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Congress.

HOUSE OF REPRESENTATIVES.
Tuesday, Feb. 17.

DEBATE

On the resolution of Mr. Broom.

The resolution is as follows:

Resolved, That a committee be appointed to inquire into the expediency of securing more effectually the privilege of the writ of habeas corpus to persons in custody under or by color of the authority of the United States.

Mr. Broom moved a reference of the resolution to a committee of the whole house, and spoke at length in support of the motion. [Vide Mr. B's speech in the Minerva of March 23.] As soon as Mr. B. had concluded

Mr. Varnum rose to repel the motion. He had been at first inclined to vote in favor of the motion; but after hearing the arguments of the gentleman who introduced the resolution, he found himself compelled to give a decided negative. It has been said that there has been a gross violation of the constitution; but Mr. V. demanded where was the proof of the assertion. He had seen no official documents to warrant such a charge. It is well known that the persons recently brought from New Orleans have received every benefit to which they were entitled, from the writ of habeas corpus. The motion is also ill timed. Shall we undertake to decide on the guilt of these persons when they are now arraigned before the court? The legislature ought not to prejudge the question.

Mr. Burwell said he should vote for the motion whether the facts stated by the gentleman from Delaware (Mr. Broom) were correct or not. Mr. B. was always ready to confirm and secure the writ of habeas corpus, and if the gentleman from Delaware could discover any defect in the present system and could devise a method to remove it, he should have his vote and his thanks.

But I believe the writ is now sufficiently secured; as much so as in England. The states have passed laws for this purpose, and the constitution of the United States recognizes and confirms the writ. Judges are on application obliged to issue the writ, and the officers of the courts are compelled to execute it. Where then is the necessity of sounding an alarm? The constitution has not been violated unless by military force, and that requires a different remedy. A civil action is the proper means of redress and the only possible remedy. These gentlemen who have been recently brought from New Orleans, I admit were improperly seized and transported, and I fully agree with the gentleman from Delaware that it ought to be an early warning—an early warning against the increase of military force further than the exigencies of the country require. I do not pretend to say that the conduct of the commander in chief is justifiable, but the courts are open. The house ought not to act precipitately on rumor and ex parte statements.

Mr. Dana considered that it was not necessary now to examine whether the facts alleged to have taken place at New Orleans had been correctly stated or not. He would not say whether Wilkinson had conducted himself right or wrong. It was sufficient if questions arose whether the writ of habeas corpus was so well secured as it ought to be. He apprehended it was not so well guarded here as in England. If doubts, however, arise on so interesting a subject, they ought to be removed and the law fixed by statute.

Mr. Smilie declared himself in favor of the resolution for the reasons stated by the gentleman from Connecticut (Mr. Dana). He wished, however, the subject had been considered on its own merits and without reference to any past transactions. He wished not to refer to New Orleans. In circumstances of great danger it is the duty of a good citizen to do what he thinks is right, and take the responsibility. There was no testimony which enabled him to decide on the transactions at New Orleans.

If the statute of Charles extends to this country, there is no need of further provision to secure the writ of habeas corpus: if it does not extend here, it is highly necessary to guard the writ by similar provisions. He had consulted lawyers on the subject and could get no satisfactory information. Till the statute of Charles, all the provisions in favor of the liberty of the

citizens contained in Magna Charta and the bill of rights were found inadequate.

Mr. S. said all parties and every man in the U. S. were concerned in this subject. The inestimable privilege of the writ of habeas corpus existed in no country but ours and in England. Arbitrary imprisonment prevailed in all other countries. He was glad the motion had been brought forward, and if the subject could not be matured now it could be the next session.

Mr. Bidwell was in favor of the motion, and expressed sentiments substantially the same as those of Mr. Smilie. He was sorry extraneous matter had been introduced, and conceived it improper to go into an inquiry on Wilkinson's conduct. That officer acts with high responsibility. An inquiry now would be premature and we are not the proper tribunal to try the question. I think all will agree that there may be situations in which the commander of an army or garrison ought to do what he thinks the exigency of the case requires, and throw himself on the generosity and justice of his country.

The writ of habeas corpus is a very important privilege, and is not, I think, now well secured. The criminal code of the United States is incomplete and wants revision, additions and explanations. The statute of Charles is enacted in some of the states, but not in the United States. Questions have also arisen in regard to the power of the judges of the supreme court, collectively and individually, and some are now under consideration. It would have been well if the subject had not been stirred at this particular period, but I am always ready to improve and secure the writ of habeas corpus so far as it is capable of further improvement and security.

