CONGRESS.

House of Representatives.

Monday, Jan. 25.

The annual report was received from the Department of State of the Clerks employed, with their respective salaries. Referred to the committee of Ways and Means.

A report from the Department of War on the same subject, was also referred to the committee of Ways and Means.

Mr. Newton from the committee of Commerce and Manufactures, made a report unfavorable to the memorial of the first and second chambers of the council of the city of Washington, stating that the fees of the collector of the port of Georgetown, at present including Washington, do not sufficiently compensate him, inasmuch as he now receives 200 dollars annually in addition from the public treasury; for which reason they have thought the prayer for the establishment of a port of entry at Washington, unreasonable. Ordered to lie on the table, 46 to 36.

Mr. Chandler said, he wished to propose a resolution relating to the pay and emoluments of the militia of the U. S. when called into actual service. The law at present existing on this subject provided that the pay and cloathing of the militia when called into actual service should be the same as that of the regular army. In the laws relative to the regular army, the U. States having in their pay no officer higher in rank than a Brigadier General, there was no provision for compensation of a Major General when called into service, or for a brigade inspector or quarter master general. He therefore moved the following resolution, which was adopted, and Messrs. Chandler, Tallmadge, J. Smith, Blount and Desha appointed the committee.

Resolved, That a committee be appointed to enquire whether any, and if any what alterations are necessary to be made in the law providing for the pay and cloathing of the militia of the U. S. when called into actual service, and that they have leave to report by bill or otherwise.

Mr. G. W. Campbell, from the committee of Ways and Means reported a bill making appropriations for the support of the Navy of the United States during the year 1808. Twice read and referred to a committee of the whole.

Mr. Dawson, from the committee to whom the resolution on the subject had been referred, reported a bill authorising the President to employ an additional number of seamen in the service of the U. S. Read twice and referred to a committee of the whole.

Mr. Dawson said, he need not impress upon the House the necessity of a speedy passage of this bill, as there were many seamen now out of employ, and several gun-boats as yet unmanned; he therefore moved that it be made the order of the day for this day. The motion was seconded by Mr. Newton. Agreed to, *nem. con.*

On motion of Mr. *Dawson*, the further consideration of the bill for classing of the militia was postponed; and the House went into a committee of the whole, Ayes 72, Mr. J. Richards in the chair, on the bill this day reported authorising the employment of an additional number of seamen.

A letter was offered from the Secretary of the Navy, and read, stating that the whole number of seamen authorised by law amounts to 1425; that 1272 are required in addition to the present establishment.

The blank in the bill for the number to be employed was then filled with 1272, without a division.

The bill was gone through, and the question put that the committee rise and report it.

Mr. Macon. It may be necessary to raise these men; but there is a principle contained in this bill to which I can never consent. It gives the President a discretionary power; he may or may not raise these seamen as he pleases. I object to it on another ground; it is a partial bill. I always consider the President as required to put such a law as this into operation when he is authorised to do it; and I wish the law to be expressive of the intention.

Mr. Chandler. I have no objection to leave the President to raise these men according to the exigency of the times; but I object to their being continued in service for a longer time than until the next session of Congress. They should be continued in service as long as the exigency of the case may require, or till the end of the next session of Congress.

Mr. Newton differed with the gentleman from North Carolina on this subject; as the same phraseology had been established in the laws heretofore passed on this subject.

Mr. Dawson. I am not scrupulous as to the particular form; nor is it material; my object is to procure seamen at this particular moment. The committee did not consider the employment of these men as an addition to the peace establishment of the U. States, as the gentleman from North Carolina seemed to consider it. If the gentleman wishes to add them to the Naval establishment of the U. States, his motion might be necessary; but the opinion of the committee was different; they considered it as a *war* measure.

Mr. Macon. There is not the least fear that I shall ever wish to increase our naval establishment. Every body knows that I am opposed to the navy; I am not afraid of being called a navy man. I am aware that this phraseology has been used in former laws; it originated with the twelve regiments. I was then opposed to it and have been ever since, and ever shall be. I am for giving to each department its proper share of responsibility. To prevent this from being considered as a part of the peace establishment if my amendment takes place, it will be easy to say at the end of the bill that it is a war measure. My objection is to the putting that responsibility on the President which belongs to another department of the government. Every President may raise this number of men under the law; I cannot tell what may happen. I do not want a naval establishment; but I am opposed to giving to the President the power of raising an army of marines or of any description whatever, with a discretionary power to raise them or not. I wish to say absolutely that they shall or shall not be raised; and that Congress may say whether or not the public exigency requires their service. This discretion is what I have always thought wrong; and no argument has ever convinced my mind to the contrary.

