Continued from first page.

tion was overruled upon this ground: that the treasonable (overt) act having been alledged to be committed in the state of Ohio, and general Wilkinson's letter to the President of the U. S. having been dated, although but a short time, prior to that act, this person had the benefit of what lawyers would call a legal exception, or a fraud. But, said Mr. R. I will inform the gentleman, that I did not hear a single member of the grand jury express any other opinion than that which I myself expressed of the *moral* (not of the *legal*) guilt of the party.

Mr. Smilie said he would not detain the House on this subject; he had the other day taken an opportunity to state his sentiments on the subject—that in his opinion there was no power in the House to proceed in the business. The same sentiments he yet entertained; and when gentlemen told him that it was necessary for the public safety that this House should exercise such powers, and at the same time they could not point out a single expression in the consitution vesting the House with this power, he could not consent to vote with them: nor had a single gentleman who had spoken attempted to shew that they did possess these powers. The gentleman from Virginia had spoken of their power to disband the army; if the gentleman chose to bring forward a resolution for that purpose, Mr. S. said he would meet him. He had also told them that they had a power to refuse supplies: Mr. S. said he agreed with the gentleman in this: but when they stepped out of the road and assumed a power not vested in them, he could not go along with the gentleman. Was it not the duty of the President alone to enquire, who possessed full power to act on the information which might be the result of an enquiry? Certainly it was. The officer interested in this discussion was undoubtedly subject to trial by a court-martial, and no doubt also by a court of justice; for if he was guilty of the crimes laid to his charge, they were of a high nature and would subject him to the cognizance of the civil law.

But he would ask gentlemen, if they succeeded in passing the resolution upon the table, what was next to be done? Did the House believe that they could remove or punish a military officer for misconduct? If they could not do this, and he presumed no gentleman would contend for this, Mr. S. could see no reason for an enquiry. Were they to become mere juries for a court of justice—mere collectors of evidence, for it was admitted that they could not act upon it after it was collected? He believed the courts of justice were possessed of sufficient authority without this House volunteering their assistance.

Mr. S. remarked what would be the effect of this motion, which was substantially the same as that proposed by the gentleman from N. York, and rejected by a large majority. It would answer the purpose of holding up this man to suspicion for years to come for aught he knew, without producing any other effect. He was willing to enquire; he had seen from the beginning of the business that an enquiry must take place. There had been a number of papers laid upon the table relative to this; he was willing to transmit them to the proper department, there to be made use of, and he hoped the House would go no farther. For in regard to the proceedings which had taken place they had exercised a right which did not appertain to them in proceeding in this business at all; they had no right to beset the character of the man; and he rested his objections on this point, that no man could shew him an authority for it.

He was very sorry, because he thought it would produce effects of a serious nature, to hear a gentleman this day denounce the army as corrupted throughout. He must tell that gentleman that he could not credit the assertion. They had tried (without meaning to express any opinion as to the officer now involved) their officers and found them trusty. And to hold them up as unworthy of trust at this time, in a crisis like the present, was impolitic and unjust. If gentlemen knew of any particular officers who were corrupt, why could and did they not lodge information against them, not by clamor here, but by proof before the proper authority.

Mr. S. in conclusion declared that he should not vote for this resolution; for in any way a procedure by this House on the subject would be incorrect.

Mr. Rhea (T.) called for the reading of the letter of —— Duncan contained in the evidence laid before the House this session relative to the late trial at Richmond; it might be satisfactory in explaining the differences between the version of the cyphered letter by the grand jury and the translation made by general Wilkinson.

Mr. Love said, that although the form of the question had been varied, by the resolution of the gentleman from Kentucky, (Mr. Rowan) yet the principles of decision remained nearly the same as on the original resolution; the same objections applied, as to the subject embraced by the present form, and so long as it thus remained, those objections would continue to influence his determination.

These grounds of difficulty had been attempted to be removed by the gentleman from Virginia, (Mr. Randolph) by arguing, that the investigation of the subject might lead to measures, which no one would doubt, it was competent, to the house to act on; by pursuing the enquiry, it was said it might be found, that it would be expedient to disband the army, or withhold its necessary supplies: this said Mr. L. is begging the question; the terms of the resolution in their present shape, can not possibly conduct a committee to any such enquiry: It is confined to a single object; it is whether the present commander of the army has been guilty of corruptly receiving money from Spain; the charge alluded to is understood to be of an ancient date; it is not suggested by any one that the army is tainted with this crime, specially set forth in the resolution: the charge, if proven, could not then be a cause for disbanding the army, or withholding the necessary supplies; if an object of this kind is contemplated let it be so stated, and an enquiry into the grounds of such proposition, however strange in idea, would only be the exercise of a constitutional right.

