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Congress.

HOUSE OF REPRESENTATIVES.

Wednesday, February 18.

DEBATE

On the resolution of Mr. Broom.

Mr. Holland spoke at great length against the resolution, repeating and amplifying all that had been previously urged on the same side of the question. He thought Wilkinson had done right at New-Orleans. It was a mystery to him that a proposition in favor of liberty should come from the other side of the house; and he observed, that the friends of monarchy looked with indifference or with approbation on the schemes of Burr.

Mr. Alston spoke at some length against the resolution. The question had been varied and the present motion was more objectionable even than the original one. The resolution is calculated to have an effect, a bias on what has taken place at N. Orleans. Why had the house lain still for 15 or 16 years, and not found out before, this defect in the judicial system. The resolution will also have an effect on proceedings which may be hereafter instituted. The conspiracy is wider than some gentlemen are willing to own. If the resolution is carried, the mover will probably be chairman of a committee to report a bill. It is too late now, to act on any report, yet it will have an imposing appearance on the nation and bias the public mind.

Those men who have heretofore been in favor of a strong energetic government, are now most clamourous for the liberty and rights of man. This is strange indeed. Mr. A. believed the object of this resolution was, to protect those guilty of treason, and rescue them from trial and punishment.

Mr. G. W. Campbell said he had been misunderstood or egregiously and wilfully misrepresented (referring to Mr. Randolph.) He had never undertaken to vindicate his vote by the precedents of the alien and the sedition times. He believed himself as sincere a friend to liberty as any member whatever, and he hoped the constitution would never depend on a man of an effervesced imagination, using wild declamation without argument and without system, whose conduct is at one time different from that of another, and whose speeches of one day may be read as an answer to those delivered on another.

Mr. Masters opposed the resolution. He could not conceive how a refusal to obey a writ could be considered a violation of the constitution. Why, said he, this extraordinary zeal for these people's rights who want to destroy your own rights? Have no other people any rights.

Several gentlemen were rising to speak when an adjournment was called for and carried.

Quarter before 5, adjourned.

Thursday, February 19.

The house proceeded to consider the motion of Mr. Broom—Ayes 60, noes 37.

Mr. Burwell said he should vote for the motion, but he hoped that the house would agree to amend the resolution before the question was put. He thought there existed a necessity of defining the power of the supreme court of the United States in issuing the writ of habeas corpus. A division of opinion on this subject had lately taken place in the court. Mr. B. believed that they had no power to issue the writ, that they had no original jurisdiction in regard to the subject, except in a few cases specifically designated in the constitution. If the doctrine is admitted that they have the power contended for, the consequence is that a man confined in any part of the United States may be brought up to the seat of government and released by the court.—The exercise of the power will be attended with immense inconvenience, for witnesses may be ordered in any numbers from all parts of the union, merely to give testimony in the case of a habeas corpus. Mr. B. supported his argument at considerable length, and concluded with offering an amendment which was agreed to—Ayes 76.

The resolution as amended is as follows, the amendment being in italics.

Resolved, That a committee be appointed to enquire into the expediency of making further provision by law more effectually to secure the privilege of the writ of habeas corpus to persons in custody under or by color of the authority of the U. States, *and the necessity of defining the power of the Supreme court of the U. States in issuing the writ of habeas corpus*, with leave to report by bill or otherwise.

Mr. Jackson was opposed to the resolution as it stood originally and he thought the amendment rendered it even more exceptionable. The writ of habeas corpus was in his opinion amply secured. Gentlemen, when called upon, have not shown that it is not well secured. It was in vain to say that an action for damages did not afford an adequate remedy. Gentlemen had contented themselves with declamation and denunciation without condescending to investigate the merits of the subject.

Five gentlemen rose now at nearly the same time and all appeared extremely solicitous to deliver their sentiments on the subject. The speaker thought Mr. Bidwell was first up and entitled to the floor.

Mr. Bidwell spoke at length against the motion. He observed that it had two objects in view and both predicated on recent occurrences. Both members of the resolution met with his disapprobation. The present time was improper. The arguments of the gentleman from Delaware were calculated to excite unpleasant sensibilities in the house and to alarm the nation. There were on the table a great number of reports and bills which awaited the decision of the house and if the resolution was pursued as heretofore all this important business must be transferred to the next session.