Mr. Dana. The argument of the gentleman from North Carolina might have answered several years back much better than at the present time; such arguments were then used. For several years past, however, such arguments have not been urged according to former practice, when it was very strenuously urged that a discretionary power should not be vested in the President of the U. S. The gentleman was pretty correct about the origin of the practice; but really it has been confirmed so often since, that it has now received the strongest sanctions. I think I have heard the gentleman himself lay it down as a correct principle, that two decisions form a precedent in any case. Since 1801, there have been more than two decisions on this point: so that the gentleman must consider it correct in practice if not in theory. When we come to examine the subject, we shall find it to be correct on principle. If it be decided by the legislature that certain troops shall be raised, it is either decided that under present circumstances they may be raised, or that under a certain contingency they may be raised. The execution of such law is necessarily committed to the Executive authority. It is a fair exercise of our powers to say that such a thing shall be done under such circumstances, and whenever an authority is given it is in this discretionary manner. We give the President a full power to carry the law into effect or abstain from it, if he chuses. In many cases it might not be proper to say that the President should or should not abstain from the execution of the law. Every species of military or naval force is but an instrument for executing the laws; the authority given to the President in this case is not a general delegation of power, but merely entrusting him with an instrument for the execution of our general system of laws; for by the constitution he is authorised to take care that the laws be executed by peaceable means if they can; but if not, by forcible means. The whole force of the nation is sometimes necessary for the execution of the laws; we therefore place at the disposal of the President the whole force of the country, at the same time saying that if he does not want the whole, he may abstain from using it, or take but a part. It is well known that we have given the President authority even to suspend laws. For instance the non-importation law, over which we have stumbled so often—even this law the President of the U. S. was authorised to suspend the moment we passed it.

Mr. Macon. One word in reply. I think it very likely that I may have stated what the gentleman has ascribed to me, that I consider two decisions as forming a precedent. That its true as to ordinary matters, but never on a constitutional question. The passage of twenty sedition laws would not convince me that it was a constitutional exercise of power to pass such laws; nor, I suppose, if we were to repeal twenty judiciary laws, would the gentleman from Connecticut allow that we acted constitutionally in so doing. Precedent cannot affect the construction of the constitution. I have no expectation that this force is intended to effect the execution of the laws; such an argument would be as well applied to a standing army of 100,000 men or to a navy of fifty ships of the line, as to these twelve hundred sailors. This is a subject on which I have often stated my opinion, and I may also tell gentlemen that I never have found a majority of the same opinion with myself on this point; but as often as a measure of this kind comes before us, so often shall I make a similar motion till I succeed.

Mr. Dana. I am very glad that I referred to the opinion of the gentleman from North Carolina, for the sake of the nice though just distinction he has made, though I do not recollect that the gentleman's definition of precedent occurred on a constitutional question; but on the subject of claims; for on that subject the gentleman is peculiarly orthodox. It is competent for any gentleman to call in question the constitutionality of a measure; though I rather think the gentleman must have now the misfortune of being in the minority. Of late he has generally been in the majority, and I in the minority; but now the practice is coming round to its former standard, and I shall be in the majority, and he in the minority.

Mr. Smilie. This is a subject which has heretofore been warmly agitated. Taking the subject as it presents itself, I think one reason why discretionary powers ought to be vested in some instances in Executive officers, is that legislatures cannot foresee what events may arise during the time of their recess. Would it be better for the people and the country to pass this law absolutely, that these seamen shall be raised, when we do not know the circumstances which may arise, or that the situation of our country may be such as to render such a force necessary. Would it not be subjecting the Treasury to an unwarrantable diminution if they should prove not to be necessary? On the other hand may it not be necessary for them to be raised while the legislature is not in session? I should be sorry, if there were no necessity, that they should be raised; if there were a necessity, I should regret that they were not raised. The constitution does not restrict us on this point, or contain any provision one way or the other; but in point of economy and safety, the measure should be placed at the discretion of the President.