The resolution, Mr. L. repeated, called the attention of the House to a single fact, it exhibited a charge already made penal, both by the military and civil code; it respects a character over whom we have no constitutional control by impeachment or otherwise; if an improper character is commissioned to the command of our armies, and continues so, let the responsibility fall where the constitution has placed it, on the Executive; the attention of the legislature must be called to other things than judging of the merits or crimes of the soldiery. But it is objected that the military tribunal appointed to make an enquiry on the demand of the person accused, and which the House understood was now engaged in the performance of that duty, has no power to compel the attendance of witnesses, or the production of papers: he would not for a moment so far impeach the patriotism of those gentlemen, who have declared themselves possessed of knowledge on the subject of the charge, as to suppose they would not attend the respectful summons of a tribunal erected by our own laws, for the investigation of crimes which they admit are of importance to their country. Those gentlemen surely too well understand the rights of others to object to a cross-examination; but if a military court is not possessed of power sufficient to compel, if it should be necessary, the attendance of witnesses, the common judicial tribunals are so; the civil, as well as the martial code, has cognizance of such offences as are suggested; the same effect as it respects a military officer, would follow the establishment of guilt before either tribunal—if gentlemen object to a military court, which the law has instituted, let them resort to a civil one, it is there they may without apprehension or difficulty make those disclosures, which the good of their country requires: it is not here that a power is found, either to prosecute or punish the offences of military men: he hoped the time of this legislature would be better employed, than in the usurpation of the powers of the judiciary or executive, in the investigation of criminal charges, against military men, whom they could neither hear the defence of, or punish their crime, if proved.

Mr. L. said that as to the truth and weight of the charges made against the military character in question, he felt no disposition to decide; to determine a man guilty of crimes of great enormity, without a hearing, without examination of testimony, and without a possibility of defence, was so hostile to every principle of justice, and common humanity even, that he had not permitted his mind to enter into any investigation of fact, or his feelings to enlist in the prosecution; much detail of circumstance had been used, which ought to put the House extremely on its guard against the influence of feeling in deciding the present question. A gentleman had the other day said, that he felt no delicacy towards a man, whom he had on his oath been obliged to say was guilty of misprision of treason; it was thus intimated that the grand jury of the Virginia district, who investigated the subject of Burr's conspiracy, had agitated the question of General Wilkinson's criminality; (setting aside the observation which might well be made that Burr's conspiracy was no part of the present enquiry) it appeared to Mr. L. that the question having been agitated, and no presentment being made of the officer now charged, a considerable portion of the grand jury, must have said in like manner, on their oaths, that that officer was not guilty of misprision of treason; but to day the same gentleman has informed us, that the reason why no presentment was preferred against Wilkinson was, that he escaped by a legal exception in his favor: that although the immorality of his act was complete, (as well as he could understand the gentleman at the distance he was from him) the offence could not be located, or some other legal defect. Mr. L. said he confessed he was not well informed of the proceedings of the grand jury, he had heard some noise which he had scarcely listened to about them: he had never before heard, that the principal officers of the army were leagued in Burr's conspiracy: he would say, however, that the grand jury assembled on that occasion, was as able and respectable a one as ever sat on any former occasion of the kind, and he confessed he was surprised to hear they had omitted to exercise a general power, which, when it appeared to them, the officers of our army were actually conspirators against the government, as we are now informed, it became imperiously their duty to exercise, by making a presentment of the dangers of the country: any general evil a grand jury may present, if they believe it to exist only in intention. The acts of a legislative body, and some he believed of Congress itself, had been presented by grand juries as of evil tendency; and one instance at least has occurred of a grand jury having presented the very court which presided over it. Certainly such an evil as a general conspiracy of the officers of our army, required some public exhibition of the offence; even if it was such in them as well as the commander, as not to be brought in the opinion of the jury, within the form of an efficient prosecution. Mr. L. said he was sorry that he too had been led into the notice of facts by the surprising things he had heard. He hoped unnecessary delay would be avoided. The time occupied in the discussion of this dispute, had already, he would presume, prevented some of the committees from reporting on subjects of the first consideration. The present eventful and threatening aspect of foreign affairs demanded attention; he particularly apprehended it might have prevented the report of the bill for arming the militia, as well as other subjects of national interest from being taken up. Let us then, said Mr. L. meet this question, decide upon it, and send to the proper departments the information which will enable them to act in the manner we are told they have already attempted, under the laws in existence. The question which they solely ought now to consider was their right to act. He believed there was no man in that House who did not after what had been said, wish a thorough investigation, but certainly, the mode to be pursued was obvious and easy. He conceived it would be entirely sufficient if the papers and information were transmitted to the proper department, and should, if the resolution was negatived, beg leave, if he could get the floor, to offer a resolution, with a preamble, detailing the reasons which governed him in his vote, by which it might appear, that although he felt as much anxiety as any man, that the proper tribunals should act on the subject, yet his objection to the present mode proposed rose to a source above mere matters of expediency or temporary feeling.

