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DEBATE ON THE SEMINOLE WAR.

[Mr. Clay's Speech concluded.]

The principles which attached to the... of Arbutnot and Ambrister, constituted them merely participants in the war, supposing them to have been combatants, which the former was not, he having been taken in a Spanish fortress, without arms in his hands, all that we could possibly have a right to do, was to apply to them the rules which we had a right to enforce against the Indians. Their English character was only merged in their Indian character. Now, if the law regulating Indian hostilities, be established by long and immemorial usage, that we have no moral right to retaliate upon them, we consequently had no right to retaliate upon Arbutnot and Ambrister. Even if we were admitted that, in regard to future wars, and to other foreigners, their execution may have a good effect, it would not thence follow that you had a right to execute them. It is not always just to do what may be advantageous. And retaliation, during a war, must have relation to the events of that war, & must, to be just, have an operation upon that war, and upon the individuals only who compose the belligerent party. It became gentlemen, then, on the other side, to shew, by some known, certain, and recognized rule of public or municipal law, that the execution of these men was justified. Where is it? He should be glad to see it. We are told in a paper, emanating from the Department of State, recently laid before this house, distinguished for the fervor of its eloquence, and of which the honorable gentleman from Massachusetts has supplied us in part with a second edition, in one respect agreeing with the prototype, that they both ought to be inscribed to the American public—we are justly told in that paper, that this is the first instance of the execution of persons for the crime of instigating Indians to war. Sir, there are two topics which, in Europe, are constantly employed by the friends and minions of legitimacy against our country. The one is an inordinate spirit of aggrandizement, of coveting other people's goods. The other is the treatment which we extend to the Indians. Against both these charges, the public servants, who conducted at Ghent the negotiations with the British commissioners, endeavored to vindicate our country, and he hoped with some degree of success. What will be the condition of future American negotiators, when pressed upon this head, he knew not, after the unhappy executions on our southern border. The gentleman from Massachusetts seemed on yesterday to read, with a sort of triumph, the names of the commissioners employed in the negotiation at Ghent. Will he excuse me for saying, that I thought he pronounced, even with more complacency and with a more gracious smile, the first name in the commission, than he emphasized that of the humble individual who addresses you. [Mr. Holmes desired to explain.] Mr. C. said there was no occasion for explanation—he was perfectly satisfied. [Mr. H. however proceeded to say that his intention was, in pronouncing the gentleman's name, to add to the respect due to the negotiator, that which was due to the Speaker of this House.] Will the principle of these men having been instigators of the war, justify their execution? It was a new one; there were no land marks to guide us in its adoption, or to prescribe limits in its application. If William Pitt had been taken by the French army, during the late European war, could France have justifiably executed him, on the ground of his having notoriously instigated the continental powers to war, against France. Would France, if she had stained her character by executing him, have obtained the sanction of the world to the act, by appeals to the passions and prejudices, by pointing to the cities sacked, the countries laid waste, the human lives sacrificed in the wars which he had kindled, and by exclaiming to the unfortunate captive, you miscreant, you monster, have occasioned all these scenes of devastation and blood? What had been the conduct even of England towards the greatest instigator of all the wars of the present age? The condemnation of that illustrious man to the rock of St. Helena, was a great blot on the English name. And Mr. C. repeated, what he had once before said, that if Chatham or Fox, or even William Pitt himself, had been prime minister, in England, Bonaparte never had been so condemned. On that transaction history will one day pass its severe but just censure. Yes, although Napoleon had desolated half Europe; although there were scarcely a power, however humble, that escaped the mighty grasp of his ambition; although in the course of his splendid career he is charged with having committed the greatest atrocities, disgraceful to himself and to human nature, yet even his life has been spared. The allies would not, England would not execute him, upon the ground of his being an instigator of wars.

