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AND

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WASHINGTON-CITY, Dec. 9.

Mr. Giles from a committee appointed in the Senate, yesterday reported "A bill making further provisions for enforcing the Embargo."

Accompanying the bill, were the following letter to, and answer from the Secretary of the Treasury. The provisions of the bill are generally correspondent with the recommendations of the Secretary.

COMMITTEE CHAMBER,
November 14, 1808.

Dear Sir—I am instructed by the committee appointed to consider the several Embargo laws, &c. to request you to lay before them with as little delay as possible, such information as your department affords upon the following questions:

First. What measures would be most effectual in preventing the violations or evasions of the several Embargo laws; and enforcing a due observance thereof?

Second. Can any of the inconveniences of the present system be remedied by further modifications—and what modifications would effect that object?

Be pleased, sir, to accept assurances of my high consideration and regard,

(Signed) W. B. GILES.

Hon. ALBERT GALLATIN,
Sec'y. of the Treasury.

Treasury Department,
Nov. 24, 1808.

SIR,

Indisposition has prevented an earlier answer to your letter of the 14th instant.

For better preventing coasting vessels regularly cleared, from violating the Embargo, two measures appear necessary:—

First. That the amount of the bonds should be increased.

Secondly. That neither capture, distress, or any other accident should be admitted as a plea, or be given in evidence on trial.

By the first regulation the temptation of going to a foreign port, in hopes that the profit on the sale of the cargo will indemnify for the forfeiture of the penalty, will be done away.

By the second, every expectation of escaping the payment of the penalty under fraudulent pretences will be disappointed—and the power of remitting the penalties in the few cases of unavoidable accident which may occur, will remain as heretofore, and as in other cases with the Treasury.

As the object of these two regulations will be to make the bond a sufficient and complete security, they will have a tendency to relieve, in a considerable degree, the coasting trade from the inconvenience resulting from detentions. The sufficiency of the bond will in many doubtful cases, remove the necessity of detaining vessels, or what amounts to the same of informing the owners that unless they reduce the amount of their cargoes, they will be detained.

I would also submit the propriety of placing under the controul of the President, that the power of detention vested in the Collectors by the act of the 25th April last. That subject has been a constant source of complaint and difficulty.—It has been the uniform practice, from the establishment of the government of the United States, to give positive instructions to the Collectors respecting the execution of the laws, and which they were bound to obey, unless a different construction should be established by a legal decision. This indeed was essentially necessary, in order to secure an uniform construction and execution of the laws. But the provision now

alluded to, makes the detention to rest on the opinion of each Collector, and this must necessarily produce a great diversity in the manner in which the power should be executed. All has been done that could be done to obviate that evil; and the President being authorized to decide on the detentions when made, the opportunity was taken to inform the Collectors of what in his opinion, should be a proper cause of detention. This, however, could be given only as opinion, and operate as a recommendation, and not as an order. Nor does it appear practicable to establish uniformity, and to prevent partiality, on either laxity or too great severity in practice, unless the power of prescribing general rules in that respect by which the Collectors will be bound to abide, be vested in the President.

I am aware that there is another mode of evasion by regular coasting vessels, which will not be prevented by either of the preceding provisions. Either whilst in port, or on their way down our rivers and bays, coasting vessels may receive articles not entered on their manifest, which they put on board other vessels lying off the coast for that purpose.

But it is not perceived that any legal provision can prevent that infraction, nor that any other remedy can be found than the vigilance of the officers. Another general regulation will, however, be suggested, perhaps useful as a permanent measure; but which would at all events, under existing circumstances, give additional security for the observance of the laws, and afford some relief to our own seamen; to wit, a prohibition to employ any aliens either as masters or part of the crew of any coasting vessel.

It is still more difficult to guard against violations by vessels departing without clearance in open defiance of the laws.—The following provisions on mature consideration appear most efficient that can be devised against infractions, which it is the more necessary to reprove, as they may be daily expected to increase, and threaten to prostrate the law and government itself.

1st. To forbid expressly under pain of forfeiture (the penalty now being only implied) the landing of any vessel without the permission of the Collector, and without the bond for a coasting voyage being previously given—authorizing the Collectors to refuse permission, unless the object be that of a lawful coasting or fishing voyage. The great number of vessels now laden, and in a state of readiness to depart, shews the necessity of this provision. If there be cases, in which the indulgence of converting vessels into ware-houses ought to be granted, there will be no hardship, where the intention is fair, to require a bond similar to that given for a coasting voyage. And the Collectors should likewise in such case, be expressly authorized to take such efficient precautions as will put it out of the power of all such vessels to sail without warning.

2d. In order to prevent those fraudulent sales of vessels by which ostensible owners of no responsibility, are substituted to those from whom penalties might be recovered, it is necessary to provide that those owners of vessels, whose names appear on the register of licence should continue to be reputed as such, and liable to the penalties in case of infraction of the laws, until the register or licence shall have been actually surrendered and new papers shall have been regularly granted by the Collector to the purchaser. And in every such case

of purchase, a sufficient bond that the Embargo shall not be infringed, to be previously required.