Mr. L. then said, as it was not in order in the then stage of the debate, to propose his resolution, he would read it in order that the House might be apprised of his views. He then concluded by reading the following resolution:

Whereas, It is a primary duty, enjoined on the House of Representatives of the United States, cautiously to avoid any encroachment on the constitutional rights & authorities of the other departments of the government: And according to the letter of the federal compact and the acknowledged spirit, and meaning of that instrument, the several departments thereof should forever be kept separate and distinct, so that neither interfere with the powers and duties of the other: And this House being aware, that it is only by the practical observance of fundamental principles, that it can secure to itself and to the people of the United States the beneficial effects resulting from a written and well defined form of government; that to fail in such observance, would be to yield all the blessings, and advantages, which such written and well ascertained form of political institution is calculated to ensure.

And whereas the constitution of the United States, has in no instance vested in this House, the power of instituting or requesting the institution of an enquiry into the conduct of any military officer; but while it has invested those powers in another tribunal, has confined the inquiries of this body to the conduct of civil officers holding authority under the United States, and has restricted the mode of such enquiry to the process by impeachment; and as the powers of a military tribunal, over a military officer, are as competent to all the purposes, which ought to be the objects of prosecution under martial law, as the powers of a court of impeachment are to the purposes which ought to be the objects of such court, and either the civil or military officer is alike amenable for the commission of crimes, to the regular process of law, before the judicial civil tribunals of the country, where all offences of every nature are punishable; And inasmuch as it is the opinion of this body, that regulated by the proper sphere of their duty they have as little right or power to request of the President of the United States, the institution of an enquiry into the conduct of a person supposed to have committed an offence in the army, as they would have to request the head of the judiciary department, to cause an indictment to be preferred against any individual in civil society, or to see to the performance of any judicial duty whatever.

Resolved therefore, That the papers and information laid on the Clerk's table of this House, relative to Gen. James Wilkinson, be referred to the Secretary of the War department of the U. S.

Mr. Lyon said, notwithstanding the impression made upon his mind by the statement read this day, he should vote in the same way as he should have done before he heard it, if the power of the House to make an enquiry were not called in question. He would as soon cut off his right hand as to say that this House had not the power to call in question the conduct of the commander in chief. Was this House prepared to say that they had not the power to enquire whether or not the commander in chief had sufficiently the confidence of the people and of the army? He would not commit himself in this way, and after what had been urged as reasons for voting against the resolution, he could not promise how he should vote. The question was altogether varied by the motion now under consideration; the former and original question was whether they would request the President to perform certain duties; it was now moved that they should perform these duties themselves; and he should certainly vote in favor of it, if it were contended that this House had not the power to pass it.

As to the creed of the gentleman behind him, (Mr. Love) he could not subscribe to it; it was too long for his comprehension; but if it were intelligible, he would tell the gentleman behind him that he could not agree with him.

He should be satisfied to see what the court of enquiry would do in this business; and if they did not do what would satisfy the nation, he should be perfectly willing to proceed in the enquiry. He thought that then, feeling as his colleague (Mr. Rowan) must feel, it would come properly before the House. Mr. L. had long had a suspicion of this man, and his mind was much at variance on this subject. None of his feelings would induce him to surrender the right of the House to enquire, and if this were made a general ground of opposition to the motion, he should assuredly vote for it.

