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HOUSE OF REPRESENTATIVES

DEBATE

On the Resolution for requesting the President to cause an enquiry to be made into the conduct of GENERAL WILKINSON.

(CONTINUED.)

TUESDAY, JANUARY 12.

Mr. Rowan's resolution being under consideration.

MR. ROWAN moved to amend his resolution by adding a clause directing the committee to be appointed to enquire generally into the subject of the concern of General Wilkinson in any combination with Aaron Burr or any foreign power to separate the western states from the union.

MR. LOVE acknowledged that by the modification made by the gentleman of his resolution, he believed the House might have incidental jurisdiction of the subject, it was now possible the terms of the resolution might lead them to the exercise of some legitimate right under the constitution; if foreign nations have been tampering with our officers, as the resolution suggests, and promoting a conspiracy against the government, the enquiry on that subject might lead to some legislative regulation as to our foreign intercourse. Thus the House might incidentally have cognizance, and he conceived that the arguments of the gentleman from Virginia yesterday, relative to incidental jurisdiction, would leave in the modified shape of the resolution some ground of support. He admitted that the enquiry had progressed to that point which required of the House to go further with it if they could, for the sake of justice to both parties. But Mr. L. said the resolution must still undergo, considerable amendments before, it ought to receive the sanction of the House. He would propose one, which he hoped there would be no objection to, the object of it was to transmit immediately to the President of the United States, a transcript of the papers and information laid on the table. The propriety of doing so, said Mr. L. was obvious on two grounds, first it would enable the government to lay before the tribunal now in session, which was engaged in the enquiry solicited by the commander of the army, the means of conducting that enquiry, with all the success which the proofs, if made in conformity to the information, and the papers might merit, and secondly, it will be the means of enabling the accused to defend himself against the charges which have been here publicly made against him, without any power on his part to assert their falsehood. It would seem, said Mr. L. that not only our laws, but the common rights of humanity, would enjoin on us the necessity of giving to the accused some power of reply. *(Mr. L. then read the amendment stated to have been proposed by him, in our paper of the 13th inst.)*

MR. ROWAN said that the papers now before the House might be disposed of in any manner that they should think fit; but he saw no necessity for connecting that disposal with the resolution now under consideration, which embraced the simple question, would the House appoint a committee of enquiry into this matter? Whatever information the House had before them they would know how to use. But, said Mr. R. gentlemen seem to think that the President has no information on this subject. Information such as that on the table, has been and is in possession of the cabinet; and if the House adopt my resolution, they will call upon the Secretary of State for the information in his department, which it will be his duty to lay before the House. If this subject were about to burst forth for the first time to the view of the Executive, it would be proper to give him the information as it comes into our possession. But this is not the case; there is no necessity for sending it. Let the court of enquiry exercise their legitimate power of enquiry. This enquiry has been instituted by the President; let him superintend and manage it; but let us conduct our enquiry in our own way. Mr. R. said he could not see the propriety of the amendment of the gentleman from Virginia, or agree to it; and at all events, were it adopted, would call for a division of the question, taking it first on the amendment, as he wished to have a distinct and unencumbered vote on his own proposition.

MR. LOVE said he knew not whether, as had been asserted, the same information was already before the government, if it was he had no doubt also that there was enough of testimony to rebut it, from the circumstance of it not having been acted on; but of this he knew nothing, although he had understood that the purport of the charges on the Clerk's table against General Wilkinson, had been laid before both the former administrations. That the accused had been informed of them, and had requested from General Washington and Mr. Adams successively, an enquiry into his conduct; that this enquiry was not assented to, because the charges were not credited or were refuted. This he learned from a document in possession of every member in the House, (the evidence in Burr's trial) it was as asserted by that document, said by the counsel on the part of the prosecution, that these requests were made by General Wilkinson, and refused; and to this proposition, Mr. Martin of counsel for Burr, asserted and said that a court martial had been required by General Wilkinson.*