Mr. B. deemed the laws relative to the habeas corpus imperfect, but he thought the provision suggested by the gentleman from Delaware unnecessary, and if necessary, he should oppose their adoption, at this particular crisis.

The arguments in favor of the resolution, are founded on what is called a violation of the constitution, that is, a violation of a constitutional right, which is in some sense a breach of the constitution. The resolution, if agreed to, ought to go in the first place, to a committee of the whole, for the decision of principles, and then referred to a select committee, for the arrangement of details.

It has been said with great zeal, that the "constitution has been violated, and if we sit still, and allow those violations to go on, the constitution will be eventually sacrificed."

This is a two edged sword, and cuts both ways. If unnecessary alarms are excited, the feelings of the people will be blunted, and they will be at last insensible to real and dangerous violations of the constitution.

To interest our feelings a case has been put, of a member of this house being arrested by force, and sent to New Orleans. But even in that case there would be no need of legislation. An action for damages and an indictment would afford the means of redress and of punishment. Mr. B. would not disparage the trial by jury so much as to say that it is not competent to give relief. A jury are not more liable to prejudice and partiality than a legislature. While a question is pending in the court, it is improper for us to take up the subject, for it will produce an impression on the public mind, which will find its way to the jury.

It has been repeatedly said, that Wilkinson has violated the constitution; it had been repeatedly said that he had violated the writ of habeas corpus. Mr. B. understood the fact to be otherwise; that Wilkinson had never refused obedience to a writ of habeas corpus. He had only arrested men illegally, and taken the responsibility upon himself. Mr. B. at considerable length, explained the distinction, and insisted on its correctness and importance. He contended that at New-Orleans there had been no refusal to grant or obey a writ of habeas corpus; the conduct of Wilkinson was quite another thing.

Mr. Quincy. So long as an intention appeared to make this a party question, I had no inclination to intermeddle with it. The subject seems to me to be of too high a nature, and too deeply to be connected with the rights and liberties of us all, to be examined under those narrow and temporary views, which party spirit necessarily introduces. Since the discussion has assumed a milder aspect, I shall offer a few considerations; limiting myself to a very simple and brief elucidation of the subject, in a point of view, which no other gentleman has taken it, as yet, on this floor.

I cannot agree with those gentlemen, who maintain that, in the arrest and transportation of Bollman and Swartwout, they can see no violation of the rights of individuals. The privileges of the constitution are as much the inheritance of the humblest and the most depraved, as of the most elevated or virtuous citizen. To be seized by a military force, to be concealed and hurried beyond the protection of the civil power, and to be sent a thousand miles for trial, in a place where the crime charged was not committed, I humbly conceive, are violations of individual rights and of the constitution. I am not, however, prepared to say, that in no possible case they can be pardoned; nor, with the gentleman from Virginia (Mr. Randolph) that in no case I would consent to indemnify a military commander for making such an arrest. A case might exist, when it might be the duty of a legislature thus to indemnify. I agree, however, that it must be an extreme case, and that the party to be indemnified must evidence that he had himself no voluntary agency in producing that state of things which made such an unconstitutional exercise of power, necessary to the safety of the state. I give no opinion concerning the conduct of general Wilkinson. The events which happened at New Orleans have no other relation to the subject before the house than this. They have turned the attention of reflecting men in this nation to the nature of the security they possess against similar violence, and in common with other reflecting men, it has become our duty not only to understand the nature of that security, but also to supply, as soon as possible, any deficiencies we may discover in it.

The only question is, have this people the privilege of the writ of habeas corpus secured to them as fully and effectually as the constitution intended, and as wise and prudent men ought to desire? I answer unequivocally, *they have not*. So far as relates to cases under the exclusive jurisdiction of the United States, *we have virtually no writ of habeas corpus*.—And for this plain reason, that we have none of the sanctions of the writ; we have none of those penalties, without which the writ of habeas corpus is a dead letter; particularly in all cases, in which the state of party passions, or of any predominant power leads to the oppression of an individual.