Mr. Eppes. If the gentleman who introduced the resolution is sincere in the principles which he has professed, I congratulate him on his conversion to democracy; I congratulate him that his eyes are at last opened. But if he has put them on for a particular occasion like a Sunday coat, with a view to renounce them when they no longer suit his purpose, I trust that he will be eventually frustrated in his designs.

The game that is now playing in this house is part of the same system as that which is going on in the courts below. Whom do we find there, clamorous for liberty and the rights of the citizen? The same party who have always evinced their utter disregard and contempt for both.—We find there the ex attorney general of the United States, and what is more, the ex-attorney general of Maryland. The greatest monster in human shape is one of these disguised men, clamoring for liberty with no other view than to oppress and enslave. Where was his zeal now so ostentatiously displayed, when the alien law and the sedition law were passed? The rights of man were not then so much in vogue with his party.

It is surprising to see the sympathy of certain men for the man whom they lately hunted from society. The truth is they cannot bear to see a conspiracy reduced without armies and navies. They grieve at the unexampled prosperity of the country and the attachment of the people to their constitution and their government.

I will not soften the transactions at New Orleans. The commander in chief has done an illegal act, on his own responsibility, and he is answerable in damages. But to speak with that frankness which I think always becomes a legislator, I own that were I on a jury, I would give no damages, or at most, nominal damages only.

For whom is such a sympathy excited? For two men, one of whom is a foreigner, who might in England have been transported to Botany Bay; the other a young American who has disgraced that character by acting as a spy on the commander in chief. I am willing that the people should see that there has been a little stretch of power in those cases.

There is no remedy for a man aggrieved in this case but a civil action, and unless you doubt the efficacy of a trial by jury, no other remedy can be asked for. The mover of the resolution has cited the example of England, where the habeas corpus has been suspended for these ten years.—It was not violated there till since packed juries and judges dependent on the executive have grown into fashion. When Wilkinson shows that he has acted honestly I will vote any sum to indemnify him.

I believe the writ of habeas corpus cannot be better secured than it is now; but I

will vote for the motion to give the mover a chance to suggest any improvement which he can devise, though I am persuaded he can propose none. It is the duty of judges to grant the writ, and they must be obeyed. If the officer is resisted in executing it, he may call out the posse comitatus to his assistance.

These men could not have been tried at Orleans. The court there has the same powers as the district court of Kentucky, and cannot try a question of treason. I am willing that the people should see the whole case and judge of the charge against us.

Mr. Early could not see the correctness of the two gentlemen from Virginia, (Messrs. Burwell and Eppes.) My views of the resolution are the same as theirs, and yet my vote will be totally different. I shall vote against it in every stage. My reasons are the short time left of the session, the bearing of the resolution, and the avowed object of the mover. The resolution cannot be definitely acted on this session, and it is designed to have a bearing on existing cases. The second objection is more formidable than the bare want of time. If the resolution is referred, the next step will be to call on the executive for information relative to infractions of the writ. This will take time, and the subject cannot be acted upon this session. What impression will this make during the recess? It will countenance charges against certain persons; the idea inevitably will be that the habeas corpus has been violated, and that the acts done at New Orleans ought to be frowned upon. You hang up a charge against a public officer and leave him under the torture of the public odium.

Where is any evidence that the existing provisions are insufficient. Suppose there have been violations, where is the evidence that adequate damages cannot be had.—Let the parties aggrieved bring their action. When it is known that such a remedy is inadequate, it will be time to legislate.

The resolution has a tendency to influence the judicial proceedings against Wilkinson in actions which will likely be brought. I have another objection. The resolution is calculated to give a coloring to the Orleans business on which we have no adequate evidence. We are yet in the dark. We have little evidence indeed. We have none to justify a rational man in taking a single step.

If the commander in chief has done wrong, let him answer for it; but if he has done only what the necessity of the case required, he has done what merits a statue of gold to be erected to his memory. Let the judiciary decide on the question, and if he is muled, let this house then decide whether they will indemnify him.