Mr. Taylor confessed that the importance of the subject was sufficient to claim his ardent attention, and from the consideration he had given it, he was opposed to the resolution and felt it a duty not to give a silent vote on a measure, which by the terms of the resolution offered was not to enquire on a general subject, (which even on this subject unconnected with any individual, but as he might be incidentally concerned might be excusable) but to enquire about the conduct of a single individual; or in short and plain terms to denounce the man, a man too holding an office out of the immediate control of this House, amenable to other tribunals, and liable, if guilty of all that has been asserted against him, to the sentence of death, both by our civil and military courts.

This measure of denouncing an individual whom this House cannot impeach, said Mr. T. is then a new case, and one which, if adopted, will establish a precedent dangerous to this government, dangerous to the life and liberty, the honor and reputation of the citizen, and calculated in its effects to put at hazard every institution and sacred provision in the constitution under which we profess to act.

We shall in the first place interfere with the Executive Department. With which department the constitution has expressly intrusted the care, the responsibility of watching over the army; and in respect to the enquiry proposed to be made by a committee of this House, when we have made it, we can pass no sentence, we can ground no impeachment against the denounced; we should then have to come back and acknowledge our imbecility, by asking, requesting the President to do that which we found ourselves unable to perform.

We assume to ourselves the responsibility which properly attaches to that department. I rejoice that here the maxim is monstrous and exploded, that the Executive can do no wrong; that here the ministers are not liable for the acts of the superior, but the superior accountable for the acts of his ministers and agents. If Gen. Wilkinson is the monster in iniquity his enemies state him to be, if the President has continued him in employment after he had evidence positive of his guilt, or if, as he has been charged, he has turned a deaf ear to the proof about to be offered by an ardent, a disinterested friend to his country—Why has not this blazing patriotism burst out in a direct and not an indirect impeachment of the Executive. But the sense of the nation is too well known to venture at this thing. No, say the advocates of the resolution, this has nothing to do with confidence in the Executive—and yet if the executive has a spark of that patriotism which he ought to possess, if he is not the protector and upholder of a known traitor, would he dare to disregard the information if legally substantiated, which the gentleman from Virginia and the delegate from Orleans have laid on your table? If confidence has nothing to do with this, why did not these gentlemen hand in to that department of the government which had the constitutional cognizance and final control of this business, all the information they had on this subject? Why make this House the great gun from which to thunder their denunciations and fulminations against an individual, when there was a shorter and more easy way of getting at their object. A corrupt Executive would desire the very measure proposed. Interfere with his functions, assume his responsibility, what would be the result? You denounce the agent, the tool of such an Executive (the col. Vernon of Cromwell, for example). You order, or you request, that his conduct should be enquired into. Well, in obedience to your order this corrupt Executive appoints a corrupt board of officers. The conduct is enquired into, and the accused comes out glossed over with an honorable acquittal from this court, & ready & more fitly prepared to execute the ambitious designs of his protector. Ask of the Executive why is this so, He answers I have obeyed your orders, the responsibility is yours and not mine. This will be the effect of our travelling out of our defined orbit and taking upon ourselves what never was intrusted to us by the constitution under which we act—already, when gentlemen say, that we are not to know that a court of enquiry is ordered in this case, but which every one does know, is now sitting—I say, already do they anticipate the result, and in a fore-handed way make it a theme of abuse against that Executive, with which they tell us confidence or diffidence has nothing to do in this question.

But to be done with these words so offensive to the chaste ears of the supporters of this measure, Mr. T. said he would ask these gentlemen if they would allow, their own judgement, views and conduct to be judged of by those who by duty were compelled to decide upon the measures they proposed. They surely not not claim that infallibility which they denied to others. Well then, said he, place them in the one scale, with all their acts or with any particular act, and place the Executive in the other, with all or with any of his acts. Nay, sir, take the present subject only as a criterion. Let the nation hold the balance. I have no hesitation in saying their scale would kick the beam. This I am compelled to say; I have more confidence in the present administration than I have in those who brought forward & now support the present motion. I seek for nothing but truth—I would not kiss my hand for any thing that the Executive could do for me or mine. I am not one of those politi-

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