The writ of habeas corpus and the penalties by which it is enforced, and in which the great benefit of the privilege consists, are distinct things in their nature. The former was known to the English common law, and although, at all periods of English history, it was held a very precious right, yet were its provisions found wholly inefficacious against arbitrary power, until after the statute of Charles II. called by Englishmen their second Magna Charta. This statute gave penalties unknown to the common law. If a judge refuses to grant, or an officer refuses to execute the writ! he is liable to a penalty of 500*l.* sterling, and similar sanctions annexed to other neglects of the precept. The house will observe, that all these penalties are securities, given to personal liberty, *additional to those* which exist at common law, and are not substituted for them. These penalties are annexed for disobedience to the writ, not as an indemnification for the injury. All the other remedies against the judge, or the party imprisoning, remain unimpaired.

The question recurs, does the federal constitution, by securing to us "the privilege of the writ of habeas corpus" assure to us those sanctions of the writ, which constitute in England, its characteristic security? If the constitution had re-enacted the statute of Charles there could be no doubt. But will gentlemen seriously assert, that a penal statute of another country, can, *by construction*, be declared the law of this, so as to make our citizens obnoxious to its penalties? If that statute be our national law, how was it obtained? Re-enacting statute we have none. And, "*the United States, as a federal government, have no common law*," if we give credit to declarations daily made upon this floor; or respect the opinions of one of the highest law authorities in this nation—I refer to the opinion of judge Chase in the case of the United States against Worrall. 2 Dallas 394.

This view of the subject is certainly sufficient to satisfy this house that their security for this great privilege is, at least, uncertain; and is not this reason enough, for this legislature to commence an inquiry into the nature of that security, and the additional provisions it requires? This at present is the only question.

But gentlemen ask "what need of further penalties?" "If the judge refuses the writ, is there not impeachment?" "Against the person illegal imprisoning another, is there not an action for damages? I answer. Both these securites for the personal liberty of the citizens existed, and do still exist in England, as fully as they do here, yet was it ever before heard that these were reasons against enacting that celebrated statute of Charles or were ever urged as evidence that its provisions were needless, or useless? The penalties of that statute are guarentees for the liberties of the citizen, additional to those, which result from the law and the constitution. The principle of that statute is, to rest satisfied with nothing short of the actual liberation of the person, for illegal imprisonment, in the shortest time possible. To this end all its provisions tend. It will not leave a citizen to languish in prison, in expectation of the result of the slow progress of legislative inquisition, or for the purpose of ultimately qualifying him to receive a heavy compensation in damages. Impeachment is always a dubious, and an action for false imprisonment, often an inadequate security for the observance of the writ of habeas corpus. Great violations of the privilege of this writ can never happen, unless in times of great party violence. In such times, what hope of an impeachment against a judge, who abuses his authority in coincidence with the views of a prevailing party? And as to damages, is personal liberty to be estimated by money? And if it were, what certainty that the person guilty of the illegal arrest will be competent to pay the damages recovered? In the case of seizure by a military power can it ever be expected from the universal pecuniary deficiencies of the soldiers, that damages will be realized, even should the civil arm be competent to enforce an execution?

The penalties affixed by the statute of Charles, on the contrary, assure the obedience of the courts and officers of justice, independent of all party influences, which may happen to prevail in the nation, and secure personal liberty by pecuniary perils, suspended over the heads of men, whose situation in society is such as, in general, makes the attainment of the penalty certain, should it be incurred. Upon the whole, those who oppose the present motion seem to me to be reduced to this dilemma—either they must acknowledge, that they are content that the citizens of these United States should possess less security for their liberties, than the subjects of the law of England enjoy for theirs;—or they are reduced to the necessity of adopting the doctrine that the statute penalties of another country may *by construction* become the law of this nation; than which, I can conceive nothing more monstrous or absurd.

In this discussion it has been my wish to avoid all notice of the party and personal invectives which have been uttered. The question is too important to be mingled with feelings and passions of these descriptions. And the circumstances of the time and of the nation, seem to me to claim from us all a contempt for these local and ephemeral distinctions.

Mr. Gregg rose to move a postponement of the resolution indefinitely. He thought the propriety of the motion must be by this