mony in all cases; he had always thought that civil courts had carried this principle too far, and certainly did not wish to admit it here. As the bill at present stood, a citizen might be called by a military court from the province of Maine to New-Orleans. Mr. B suggested one difference in this respect between courts of law and courts martial. Civil courts were numerous and held at stated places, offenders being tried in the district where the offence was committed, so that a witness might in civil cases not have so great a distance to travel; whilst a military court is held perhaps in a remote corner of the country from the peculiarity of its organization.

Mr. B. concluded by moving that the bill be recommitted for the purpose of amending the detail.

Mr. Montgomery stated to the gentleman last up that the operation of this bill went to provide that in cases in which the definitive sentence might go to loss of life or to infamy, subpoenas should issue. But where the punishment did not extend to loss of life or infamy, depositions might be taken. He would submit it to the consideration of the House whether a person should be at the risk of life, limb or reputation before a court, and not have the benefit of that testimony which would prove his innocence. There was no civil criminal jurisdiction throughout the United States, the constitution having forbad it, in which the person accused was not confronted with his witnesses; depostions were not allowed to be produced as evidence in such cases. This bill provides, said he, that in cases going to life and infamous punishment, oral testimony shall be had; in other cases depositions may be taken, upon application to a judge of the United States by the judge advocate or party accused. My own opinion on this subject is, that in no case whatever ought a sentence affecting life to be adjudged unless the party be confronted by his witnesses; this too is the practice in our civil courts under the constitution. The principle contained in the bill does not vary from the practice of the courts of the U. States, or of the several states. Inasmuch as but in few cases can it be necessary to summon witnesses from remote parts of the Union, and as in those cases they ought to attend, I wish the bill not to be recommitted.

Mr. M. Williams wished the bill to be recommitted and stated his reasons for so doing. Among others, that parole evidence taken before a court of inquiry when collected could not be received by a court martial in cases affecting life or limb. When gentlemen come to examine the principles of the bill, said he, they will be found erroneous. I am certainly of opinion that there ought to be provision by law to give a person accused of a crime a fair opportunity to meet all charges against him; but I cannot see any good grounds why a citizen should be dragged before a court martial, or compelled to come forward when their testimony could not be received. Whenever an officer in the army is charged with a crime against military law, he is tried by a military court; but whenever he commits an offence of a civil nature, it is tried by a civil court. It is well known that the case which has formed the ground of this bill is triable by a civil court—and, suppose a charge against an officer for murder, or for bribery or corruption, is it proper that these being civil offences should be tried by a military court? I think the bill very exceptionable; I wish every person accused to have a fair trial, but I would never give power to a military court to drag our citizens from every part of the union. Another section gives power to compel the production of all public papers. Would you compel a clerk of a court to bring forth all his records? Is there in the United States any court which has that power? In some cases copies of particular records are permitted to be taken; but this bill not only requires the records but all in the possession of any officer, upon the summons of a military court. Another part says the witness shall be tried for non-attendance by the military court, and fined by a civil court. The second section says the witness shall not be discharged until he has gone through an examination, and the court think proper to discharge him. Gentlemen have told us that a military court will not pretend to abuse their authority: I would not give an authority to them which they possibly could abuse. A witness might be led to give testimony to convict himself by a court composed of military men, who though actuated by good motives, may not be acquainted with the correct rules of procedure in such cases. I can never consent to vote for this bill; if it be recommitted and such a bill reported as might be formed, I might vote for it, as I am willing to make some provision in the case. Such a bill as this, taking power from the civil and vesting it with the military authority, never ought to be adopted in our government. We should be careful not to legislate for the particular case, but consider the general effects of the bill.

Mr. Fisk was opposed to recommitment. The necessity and justice of confronting persons accused with the witnesses against them had been acknowledged in all free governments. Depositions, he said, were the most fallacious evidence that could be conceived; much more of fact could be gathered from oral testimony, cross-examinations being essentially necessary for obtaining the whole truth.—In depositions when taken, said he, the deponent may be made to speak a language and convey a meaning which he did not intend, and facts may be concealed which when drawn out by question, would totally change the complexion of the evidence. So long therefore as we have a disposition to secure the liberty of man, so long certainly should we preserve the testimony by parole. The life of a citizen soldier or officer is as dear to him as it is to a man in civil life. I believe it would be good policy in all governments to reduce the military law to as close a conformity with the civil as possible. In the same proportion as we do this I believe we shall lessen the danger to be apprehended from a standing army; because while they remember the feelings of a citizen freeman, they will respect the citizens' rights. The present bill is a step towards that object; it provides that courts martial or enquiry, whenever life or reputation is involved shall have a power of summoning witnesses. This law is as well guarded as it was possible to make it; it does not put it in the power of a court martial arbitrarily to call a witness. Gentlemen will recollect that the accused is obliged to apply to a court of civil law and shew probable cause. Now let me ask whether this is not a complete security? The right is not arbitrary nor the power at the will or discretion of the accused, but it is guarded with discretion. If the power be safe with courts of law in civil cases, why not in military? If gentlemen examine this bill again they will find that notwithstanding the necessity for this testimony and the disposition of a court martial, it cannot inflict fines or forfeitures until a court of law have said that the testimony is necessary. The bill therefore makes the military subservient to the civil authority.