MR. W ALSTON. Can it be true that gentlemen who had made so much noise about an enquiry should want it to be stifled? Could it be true that they wished this evidence to be kept back? I did not believe it could be possible that any one would be found to object to the transmission of these papers to the Executive. What may be the effect of refusing to communicate them? An enquiry has been instituted into the conduct of this gentleman, and his conduct may be submitted to a court martial. This officer may be found capable of defending himself completely. The court martial of course will acquit him. Then what say gentlemen who have clamored in this manner? Why, that this evidence was never communicated to the court. Would they not have a pretence on which to reiterate charges against this officer, although this evidence might have been before the court, but not from this source? I do not say this will, but it might be the case. Whether this proposition be included in this resolution, or made separate, is certainly very immaterial. Can gentlemen wish that a committee alone shall enquire? Do they wish the court not to possess such information as we possess? I must confess I cannot for my soul see any objection to the amendment.

MR. ROWAN. The gentleman has mistaken me excessively. I am as willing as any one to give information to the President, if it were necessary. These papers are not embraced by my resolution at all, I am not opposed to the transmission of these papers to the Executive; but I do not believe that there is any anxiety there for this information from what I have heard. The cabinet has long been in possession of this information, and this officer has been officially named to the Executive as being concerned in the project. The truth of this assertion may be ascertained by searching the office of the Secretary of State. All I wish is that my proposition may not be encumbered by any other. As to the mode in which the committee shall proceed or the disposition which shall be made of the evidence when collected, or whether we shall then transmit it to the Executive or elsewhere, the House can then determine.

The amendment proposed is totally unconnected with the resolution under consideration. I am not very old in legislation, but I have seen that there is some art in it. There is such a thing as hugging a proposition to death, smothering it with kindness. I do not say that this is now the intention. I hope it is not. I should be willing that it should be somewhat obscured by this amendment, but that the object of it can be as well attained by its introduction into a separate resolution. Whenever the proposition to transmit these papers shall come before us in its proper shape, I shall vote for it. I am willing that the Executive shall have every information relating to this important subject as early as possible; but I cannot see the necessity of connecting them. The House has not yet said that it will appoint a committee. First, try whether a committee will be appointed; and when appointed, we may dispose of the papers before the House.

MR. EPPES said it was not material to him whether the amendment was adopted or not. He thought that whatever difference of opinion might exist as to the form, there could be none as to the propriety of an enquiry into the conduct of Gen. Wilkinson. The evidence exhibited to the House of Representatives had assumed a new and serious aspect. It was no longer the statement of a foreigner unknown to us on which we were called to act. A member of the House of Representatives has charged directly on oath the commander in chief of your army with being a Spanish pensioner; a charge so specific made by a credible witness must be met by enquiry; by an enquiry which, whatever may be its result, will unite the public confidence. He thought that on every occasion where an enquiry was called for it ought to assume the form best calculated to do justice to the character of the individual accused and to the feelings of the nation. Will the report of a court of enquiry produce either of these desirable ends? Can the opinion of any three officers of your army, however respectable, restore to general Wilkinson the confidence which it is essential for an officer of his rank to possess; more particularly essential at this interesting crisis in the affairs of the nation. Indeed, Mr. E. thought after the observations which had been made on the floor of the House a more general enquiry ought to be made; that the charge of corruption in the army ought to be probed, and suspicion, if unfounded, removed by a fair and full investigation; that it was a piece of justice due to the officers of the army, all of whom at present whether meritorious or not were implicated in the charge made, as no names had been given. Mr. E. said it was certainly true that no power could be exercised by Congress not delegated by the constitution. It was equally true that the power to punish a military officer could not be exercised by the House of Representatives. He considered the right of enquiring into charges such as had been exhibited, as totally distinct from the right to punish. Punishment can only be inflicted in the form prescribed by the constitution or laws. The object of the present enquiry was not to inflict punishment, but to obtain information subject to the future disposal of the legislature. It was not in his opinion at present necessary to declare what would be the course pursued after the information was obtained; that must depend on the result of the enquiry. The information obtained may form the basis of any legislative provision within the delegated powers of Congress; or it may be transmitted to the department competent to try and punish; for punishing an offence against the military laws, a military tribunal was certainly the only one which could be resorted to. It ought however to be recollected that the charge against the commander in chief is for a species of corruption not punishable by any existing law.

