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National Intelligencer.

IN SENATE

OF THE UNITED STATES.

NOVEMBERR 30.

MOTION,

That a committee be appointed to examine the act, entitled, "An act to enable the people of the Eaſtern diviſion of the territory, North Weſt of the river Ohio, to form a conſtitution and ſtate government, and for the admiſſion of ſuch ſtate into the union, on an equal footing with the original ſtates, and for other purpoſes," and that they have leave to report, by bill or otherwiſe, the manner in their opinion, the money appropriated by the ſaid act ought to be applied.

7th December, 1804.

The committee appointed "to prepare and report proper rules of proceeding, to be obſerved by the Senate in caſes of impeachment," ſubmit the following.

REPORT:—

Whenſoever the Senate ſhall receive notice from the Houſe of Repreſentatives, that managers are appointed on their part, to conduct an impeachment againſt any perſon, and have directed the ſaid managers to carry ſuch articles to the Senate, the ſecretary of the Senate ſhall immediately inform the Houſe of Repreſentatives, that the Senate is ready to receive the managers, for the purpoſe of exhibiting ſuch articles of impeachment, agreeably to the ſaid notice.

When the managers of an impeachment ſhall be introduced to the bar of the Senate, and ſhall have ſignified that they are ready to exhibit articles of impeachment againſt any perſon, the Preſident of the Senate ſhall direct the ſergeant-at arms to make proclamation; who ſhall, after making proclamation, repeat the following words: "All perſons are commanded to keep ſilence on pain of impriſonment, while the grand inqueſt of the nation, is exhibiting to the Senate of the United States, articles of impeachment againſt ; after which the articles ſhall be exhibited, and then the Preſident of the Senate ſhall inform the managers, that the Senate will take proper order on the ſubject of the impeachment, of which due notice ſhall be given to the Houſe of Repreſentatives.

A ſummons ſhall iſſue, directed to the perſon impeached, in the form following:

The United States of America, ss.

THE SENATE OF THE UNITED STATES OF AMERICA,

To *Greeting:*

Whereas, the Houſe of Repreſentatives of the United States of America, did, on the day of exhibit to the Senate, articles of impeachment againſt you, the ſaid in the words following, viz: (here recite the articles) and did demand that you, the ſaid ſhould be put to anſwer the accuſations as ſet forth in ſaid articles; and that ſuch proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and juſtice. You, the ſaid are therefore hereby ſummoned, to be and appear before the Senate of the United States of America, at their chamber in the city of Waſhington, on the day of then and there to anſwer to the ſaid articles of impeachment, and then and there to abide by, obey and perform ſuch orders and judgments as the Senate of the United States ſhall make in the premiſes, according to the conſtitution and laws of the United States.

Hereof you are not to fail.

Witneſs Vice-Preſident of the United States of America, and Preſident of the Senate thereof, at the city of Waſhington this day of in the year of our Lord and of the independence of the United States, the

Which ſummons ſhall be ſigned by the ſecretary of the Senate, and ſealed with their ſeal, and ſerved by the ſergeant-at arms to the Senate, or by ſuch other perſon as the Senate ſhall ſpecially appoint for that purpoſe; who ſhall ſerve the ſame, purſuant to the directions given in the form next following:

A precept ſhall be endorſed on ſaid writ of ſummons, in the form following, viz.

United States of America, ss.

THE SENATE OF THE UNITED STATES.

To *Greeting.*

You are hereby commanded to deliver to, and leave with if to be found, a true and atteſted copy of the within writ of ſummons, together with a like copy of this precept, ſhewing him both; or in caſe he cannot with convenience be found, you are to leave true and atteſted copies of the ſaid ſummons and precept, at his uſual place of reſidence, and in whichever way you perform the ſervice, let it be done at leaſt days before the appearance day mentioned in the ſaid writ of ſummons. Fail not and make a return of this writ of ſummons, and precept, with your proceedings thereon endorſed, on or before the appearance day mentioned in ſaid writ of ſummons.

Witneſs, Vice-Preſident of the United States of America, and Preſident of the Senate thereof, at the city of Waſhington, this day of in the year of our Lord and of the independence of the United States, the

Which precept ſhall be ſigned by the ſecretary of the Senate, and ſealed with their ſeal.

Subpœnas ſhall be iſſued by the ſecretary of the ſenate, upon the application of the managers of the impeachment, or by the party impeached, or his counſel, in the following form, to wit.

To *Greeting.*

You and each of you are hereby commanded to appear before the ſenate of the United States, on the day of at the ſenate chamber in the city of Waſhington; then and there to teſtify your knowledge in the cauſe which is before the ſenate, in which the Houſe of Repreſentatives have impeached

Fail not.