Mr. Lyon said he expected to be in the minority on this question, as he had all along been on the subject of complimenting the President with the powers vested in Congress. The constitution had placed the power in Congress of declaring war, raising and supporting armies, and providing for the maintaining a navy; he had under the former administration opposed the relinquishment of those powers to the President on constitutional ground. The republicans universally opposed the relinquishment—he saw, and lamented to see a strong disposition in the republican majority of the present House, to yield those powers particularly delegated to Congress, and to compliment the Executive department of the government, as he ever did in the Federal majority, under the former administration. This he considered as another proof among the many he had seen, that power makes men tories. Majorities will have an idol, to whom they will pay their adulation. But why do gentlemen contend for paying this compliment of their constitutional powers at this time, when there was the most evident necessity for employing the seamen contemplated by the bill. If there was no other reason, he should be disposed to employ them during the time of the embargo, to keep them from going to Nova Scotia, to get into the British service.

Mr. L. did not blame the Federalists for adhering to their old principles. The gentleman from Connecticut had felicitated himself in having a majority under the former administration on these questions, and exulted in being now in the majority. This was not to be wondered at, but said Mr. L. it does not sit very well on my mind to see gentlemen with whom I formerly voted on this great constitutional principle, turning their back upon their old arguments and principles. I want to see gentlemen stick to their text in fair weather as well as in foul.

Mr. Cook said that in many cases a limited discretion must devolve upon the Executive. In many cases he had voted for vesting discretionary powers, and in no case had they been exceeded. The reason why he seconded the motion of the gentleman from North Carolina was, that there was an immediate necessity for raising these men, not only to guard and protect the country, but to employ so many men now out of service; it was not necessary that he should here say any thing of the state of the minds of those men which was such as to make it necessary that they should be employed.

Mr. Holland. The present question is to raise men for manning the gun-boats as I understand it. We have this very session passed a law giving the President a discretionary power to build gun-boats; if the erection of the gun-boats is at his discretion, certainly the raising of men to man them should also be discretionary.

The amendment proposed by *Mr. Macon* was now negatived by a considerable majority.

Mr. Chandler moved to strike out the words at the end of the bill and insert "and may be continued in service till the end of the next session of Congress if the public exigency may require the same."

Mr. Rhea (T.) called for a division of the question taking it first on striking out.

The question being so taken, was negatived.

Mr. Taylor asked the chairman of the committee whether there were not in the statute book regulations for the employment of these seamen? He thought the government should be authorized to employ these seamen not only on board gun-boats or other vessels, but to aid in the erection of fortfications, or in other business. He believed, unless some rule were now adopted, that they could only be employed in the line of duty as seamen. In some of the seaport towns the public authorities had employed seamen in other business than the mere service of the sea.

Mr. Dawson said these seamen were intended to be placed in the same situation as other seamen of the U. States. If the gentleman wished to render them liable to do duty other than on board of ships, he might bring in a bill for the purpose of amending the present naval system.

The committee then rose and reported the bill as amended.

The question being put on concurring with the report of the committee of the whole for filling the blank with 1272,

Mr. Burwell hoped the House would disagree to the number reported by the committee. He had heard nothing from the chairman of the committee or the gentlemen who had spoken on the subject, to prove to his mind that this number was necessary. The gentleman had talked about giving them employment and subsistance, as they suffered materially from the embargo. Mr. B. said it was the same with every class of citizens, and as the necessity of the case had required the adoption of the measure, it ought to affect all equally. They should not employ these men merely for the sake of employing them, because they could find occupation in various other modes. The gentleman from S. Carolina had mentioned that these men should be employed in throwing up fortifications. Mr. B said whoever knew the life of a seaman, must know at once that this was not the class of men to be employed in this way. If it were necessary, one million of dollars had been already appropriated, and government would employ such men in the accomplisment of the end as would be the most proper. He could not subscribe to the doctrine that they were to relieve this particular class of men, because they might suffer by the embargo. All must suffer, but they not more than others. If the gentleman who had introduced the bill would shew that this number of seamen were necessary in addition to the present number, he would vote for the bill; but until the gun-boats were built he saw no reason for employing such an additional number. With respect to the employment of seamen, all the corporations in the different seaport towns had shewn a disposition to provide for them, and to ameliorate their condition. He did not believe that in the five or six weeks since the imposition of an embargo that so much distress could prevail among this class of people. He knew from the nature of their habits that they were not generally prudent men; but he thought it hardly possible that they could already suffer so much inconvenience. If they were in this situation, why could they not apply to the various dock-yards for employment? Was it possible that the public agents would not give employment in preference to this class of men? If they did not they would deserve public reprobation. For these reasons he hoped the House would not agree to the number reported by the committee of the whole.