Mr. E. said, he did not however rise for the purpose of examining a subject fully discussed while he was absent from the House—he only rose for the purpose of correcting a statement made by the gentleman from Kentucky. That gentleman had objected to forwarding to the Executive the evidence exhibited against general W. on the ground that it was already possessed by the Executive. He believed the gentleman in this to be totally misinformed; he had always understood that during the administration of general Washington, a memorial had been forwarded to him by Mr. Marshall of Kentucky containing a detailed account of the old Spanish combination. That under the administration of Mr. Adams additional information was forwarded to the Executive department by Mr. Ellicott—he did not know how far the information transmitted to either of the preceding administrations might criminate general Wilkinson—he was certain however, that no information had ever been received by the present administration which went to charge general Wilkinson with being a pensioner of Spain.

MR. FISK conceived, before they adopted this measure, that they ought carefully to enquire whether the power were given to them by the constitution. It was proper that this House, however anxious for the public good which they might think could be otherwise promoted, should travel in the path laid out by the constitution for their procedure. The Executive and other departments had certain powers delegated to them; it was not in the power of the House to say that it should or should not be so; the people had placed it there, and it was not for the House to say that it was or was not a judicious delegation of power. We, said he, are the ministers of the constitution, and must be guided by it.

The resolution now under consideration did not originally present to his mind a subject of enquiry within the power of this House. It proposed an enquiry into the conduct of gen. Wilkinson in receiving a pension from the Spanish government. It was now so modified as to go further and enquire how he was concerned in the transaction of A. Burr. Whether he was or was not concerned was not a subject of enquiry for the House. If gen. Wilkinson were concerned in it, the question then arose whether he was within the power of the House; whether he was properly amenable to this House for his conduct, or to some other tribunal. The constitution had expressly declared that the President, Vice-President, and all other civil officers, of the U. States should be removable from office on impeachment—all civil officers. Was general Wilkinson, a military commander, included in this description? Certainly not.

This House, with the other branch of the legislature was empowered by the constitution to raise and support armies and to make all rules for their government and regulation. The constitution then clearly contemplated specific powers as given to different branches of the government and it became Congress to make all laws necessary to carry into effect these powers, but no more. Congress then had power to make laws defining punishments of all crimes committed against the U. S. but the execution of those laws was intrusted to another power. They had erected a judicial tribunal, and to this tribunal had confided the execution of those laws. Every person charged with any offence was to be tried by a jury, excepting particularly offenders, against martial law; For all crimes other than military, the citizen was amenable to presentment by a grand jury. Unless he were a civil officer, this House had no power to act in this case; they had power to impeach civil officers, but no cognizance over military officers.

It might be well here to notice that the tenth article of the amendments to the constitution expressly says, "The powers not delegated to the U. States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." A preceding article expressly guaranteed to the citizen a trial on presentment or indictment by a grand jury, for any capital or otherwise infamous crime. If general Wilkinson had then been guilty of any capital or otherwise infamous crime, he was indictable by a grand jury, and amenable only to that or a military tribunal; and when this House assumed, as proposed, a course different from that prescribed by the constitution, they no less violated that constitution than gen W. would in arresting a subaltern under military law and sending him to this House for trial.

Suppose a power given to a committee of this House to send for persons and papers, Mr. F. asked, was any person bound to obey the mandate of that committee? Would not their authority be treated with contempt? Would not a judge if applied to for a writ of habeas corpus, be bounden to enquire whether this House had authority, and would he not be bound to release the person in custody of its officers? He certainly would.