Witneſs, Vice Preſident of the United States of America, and Preſident of the ſenate thereof, at the city of Waſhington, this day of in the year of our Lord and of the independence of the United States, the which ſhall be ſigned by the ſecretary of the Senate, and ſealed with their ſeal.

Which ſubpœnas ſhall be directed, in every caſe, to the marſhal of the diſtrict, where ſuch witneſſes reſpectively reſide, to ſerve and return.

The form of direction to the marſhal, for the ſervice of the ſubpœna, ſhall be as follows.

The Senate of the United States of America,

(SEAL.) To the marſhal of the diſtrict of You are hereby commanded to ſerve and return the within ſubpœna, according to law.

Dated at Waſhington, this day of in the year of our Lord, and of the independence of the United States, the

Secretary of the Senate.

The Preſident of the Senate ſhall make all neceſſary preparations in the Senate chamber, and all the forms of proceeding, while the Senate are ſitting for the purpoſe of trying an impeachment, and all forms during the trial, not otherwiſe ſpecially provided for by the Senate.

He ſhall alſo be authoriſed to direct the employment of the marſhal, or any officer or officers of the diſtrict of Columbia, during the trial, to diſcharge ſuch duties as may be preſcribed by him.

That at 12 o'clock of the day appointed for the trial of an impeachment, the legiſlative and executive buſineſs of the Senate, ſhall be poſtponed. The ſecretary ſhall then adminiſter the following oath or affirmation to the Preſident.

"You do ſolemnly ſwear or affirm, that in all things appertaining to the trial of the impeachment of you will do impartial juſtice, according to the conſtitution and laws of the United States." And the Preſident ſhall adminiſter the ſaid oath or affirmation to each ſenator preſent.

After which the proceſs which ſhall have been iſſued and ſerved on the perſon impeached, and the return thereon, ſhall be read. And the ſecretary of the Senate ſhall adminiſter an oath to the returning officer, in form following, viz: "I do ſolemnly ſwear, that the return made and ſubſcribed by me, upon the proceſs iſſued on the day of by the Senate of the United States againſt is truly made, and that I have performed ſaid ſervices, as then deſcribed. So help me God!" Which oath ſhall be entered at large, on the records.

The ſecretary ſhall then give notice to the Houſe of Repreſentatives, that the Senate is ready to proceed upon the impeachment of in the Senate chamber, which chamber is prepared with accommodations for the reception of the Houſe of Repreſentatives.

Counſel for the parties ſhall be admitted to appear and be heard upon an impeachment. And upon the attendance of the managers, the perſon impeached ſhall be called to appear and anſwer the articles of impeachment exhibited againſt him. If he appear, or any perſon for him, the appearance ſhall be recorded, ſtating particularly, if by himſelf, or if by agent or attorney; naming the perſon appearing, and the capacity in which he appears. If he does not appear, either perſonally, or by agent, or attorney, the ſame ſhall be recorded. All motions made by the parties, or their counſel, ſhall be addreſſed to the Preſident of the Senate, and if he ſhall require it, ſhall be committed to writing, and read at the ſecretary's table; and all deciſions ſhall be had in open court, by Ayes and Noes, and without debate, which ſhall be entered on the records.

Witneſſes ſhall be ſworn in the following form, viz: "I do ſwear, (or affirm, as the caſe may be) that the evidence I ſhall give to this court, in the caſe now depending, ſhall be the truth, the whole truth, and nothing but the truth. So help me God."

Witneſſes ſhall be examined by the party producing them, and then croſs examined in the uſual form.

If a ſenator is called as a witneſs, he ſhall be ſworn, and give his teſtimony ſtanding in his place.

If a ſenator wiſhes a queſtion to be put to a witneſs, it ſhall be reduced to writing, and put by the preſident.

Congressional Register.

HOUSE OK REPRESENTATIVES.

THURSDAY, DECEMBER 6.

DEBATE

On the bill for protecting the ports and harbours of the United States, and preſerving peace on the waters within their juriſdiction.

(Continued.)