Mr. Dawson said, if his colleague had attended to the report from the Secretary of the Navy, which had been read, he would have spared his observations. The Secretary of the Navy had stated that 30 gun-boats were prepared for service, except that they were manned, and that 1272 was the precise number of seamen wanting for service. They were wanted for the vessels now prepared for the defence of our ports and harbors. If they were wanted, why should they not be employed? They were told by the proper authority that there were so many deficient; let them then be procured.

Mr. Masters said he would much rather instead of diminishing the number, increase it to three or four thousand. These men were a valuable class of people; when in employ, exposed to the greatest hardships, forever tossing to and fro, and when out of employ, from the peculiarity of their habits, prevented from acquiring a livelihood any other way. His opinion was, that their situation at this time required that they should be employed. They were a distinct class of citizens, and more than any other subject to the pressure of want during the continuance of the embargo. He could have wished the number to have been larger, tho' as the question now presented itself, he should vote for concurrence with the number reported by the committee.

Mr. Dana said if he understood the report of the Secretary of the Navy, the estimate for 1272 men was the number supposed to be required for two frigates and the gun-boats already built. Considering the number of gun-boats authorized, he should really doubt whether two frigates with these men and officers, were competent to take care of the gun-boats. Whether it were intended to employ the gun-boats or not, if the object now were to save from perishing such a number of seamen, he was much disposed to pass the bill. The case of these men was different from that of any other in the U. States. The qualities which fitted them for service unfitted them for taking care of themselves; of all men on the earth they were the first that would divide their purses with those in distress: to be provident and saving was not their character: when called to public service they exposed their lives as if of no worth; always ready to give away what little they had earned. It was for these men, said Mr. D. that you professed to have laid the embargo; to secure to them protection. The protection you have secured is the utter deprivation of employment. Those who understood the character of a seaman, need not be told how peculiarly difficult it was for him to employ himself in any other branch of labor. It was true that many of the men employed in merchant vessels could cultivate land; but as it respected the great body of the seamen, it was more difficult for them to procure employment (except on board of a vessel) than any other men. Their very habits at sea were not favorable to habits of industry on shore: he therefore thought their case peculiarly entitled to attention. If the corporations of our cities had manifested a generous attention to the distresses of these men, he was not disposed for that reason to withdraw from them any means of support which it might be in the power of the House to afford. He thought with an overflowing treasury and so much solicitude as had been displayed for the interests of these men by laying the embargo, that it was but right that the House should provide them employment on the principle of humanity.

Mr. Taylor said the scope of the argument of the gentleman who introduced the bill, and of the gentleman last up, was, that these men were in distress, and therefore should be employed. If they were to be employed, Mr. T. wished it to be for some service. As to their being confined forty or fifty in a boat, and eating up the money of the planters who suffered equally with them, he could not agree to it. Taking it up however as a matter of charity, it was contemplated to employ 1200 seamen. The seamen of the U. States amounted to between 50 and 60,000. Suppose one half of these to be employed in the fisheries and coasting trade, 25,000 remained; and he wished to know whether they ought to select twelve hundred of them, and leave the other twenty-three or four thousand to that distress which had been depicted. If it were a matter of necessity to support these virtuous people, let gentlemen come forward and drain the treasury to support them. But others suffered as well as sailors; and if they were to support all who were out of employ, they would not leave a cent in the treasury. He would now call the attention of the House to the famous gun-boat bill, this was said by its advocates to contemplate a great superiority of the new establishment over the old; that it would require but very few regulars, the rest being supplied by a naval militia. We blow hot and cold, said Mr. T. We depart from the very principle laid down, on the passage of that bill, and now are going to raise a naval standing army; for whether by sea or land it is a standing army. I say it is not expedient. If the gun-boats were now all ready for service, under the state of things which now exists, I should not be in favor of employing more men than would be sufficient to trim the boats and keep them in order. So that take this measure on principle, it appears to be departing from the principle on which we set out; and if it is meant to be done in charity, it is doing nothing. Therefore, unless gentlemen can shew me that such a number of men is necessary for taking care of the boats, having at the same time an eye to a naval militia, I shall vote against the bill on the table.

Mr. Chandler asked for what pur-