In considering the power of the House, the passage of this resolution appeared to him to be absurd in another point of view. When the evidence was collected, what use could they make of it? Could a court receive evidence collected in this manner, where one party had no power to enquire, defend himself, or cross-examine witnesses? In no court could such evidence be admissable. For what purpose then did gentlemen wish to take this evidence? For no beneficial purpose that he could devise. If the House had cognizance over military officers, it would then indeed be proper that they should send for persons and papers to enable them to enquire into the propriety of his impeachment.

But a gentleman from Virginia had yesterday called the attention of the House to the proceeding now pending in the other branch of the legislature, being an enquiry into the conduct of one of its members; and had also told the House that the gentleman from Kentucky had as good a right to institute an enquiry into the conduct of Gen. Wilkinson, with a view to his removal, as into the conduct of a member of this House with a view to his expulsion. Mr. F. said each House had the power to expel their own members for misconduct, or to punish them for disorderly behaviour; it would therefore be acting within their proper constitutional power in making an enquiry into the conduct of one of their own members. Very different was their power as respected a military officer, into whose conduct they had no more right to institute an inquisition, than to arraign a grand jury for not having made proper presentments, or a petit jury for not having done its duty. The constitution gave them not the power. The appointment and removal of all officers was vested in the President of the United States by and with the advice and consent of the Senate. With the removal of this officer then, this House could not interfere. Congress had by law instituted a tribunal for the trial of all persons charged with offences in the land and naval service; and a supreme court to try all treasons not committed in the army or navy. Our constitution said that no person should be twice for the same offence put into jeopardy of life or limb. If this House had, and exercised in this respect a co-extensive power with the judiciary or military courts, would not a man be in danger of being twice jeopardized of his life? If the supreme court, said Mr. F. possess the power constitutionally, and we at the same time exercise it, will he not be twice tried?

A gentleman from Virginia had yesterday told them that he had acquired knowledge not only of the guilt of General Wilkinson, but of the inferior officers of the army, from no dubious source, and had felt himself bound to vote against this man as guilty of treason. Now, asked Mr. F. if these facts be true, and these circumstances were brought forward before the grand jury or inquest at Richmond, why was not this man charged of the offence before a proper tribunal? Why was it brought into this House when the judicial courts were open to receive it? It would be easily seen how the man was jeopardized by this. Had he been presented by a grand jury, he would have had an opportunity of being confronted with his witnesses; but for representations on this floor a public accuser is not accountable elsewhere. If the House permit such an enquiry as this, said Mr. F. to the destruction of the character of an individual and a citizen, they will not only compromit their own dignity, but violate the constitution. If the gentleman will point his enquiry directly at the President, and shew plausible ground for it, I will vote for the enquiry, because in that case I conceive the constitution gives us power. But while the resolution is pointed at a military officer, while it embraces subjects exclusively cognizable by a different tribunal, I think the adoption of the resolution would be a violation of that constitution which I have sworn to support.

MR. ELLIOT said that the remarks of his colleague were conclusive as to that part of the resolution which had been introduced by way of modification. Was it possible that this House was to erect itself into a grand inquest of the nation in cases of treason? It could not be. He was in favor of the most material part of the original enquiry, to wit, into the fact of general W.'s having or not having received a pension from the Spanish government. Certainly if general W. had been guilty of receiving a Spanish pension, it was an act not cognizable by a military tribunal, or by any court of law in the United States; the House would therefore usurp no power delegated to another branch of the government, by an enquiry into this subject. He only now rose to explain the reason why he should move for a division of the question on the proposition, so as to exclude that part this day added by the gentleman from Kentucky relative to offences other than that of receiving a pension from Spain or her agents.

The Speaker said the motion could not be received, as a question was now pending on the amendment offered by

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* *See p. 70, 71, of the evidence furnished by the district attorney, 17th October.*