Mr. *R. Griſwold.* The remarks of the gentleman have not proved to my mind that I was miſtaken. He ſuppoſes in reſpect to the firſt idea I ſuggeſted, that Congreſs has a right under the conſtitution to call out the militia to execute the laws of a ſtate, becauſe a ſtate being part of the union, ſo are its laws a part of the laws of the union. If this propoſition is true, if the laws of a ſtate are the laws of the union, they muſt bind the union, for it is the nature of laws to bind thoſe upon whom they operate. Now will that gentleman tell me that the laws of a particular ſtate are obligatory upon the whole union? The conſtitution does not bear along his idea; it only means that the laws paſſed by Congreſs, are the laws of the union. Of courſe no power is given by the conſtitution to call forth the militia to execute the laws of a particular ſtate. He conceives that under that part of the conſtitution making proviſion againſt inſurrections, Congreſs might call forth the militia to ſuppreſs an inſurrection againſt the authority of a ſtate. Be that as it may, this bill does not contemplate calling out the militia for that purpoſe. It merely confines itſelf to the execution of a magiſtrate's warrant; therefore that part does not authoriſe the paſſing of a law of this kind. Mr. Griſwold was aware that the militia might be drawn out to aid the civil arm, where it could not effect its object with the aſſiſtance of the *posse comitatus*; but he had always thought that the executive of the ſtate authority was the proper organ to call forth the militia to execute their own laws. And are the ſtates to be now deprived of this power? By the conſtitution Congreſs have the power of organiſing, arming and diſciplining the militia, and of governing ſuch part of them as may be employed in the ſervice of the United States; but, to the ſtates is reſerved the appointment of officers, and training, and he had ever underſtood that the ſtates had the right of commanding their own militia and calling them forth to execute their own laws. This being the caſe, where is the neceſſity for Congreſs undertaking to legiſlate on this point? The ſtates having competent authority for the purpoſe, why not leave it to the ſtates? If any ſtates ſhould think it neceſſary to call out the militia, they could do it with as much diſpatch and as effectually as the United States; and all of them, he believed, had laws for the purpoſe: if any of them had not, they would ſoon paſs them if they ſaw their neceſſity.

To the ſecond objection the gentleman has replied; but it cannot be conceived that a ſheriff having a warrant can ever be juſtified in going out of his juriſdiction to execute it. He admits that the warrant ſhall not run into the ſtate of Jerſey; not becauſe the conſtitution provides for reclaiming the offender, but becauſe the juriſdiction of New-York does not extend to the ſtate of New-Jerſey. If this is a reaſon in that caſe, it muſt be a reaſon in this, and a ſheriff cannot go within the juriſdiction of the United States to execute his warrant any more than he can go into that of a neighbouring ſtate. It is, perhaps, competent to Congreſs to paſs a law to return an offender that has fled from juſtice within their territory; but they cannot extend the ſtate proceſs beyond what the ſtate itſelf directs—They may, perhaps, be authoriſed under the authority of excluſive legiſlation, to paſs a law directing offenders who ſeek an aſylum in the diſtrict of Columbia, to be delivered up to an offended ſtate: But that is not the object of the preſent bill, nor is there any proviſion of the kind contained therein. Entertaining theſe ſentiments he moved to ſtrike out the ſecond ſection.

Mr. Nicholſon. The gentleman does not conſider the laws of the particular ſtates as part of the laws of the United States, becauſe they are not obligatory over the whole union. Mr. N. alleged that a law paſſed by a ſtate conformable to its conſtitution was as obligatory over all the people of the Union, who went into that juriſdiction, as a law paſſed by Congreſs was obligatory over the whole people who reſided within the United States. The laws paſſed for the government of the diſtrict of Columbia were alſo binding over the whole Union, though they did not operate upon any perſon but thoſe who are within the ten miles ſquare. So the laws of every particular ſtate are binding on the Union *pro tanto*, for as much as they extend to—But the gentleman makes no remarks upon my ſecond obſervation, that the United States have a right to allow the officers of a particular ſtate to execute their warrants within the excluſive territory and juriſdiction of the United States. The conſtitution does not prohibit us from exerciſing this authority, any more than the conſtitution of any ſtate prohibits its legiſlature from granting a ſimilar indulgence to its neighbour. If Jerſey was to paſs a law authoriſing the officers of New York to purſue an offender, and arreſt him in the ſtate of Jerſey, could it be complained of, or would it be ſaid that the act of a ſheriff making ſuch an arreſt was illegal, & that reſiſtance would be juſtifiable? In fact, Virginia and Maryland have actually ſuch a mutual regulation, and a perſon eſcaping from juſtice may be arreſted by the officer, under proceſs from either ſtate.