of their lives. He knew, he said, the laudable spirit which prompted the ingenuity displayed in finding out a justification for these proceedings. He wished most sincerely that he could reconcile them to his conscience. It had been attempted to vindicate the General upon grounds which he was persuaded he would himself disown. It had been asserted that he was guilty of a mistake in calling upon the court to try them, and that he might have at once ordered their execution, without that formality. He denied that there was any such absolute right in the commander of any portion of our army. The right of retaliation is an attribute of sovereignty. It is comprehended in the war-making power that Congress possesses. It belongs to this body not only to declare war, but to raise armies and to make rules and regulations for their government. It was in vain for gentlemen to look to the law of nations for instances in which retaliation is lawful. The laws of nations merely laid down the principles or rule, and it belongs to the government to constitute the tribunal for applying that principle or rule. There was, for example, no instance in which the death of a captive was more certainly declared by the law of nations to be justifiable, than in the case of spies. Congress has accordingly provided, in the rules and articles of war, a tribunal for the trial of spies, and consequently for the application of the principle of the national law. The legislature had not left the power over spies undecided, to the mere discretion of the commander in chief, or of any subaltern officer in the army. For, if the doctrines now contended for were true, they would apply to the commander of any corps, however small, acting as a detachment. Suppose Congress had not legislated in the case of spies, what would have been their condition? It would have been a *casus omissus*, and although the public law pronounced their doom, it could not be executed, because Congress had assigned no tribunal for enforcing that public law. No man could be executed in this free country without two things being shewn: First, that the law condemns him to death; and secondly, that his death is pronounced by that tribunal which is authorized by the law to try him. These principles would reach every man's case, native or foreigner, citizen or alien. The instant quarters are granted to a prisoner, the majesty of the law surrounds and sustains him, and he cannot lawfully be punished with death without the concurrence of the two circumstances just insisted upon. He denied that any commander in chief, in this country, had this absolute power of life and death, at his sole discretion. It was contrary to the genius of all our laws and institutions. To concentrate in the person of one individual the powers to make the rule, to judge, and to execute the rule, or to judge and execute the rule only, was utterly irreconcilable with every principle of free government, and was the very definition of tyranny itself; and he trusted that this House would never give even a tacit assent to such a principle. Suppose the commander had made reprisals on property, would that property have belonged to the nation, or could he have disposed of it as he pleased? Had he more power, would gentlemen tell him, over the lives of human beings, than over property? The assertion of such a power to the commander in chief, was contrary to the practice of the government. By an act of Congress which passed in 1799, "vesting the power of retaliation, in certain cases, in the President of the United States"—an act which passed during the quasi war with France, the President is authorized to retaliate upon any citizens of the French republic, the enormities which may be practised in certain cases, upon our citizens. Under what administration was this act passed? It was under that which has been justly charged with stretching the constitution to enlarge the executive powers. Even during the mad career of Mr. Adams, when every means was resorted to for the purpose of infusing vigor into the Executive arm, no one thought of claiming for him the inherent right of retaliation. He would not trouble the House with reading another law, which passed thirteen or fourteen years after, during the late war with G. Britain, under the administration of that great constitutional President, the father of the instrument itself, by which Mr. Madison was empowered to retaliate on the British in certain instances. It was not only contrary to the genius of our institutions and to the uniform practice of the government, but it was contrary to the obvious principles on which the general himself had proceeded; for, in forming the law, he had evidently intended to provide under the rules and articles of war, the extreme number which they provided for, is thirteen, precisely that which is detailed in the instance. The court proceeded, not by a bare plurality, but by a majority of two-thirds. In the general orders issued from the Adjutant General's office, at headquarters, it is described as a court martial. The prisoners are said in those orders to have been tried, "on the following charges and specifications." The court understood itself to be acting as a court martial. It was so organized—it so proceeded, having a judge advocate, hearing

witnesses, the written defence of the miserable trembling prisoners, who seemed to have a presentiment of their doom.— And the court was finally dissolved. The whole proceeding manifestly shews that all parties considered it as a court martial, convened and acting under the rules and articles of war. In his letter to the Secretary of War, noticing the transaction, the general says: "These individuals were tried under my orders, legally convicted as excitors of this savage and negro war, legally condemned, and most justly punished for their iniquities." The Lord deliver us from such legal convictions and such legal condemnations! The general himself considered the laws of this country to have justified his proceedings. It was in vain then to talk of a power in him beyond the law, and above the law, when he himself does not assert it.— Let it be conceded, that he was clothed with absolute authority over the lives of these individuals, and that upon his own fiat, without trial, without defence, he might have commanded their execution. Now if an absolute sovereign, in any particular respect, promulgates a rule which he pledges himself to observe, if he subsequently deviates from that rule, he subjects himself to the imputation of odious tyranny. If Gen. Jackson had the power, without a court, to condemn these men, he had also the power to appoint a tribunal. He did appoint a tribunal, and he became, therefore, morally bound to observe and execute the sentence of that tribunal. In regard to Ambrister, it was with grief and pain he was compelled to say, that he was executed in defiance of all law; in defiance of the law to which General Jackson had voluntarily, if you please, submitted himself, and given, by his appeal to court, his implied pledge to observe. He knew but little of military law, and he had not a taste, by what had happened, created in him for acquiring a knowledge of more; but he believed there was no example on record, where the sentence of the court has been erased, and a sentence not pronounced by it carried into execution. It had been suggested that the court had pronounced two sentences, and that the general had a right to select either. Two sentences! Two verdicts! It was not so. The first, by being revoked, was as though it had never been pronounced. And there remained only one sentence, which was put aside upon the sole authority of the commander, and the execution of the prisoner ordered. He either had or had not a right to decide upon the fate of that man, without the intervention of a court. If he had the right, he waived it, and, having violated the sentence of the court, there was brought upon the judicial administration of the army a reproach, which must occasion the most lasting regret.