3d. The power to seize unusual deposits, now vested in the Collectors of districts adjacent to the territories of foreign nations, should, as was contemplated in the bill passed by the House of Representatives, be extended to all the districts. That this is an arbitrary power, which nothing but the unremitting efforts in some places to evade the law can possibly justify, cannot be denied—and it should, like that of detention, be placed under the controul of the President, and be executed only in conformity with such general rules as he would prescribe.

4th. Exclusively of the assistance which may be derived from gun-boats and from the armed vessels of the United States, it would be advisable to authorize the President to add ten or twelve cutters to the present establishment. Fast sailing vessels on every draft of water, and requiring only from fifteen to thirty men each are most wanted, and would, for the object contemplated, be as useful as the largest frigates.

5th. It is with regard that the necessity of authorizing, on the application of the Collectors, an immediate call of the local physical force of the country, must also be stated. But such partial acts of violence as have taken place in some of the seaports cannot be prevented by the circuitous manner in which the public force must now be brought out in support of the laws. And no doubt exists that the mass of citizens, whether they approve or disapprove of the Embargo, would, in every port, instantaneously suppress any such outrage, provided they can be called upon to act in a legal manner.

Some other provisions appear also necessary for the purpose of carrying the laws more completely into effect along our land frontiers.

1. The exportation of specie by land should be expressly prohibited.

2. The power of detaining deposits should be so expressed as to leave no doubt of the authority to detain waggons and other carriages laden and actually on their way to a foreign territory. Although I cannot perceive any reason for the distinction, it has been supposed in one of the districts that the law which authorize the detention of flour, beef, or pot-ash, deposited in a ware-house, did not extend to the case of their being deposited in a waggon, although evidently on its way to Canada.

3. The offence now punishable by law is that of exportation. This is not consummated till after the property has been actually carried beyond the lines, where, being in a foreign jurisdiction, it cannot be seized; so that forfeiture, which is the most efficient penalty, can never apply to exportation by land; and no bond being required, as in the case of vessels, the only remedy is the uncertain one of recovering penalties against apparent offenders who either abscond or have no property. How far it may be practicable to make the act of preparing the means of exportation punishable, or to provide some other remedy, is submitted to the committee.

But it must also be observed, that every degree of opposition to the laws, which falls short of treason, is now, with but few exceptions, an offence undefined and unprovided for by the laws of the United States; whence it follows, that such offences remain unpunished when the state authorities do not interfere. The necessity of defining those offences by law as misdemeanors, and of providing an adequate punishment appears obvious.

I will beg leave here to add that it does not appear necessary to continue any longer the indulgence granted to British merchants to import for the use of the Indians, articles of which the importation is generally prohibited by law; as that privilege is liable to great abuse, and affords just ground of dissatisfaction to American citizens. Whether it be advisable to continue the permission given to those Indian traders to export fur and peltry, is a question to be decided by political considerations.

The last branch of the subject to which I wish at present to call the attention of the committee, relates to interruptions and certain injurious proceedings attempted under color of the law.

1. Vexatious suits are brought against Collectors which not only perplex faithful officers—but have the effect of intimidating others, and prevent an energetic performance of their duties. The only provisions which have occurred to me on that subject are, to enable the Collectors who may be sued, always to remove the cause before a court of the United States to make a certificate issued by the proper authority, that there was reasonable cause of detention, protect them against damages in cases of detention, in the same manner as is now provided in case of seizures; and to provide for the safe keeping and restoring when proper, and on security being given, the vessels and property which may be detained.

2. Attempts have in several instances been made to wrest from the Collectors by writs of replevin, issued by state courts or officers, property detained or seized by said Collectors, or which in any other manner, is in their possession, in conformity with some law of the United States. It is evident that such attempts, if submitted to, would defeat not only the Embargo, but also the revenue laws of the United States; that whenever property is by virtue of a law of the United States, in the possession of a Collector, marshal, or any other of their officers, no process *in rem* which will take the property away, whether of replevin, attachment or any other, can be legally issued by a state authority; and that the sheriff or other persons executing the same must be considered as a mere trespasser, and be resisted accordingly. But there is no other way at present to resist such illegal process, but actual force. And it appears necessary that another remedy should be afforded, by providing a summary mode of superceding any such process through the interference of the courts and Judges of the United States; and by making it penal for any sheriff, or other person, to execute the same, or in any manner to attempt to take the property which by virtue of any law of the U. States is in the Collector's possession.

3. In some instances, where vessels and cargoes labelled for infractions of of the Embargo, have been restored to their owners on their giving security for the appraised value, the valuations have been so low as to reduce the forfeiture to an inconsiderable sum, thereby defeating altogether the law. It is suggested that this might be prevented by a provision, authorizing & directing the district Judges to set aside, on the motion of the district attorney, such valuations, whenever in their opinion falling short of the true value.

4. On the subject of *mandamus* I will only observe that in the only instance which has taken place, the court supposing they had jurisdiction could not, from the manner in which the question was brought before them,