Mr. *J. Randolph* ſaid there undoubtedly were difficulties ariſing out of this ſubject; but generally they had been ſatisfactorily anſwered by his friend from Maryland, (Mr. N.) The ſituation of the United States in relation to the individual ſtates, it is well known, differs from that of every other government under the ſun. The waters in our harbours are generally under the juriſdiction of the ſtate governments, while the mouths of thoſe harbours are under the juriſdiction of the United States.—And if the poſition is true that the United States cannot authoriſe a ſtate officer to execute his proceſs, when an offender ſhall have eſcaped into the waters under the United States juriſdiction the caſe is irremidable. And it will be known that the moſt daring outrages committed within a ſtate are to be paſſed by with impunity, if the criminal eſcapes beyond the ſtate boundary into that of the Union. This was a doctrine to which he never could accede. He ſaw no good reaſon why a ſtate might not as well have the privilege granted of executing its proceſs within the juriſdiction of the United States, as of reclaiming offenders flying from juſtice into other parts of the Union. He deemed it prudent to fortify the arm of the ſtate with the ſtrength of the United States. There is, however, one part of the clauſe that had not been ſatisfactorily ſupported to his mind. He did not underſtand how the Congreſs could enjoin it upon a magiſtrate to call out the militia to execute a ſtate warrant. He was not ſatisfied either as to the right, the conſtitutionality, or propriety of the meaſure. The conſtitution, when it ſpeaks of calling out the militia, confines the object to three things, to execute the laws of the Union, to ſuppreſs inſurrections, and repel invaſions—Congreſs may call forth the militia to execute the laws of the United States, but not to execute the laws of a particular ſtate. The ſtates individually have the right to call forth the militia of their own ſtates, to execute their own laws, and the United States have alſo the power to call forth the whole militia of the Union to execute the laws of the Union. He had no doubt of the propriety of giving the ſtates authority to execute their proceſs within the limits of the United States juriſdiction; but he doubted extremely the authority of Congreſs to call out the militia for the purpoſe mentioned in the bill; that he conceived to belong to the ſtate authority, and the ſtate alone was competent to its execution.

The doctrine of the Gentleman (Mr. R. Griſwold) on another point was not ſo correct. It will be recollected that the individual ſtates could neither raiſe an army, nor create a fleet; yet armed veſſels may commit in our waters, and in our ports and harbours, the moſt violent outrages upon the perſons and property of the citizens; and this miſerable quibble is to enable them to elude a nation's juſtice; we cannot, we are told, extend the juriſdiction of a ſtate nor aid her with the national force; ſurely the lives and fortunes of our citizens are not thus tamely to be ſacrificed.

Suppoſe murder to be committed in the harbour of New York by a citizen or a foreigner not belonging to an armed veſſel. This may be conſidered as a crime againſt the ſtate, and which the ſtate authority is competent to puniſh. But if murder is committed by the crew of an armed veſſel, is not ſuch an armed force equivalent to an invading foe? If a man came from Canada into Vermont, and was to commit a ſimilar outrage, would not the civil power of the ſtate apprehend him, and puniſh him with death, if his crime was of ſuch enormity as to require it? And ſhall an armed veſſel be permitted to outrage the perſon and property of our citizens on the Atlantic ſhores, becauſe ſhe has the ſtrength? He would be glad to ſee a remedy more complete than the one mentioned in this bill; he would like to ſee ſuch a force not repelled by the civil arm, but force by force. He would like to ſee the armed veſſels employed in diſturbing our peaceable commerce blown out of the water. He would wiſh to ſee our American officers and ſeamen lying yard arm and yard arm in the attack, and the queſtion of peace or war ſtaked on the iſſue, if the conduct of ſuch marauders was juſtified by the government of the nation to which they belonged.—This language may appear different from what he had conſtantly uſed; but our ſituation was alſo different. Heretofore, he was not diſpoſed to engage in hoſtilities for the protection of our navigation; but we then had no maritime force. We have ſince created one; if we had no navy, we could not meet them on the ocean; but having one he would apply it to the beſt purpoſe, that of efficaciouſly defending our ports and harbors, and would ſtruggle till the whole of our marine was annihilated, if in the conteſt Britain ſhould not leave us a ſingle ſhip? though we loſt all, we ſhould not loſe our national honor; though we ſhould not beat her on the Ocean we ſhould ſave our reputation.—But to ſuffer inſult to be added to injury is indeed a degradation of national honor, and ought never to be borne with, let it come from any nation whatever.

Mr. *R. Griſwold* did not ſay that Congreſs had not power to authoriſe the individual ſtates to ſend their proceſs into the territory under the juriſdiction of the United States. That point could not be a queſtion on this bill, becauſe that power is no where propoſed to be given. The objection was, that without having given the ſtate power to ſend its proceſs within the United States juriſdiction, you ſay that if the perſon making the arreſt, the perſon intended to be arreſted ſhall be killed within the juriſdiction of the United States it ſhall be juſtified, or if any perſon aiding the ſheriff be killed by thoſe reſiſting the civil authority, they ſhall be puniſhed as in caſes of felonious homicide. He was deſirous that ſome efficacious mode of reſiſting or repelling the aggreſſions upon our commerce could be adopted, and the peace and ſecurity of our country effectually ſecured for the future.

Mr. *Elliot.* The queſtion has ſome traits of peculiar importance, and it would be deſirable at all times to harmoniſe the conflicting claims of the ſtate and general governments. He could have wiſhed that the doubts upon his mind had been diſpelled by the ingenious explanation of the gentleman from Ma-