However guilty these men were, they should not have been condemned or executed, without the authority of the law. He would not dwell, at this time, on the effects of these precedents in foreign countries, but he would not pass unnoticed their dangerous influence in our own country. Bad examples are generally set in the cases of bad men, and often remote from the central government. It was in the provinces were laid the abuses and the seeds of the ambitious projects which overturned the liberties of Rome. He beseeched the committee not to be taken captive by the charms of eloquence, and the appeals made to our passions and our sympathies, so as to forget the fundamental principles of our governments. The influence of a bad example would often be felt when its authors and all the circumstances connected with it were no longer remembered. He knew of but one analogous instance of the execution of a prisoner, and that had brought more odium, than almost any other incident, on the unhappy Emperor of France. He alluded to the instance of the execution of the unfortunate member of the Bourbon house. He had sought an asylum in the territories of Baden. Bonaparte dispatched a corps of gen d'armes to the place of his retreat, seized him & brought him to the dungeons of Vincennes. He was there tried by a court martial, condemned and shot. There, as here, was a violation of neutral territory; there the neutral ground was not stained with the blood of him whom it should have protected. And there was another most unfortunate difference, for the American example.—The Duc D'Enghien, was executed according to his sentence. It is said by the defenders of Napoleon, that the Duke had been machinating not merely to overturn the French government, but against the life of its chief. If that were true, he might, if taken in France, have been legally executed. Such was the odium brought upon the instruments of this transaction, that those persons who have been even suspected of participation in it have sought to vindicate themselves, from what they appear to have considered as an aspersion, before foreign courts. In conclusion of this part of the subject, Mr. C. said, that he most cheerfully and entirely acquitted General Jackson of any intention to violate the laws of his country, or the obligations of humanity. He was persuaded, from all that he had heard that he thought himself equally respecting and observing both. With respect to the purity of his intentions, therefore, he was disposed to allow it in the most extensive degree. Of his acts, said Mr. C. it is my duty to speak with the freedom which belongs to my station. And I shall now proceed to consider some of them, of the most momentous character, as it regards the distribution of the powers of government.

Of all the powers conferred by the constitution of the United States, not one is more expressly and exclusively granted than that is to Congress of declaring war. The immortal convention who framed that instrument had abundant reason for confiding this tremendous power to the deliberate judgment of the Representatives of the people, drawn from every page of history. It was there seen that nations are often precipitated into ruinous war from folly, from pride, from ambition, and from the desire of military fame. It was believed, no doubt, in committing this great subject to the Legislature of the union, we should be safe from the mad wars that have afflicted and desolated and ruined other countries. It was supposed that before any war was declared, the nature of the injury complained of would be carefully examined, the power and resources of the enemy estimated, and the power and the resources of our country, as well as the probable issue and consequences of the war. It was to guard our country against precisely that species of rashness, which has been manifested in Florida, that the constitution was so framed. If then this power, thus cautiously and clearly bestowed upon Congress, has been assumed and exercised by any other functionary of the government, it is cause of serious alarm, and it became that body to vindicate and maintain its authority by all the means in its power, and yet there are some gentlemen, who would have us not merely to yield a tame and silent acquiescence in the encroachment, but to pass even a vote of thanks to the author.

On the 25th of March, 1818, Mr. C. continued, the President of the United States communicated a message declaring that, although, in the prosecution of it, orders had been given to pass into the Spanish territory, they were so guarded as that the local authorities of Spain should be respected. How respected?—The President, by the documents accompanying the message, the orders themselves which issued from the Department of War to the commanding general, had assured the Legislature that, even if the enemy should take shelter under a Spanish fortress, the fortress was not to be attacked, but the fact to be reported to the Department for further orders. Congress saw, therefore, that there was no danger of violating the existing peace. And yet, on the same 25th day of March, (a most singular concurrence of dates,) when the Representatives of the people receive this solemn message, announced in the presence of the nation and in the face of the world, and in the midst of a friendly negotiation with Spain, does Gen. Jackson write from his head quarters, that he shall take St. Marks as a necessary depot for his military operations.—The General states, in his letter, what he had heard about the threat on the part of the Indians and Negroes, to occupy the fort, and declares his purpose to possess himself of it in either of the two contingencies of its being in their hands or in the hands of the Spaniards. He assumed a right to judge what Spain was bound to do by her treaty, and judged very correctly; but then he also assumed the power, belonging to Congress alone, of determining what should be the effect and consequence of her breach of engagement. Gen. Jackson generally performs what he intimates his intention to do. Accordingly, finding St. Marks yet in the hands of the Spaniards, he seized and occupied it. Was ever, he asked, the just confidence of the Legislative body, in the assurances of the Chief Magistrate, more abused?—The Spanish commander intimated his willingness that the American army should take post near him, until he could have instructions from his superior officer, and promised to maintain, in the mean time, the most friendly relations. No! St. Marks was a convenient post for the American army, and delay was inadmissible. He had always understood that the Indians but rarely take or defend fortresses, because they are unskilled in the modes of attack & defence. The threat, therefore, on their part, to seize on St. Marks, must have been empty, and would probably have been impracticable. At all events, when Gen. Jackson arrived there, no danger any longer threatened the Spaniards from the miserable fugitive Indians, who fled on all sides upon his approach. And, sir, upon what plea is this violation of orders, and this act of war upon a foreign power, attempted to be justified? Upon the grounds of the convenience of the depot and the Indian threat. The first he would not seriously examine and expose. If the Spanish character of the fort had been totally merged in the Indian character, it might have been justifiable to seize it. But that was not the fact, and the bare possibility of its being forcibly taken by the Indians could not justify our anticipating their blow. Of all the odious transactions which occurred during the late war between France and England, none was more condemned in

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