Mr. Broom. Mr. Speaker, I confess that the opposition which this resolution has met with does surprise and astonish me, and more especially when I consider the quarter from which it comes. That those who have been the most clamorous about the rights of the people, who have been jealous in the extreme of even the lawful exercise of power, who have assumed to themselves almost the exclusive privilege of protecting our rights, should now refuse even an inquiry whether those rights cannot be better protected is to me a problem which I cannot solve unless I suppose that these were the principles and professions intended only for opposition, but never is the guide of administration. But when the principle is avowed that no laws shall be enacted for better securing our personal rights and that no inquiry ever on the subject shall be made at this time least it might cast a censure on the conduct of an officer who has violated them I consider it my duty to protest against it. Sir, is it come to this, that when the commander in chief of the army of the U. States shall turn his arms against our constitutional rights that we shall not provide against future violations for fear of exciting a prejudice in the public mind against the officer? Prostrate indeed must be our condition when we can see our great rights of personal liberty trampled upon by a military commander and be deterred from legislating lest the punishment of future violations should be construed into the murmur of disapprobation of the past.—For my own part, I deprecate such a state of things and in spite of party, trust that the highest legislative body of a free people will not be found so unfaithful to them-

selves and their country as to give it their sanction. But why, it is asked, am I thus zealous for the rights of the citizen? I arraign not the motives of the gentleman from Virginia (Mr. Eppes) for opposing this resolution, and without a word in explanation of my own, I would be willing that the public should judge between us of our motives by our conduct. But sir, it gives me pride and pleasure to avow my motives. I have beheld with indignation and horror, citizens of the United States illegally arrested, denied their constitutional privileges, and transported at the will of a military commander nearly 2,000 miles before they were delivered up to the custody of the law. Instead of seeing such conduct marked with abhorrence I found the guardians of the people's rights singing praises to the sacrifices of the patriot and the honor of the soldier. I beheld these victims of power delivered over in solemn pomp to the ministers of justice that they might crown with law the acts of tyranny and oppression. When I found these violations repeated and even aggravated; when I beheld a citizen of the United States arrested at the point of the bayonet without any warrant whatever; imprisoned for weeks in his own country; cut off from all intercourse with family & friends; denied access to courts, and privilege of counsel, and deported under military escort from New Orleans to Washington without any accusation, I considered it high time for congress to put a stop to an evil which affected the rights of the whole community and seemed to acknowledge no limits. I did hope that all would be sensible of these outrages and with hearty zeal provide by efficient laws for the prevention of them in future. I did expect that the violations of the constitutional rights of any citizen, however mean and abject his situation, would, as it was a common interest, be made a common cause. With such views of this case, I could not reconcile it to myself to be a silent spectator. It is asked why so much sensibility for men who are charged with treason against government. I answer, that it is no matter how infamous the crime or how hardened the villain. Whenever the rights of personal liberty are attacked in the person of such offenders, it is a side blow aimed at the whole community which they will and ought to feel most sensibly, and whenever the prejudices against a crime are made the pretext for the illegal oppression of the person charged, the attack is too dangerous to be trifled with, and I do consider that he who can without concern look upon such violations of the rights of others, and indifferently folding his arms console himself that it is not his own case, is not worthy of the character of an American or the privileges which he enjoys. If these men are guilty of treason their crime is of the blackest kind; depraved indeed must be that heart which can conceive treason against the United States. I have no charity for the crime, and with all my heart would punish it. But I cannot consent to break through laws and constitution to punish the traitor, much less one who is only suspected of treason. Now let me ask gentlemen in my turn why they feel so much sensibility about general Wilkinson, and so little about the rights of the citizen? are they afraid that that the administration will be implicated with the general, or are they indignant at even the suspicion that the powers that be can do wrong? For myself, though I am willing to repose all just confidence in the officers of our government, I am not so blinded by my devotion as to be willing to fall down in the dust and kiss the foot that tramples on me. I am not prepared to surrender my rights at the footstool of ministerial or military power; neither am I willing to cry peace! peace! when I see the rights of others invaded.

The gentleman from Virginia has thought proper to congratulate me on my conversion to democracy, and to express his pleasure that my eyes have been opened.—The gentleman would have done well to consider before this compliment, in what situation it placed him; for if I am advocating the principles of democracy, he is opposing them; and if my eyes are open, his must be shut. I wish to be understood that I am not advocating the speculative abstract rights of man, but good old constitutional rights, such as have secured the civil liberty of England, from time immemorial, and such as will secure our own so long as we please to preserve them inviolate; and I