This seemed indispensable, as well to meet the necessities of the people, incident to the winding up of the United States Bank, as to enable the States to appropriate to themselves, respectively, the benefits resulting from that event. The general wish of the people seemed to require from their representatives the prompt accomplishment of this important object. How deeply the people have been disappointed, appears from the demands now made through public meetings for an immediate call of the Legislatures in some of those States to resume the business of chartering State Banks."

It appeared that the process of granting bank charters at the regular annual sessions of the State Legislatures, was too slow for the administration. The people held meetings and importuned for "immediate" calls of those bodies to prosecute with all dispatch, "the business of chartering banks." It is well known, that the administration had a majority in most of the States, disposed to execute the bidding of the President. Besides the explicit echoes of the Globe, in favor of multiplication of State banks, we have as instructions from Mr. Taney, Secretary of the Treasury, to the deposite banks, an extract from his letter of Sept. 26, 1833, to the President of the Girard Bank, which is as follows:

"The deposites of the public money will enable you to afford increased facilities to commerce, and to extend your accommodations to *individuals;* and as the duties which are payable to the Government, arise from the business and enterprise of the merchants engaged in foreign trade, it is reasonable that they should be preferred in the additional accommodations which the public deposites will enable your institution to give, whenever it can be done without injustice to the claims of other classes of the community."

Here was a direct invitation to individuals and merchants to extend their credits in bank, on the faith of the public money. As all who know any thing of the productiveness of bank stock, will admit that dividends are enhanced by a large circulation of paper, it is not a matter of surprise, that the deposite banks glutted the community with their issues, and that other banks sprung up, as if by magic, to share the fostering aid of the Government, and to secure extraordinary profit. So successful had been the *experiment* of the administration, in improving the currency by an increase of banks, that in 1835, we have this financial showing, viz: Total number of banks 704; amount of banking capital $231,250, 337; bank loans $365,163 834, and bank notes in circulation $103,692,495.

To pursue our speculations on this subject, we shall add the half of 4,202, 534, being the increase of the census of 1840 over 1830, and we have 14,968,186 souls, which would authorize for each, the following scale in 1835: bank capital $15,30, exhibiting an increase of forty per cent. in five years, beyond the rate of population; bank loans $4,37, establishing eighty seven per cent. of the like increase; and bank circulation $7,00, making fifty per cent excess as the fruits of Government policy.

We step next to 1840, and show that the total population of the United States was 17,096,453; number of banks 901; bank capital 358,442,692 dollars; bank loans 462,896,523, and bank circulation 106,968,572 dollars. Another appeal to figures is necessary to illustrate Gen. Jackson's *experiment* on the currency, and to prove the superior claims of the Democratic party to the gratitude of the people, for the glorious results of banking within a noted period of ten years. Comparing the census of 1840, with the situation of the banks in that year, we have for each individual, banking capital to the amount of $21,00; bank loans $27, 12; and bank circulation $6,00. It will be perceived from the foregoing, that 571 new banks were chartered; that the proportion of bank capital was about double to what the rate of population justified, taking the banks as Gen. Jackson found them, as the safe criterion; and that the amount of indebtedness, divided equally among the population, was also about double, while the circulation of bank paper was so reduced by the action of the Government, that it was less than one fourth of the indebtedness to them. Of