It has been suggested as a reason for commitment that at present a citizen can be summoned from one extreme of the country to the other. The bill provides that in cases affecting life or reputation as dear as life, (recollect that a soldier is nevertheless a brother citizen) that a witness shall be liable to be summoned. Much better is it that these inconveniences should be suffered than that an innocent man should fall a sacrifice. When life or reputation are at stake nothing can be brought in competition with them. The more you lessen the means of procuring testimony, in the same degree the government grows despotic and the liberty of the citizen is endangered. In taking depositions, the persons employed for that service may be interested in the destruction of the party accused; they may be taken by ignorant persons so as to be foreign to truth, and sometimes by artful ones so as to be foreign to the meaning of the deponent, thus causing a sacrifice of life and perversion of all principles of justice. Instead of increasing we should endeavor to ameliorate the evils attendant on a military life.

We have been told that all offences committed on society are punishable by a civil court. We shall find the case to be different on examining the articles of war, of which I will mention one or two. When the army is on its march, if any injury be done to citizens it is made the duty of the commander to see justice done; and in case he refuses, he is subject to infamous punishments, and these to be inflicted by a court martial and not by a civil court. We have given courts martial this power, whether properly or not it is not necessary to enquire: Unless you make a provision of the kind contemplated by this bill you deprive the accused of the right of obtaining testimony in his favor, which must of necessity perhaps be drawn from the civil rank. You have placed the officer in this situation, and ought to give him a chance for a fair trial. A variety of other instances might be mentioned: Speaking disrespectfully of his superior officer is made a crime, and the law is unlimited, does not confine it to the army, but extends it to all parts of the U. S. Here then is evidence required from civil life. In case of desertion also: When a soldier overstays the time specified in his furlough, he must be tried; sickness may be plead in excuse. If it be out of his power to procure testimony of this, he is tried for his life. A number of instances might be produced where persons from their peculiar situation must be under the necessity of procuring evidence from civil life.—In the same proporion that we lessen the opportunity of obtaining testimony we deprive the citizen of his privilege as an American. I wish to see the time when soldiers shall have their privileges secured and rights defined as citizens in civil life. I hope therefore the bill will be permitted to pass. Gentlemen who wish a recommitment seem to think the principles of the bill exceptionable, which I consider as essential and of as much importance as ever were contained in any one bill proposed to the consideration of the House. I have considered our articles of war as the very image of despotism. Death seems to stare us in the face thfough the whole of them. But they were enacted in the wisdom of the House, and probably my inability to discern the good features they contain, so much distorts them in my eyes; but I wish to secure every privilege that can be permitted.

Since no summons, no attachment, no process can issue or inconvenience can ensue till proper cause be shewn and till the judge has exercised his discretion, I trust and hope that gentlemen will find this sufficient to alleviate their fears for the citizens.

Mr. Livermore said he had no objection to the recommitment of the bill or to whatever course should be pursued in relation to it. In its present form he thought it the greatest monster ever exhibited before the legislature, & destructive of the very principles it went to support. If the gentleman last up was right in what he thought should be the spirit of the bill, he was wrong in the construction which he gave to the letter of it. From what he says, observed Mr. L. I collect that he thinks, there ought to be a discretion with a judge to issue subpoenas to compel testimony. There is not however such a provision in the bill; for although in common parlance the word "may" leaves a discretion, in legal construction it is imperative. The gentleman has an idea that the bill leaves a discretion with the judge; if it is intended, it should have been so expressed. If it is wished to give a discretion, the bill should be re-committed for the purpose; but even then I should be opposed to it altogether. I would ask gentlemen whether they are willing to give power to a military court to send to any part of the union, and compel the production of all the records—to send from a court in the province of Maine to the *custos rotulorum* or whatever he may be in Georgia, and compel him to produce all their acts? I do not conceive that the convention delegated this power to Congress; if however it be derived by a forced construction, there is here no necessity for its exercise and it would produce a real injury. I should consider it unfortunate that we should legislate with a view to a particular case; it is not my opinion that the Legislature can properly make a law with a view to a particular case, especially when popular opinion on the subject has been much agitated; it is said that this bill has reference to such a particular case, although in fact it is made a general law. I cannot find that it will remedy the evils which exist even in that case. An affidavit of a member of this House has been taken and sent to the President of the United States relative to a certain person: now if I recollect, the charges contained in that affidavit did not arise from the articles of war, nor were they punishable by a military court. For what purpose then are we pursuing this subject at this particular time? The gentleman involved has called upon the Secretary of War to make an enquiry into his military conduct. What may be the result? It may give him an opportunity ostensibly to clear up his conduct. I have no ill will against general Wilkinson; I am wholly unacquainted with him: but as a legislator I must take things as they come before me. I know of no necessity for this thing. If general Wilkinson be accused by the papers transmitted, it is in his power to meet them; if evidence be produced sufficient to invalidate the testimony against him, it will have all its effect.

Mr. L. then took a view of the necessity for this law. The act of Congress of the last session had established certain articles and regulations for the discipline of the army; he did not agree with gentlemen in their great objection to these, for there could be no body of disciplined troops without similar rules. He had heard of no necessity for this law. If the United States had proceeded from 1776 to this time without it, he conceived it unnessesary to introduce it at this time. In speaking of depositions, he said he could see no material objections to them. The only difference between a deposition taken by a civil officer and oral testimony before a court martial, was that one was taken down by a civil judge and the other by the judge advocate, and in this form deliberated upon by the court. He was not anxious for the re commitment of the bill because he was opposed to to the principle in toto; though he thought some addition to the articles of war of last session relative to evidence of witnesses in particular cases, might be introduced.

Mr. Marion hoped the bill would be recommitted. He was opposed to the passage of the bill in its present shape, not from enmity to military courts nor to the principle of the bill, but to the extent to which it was carried. I allow, said he, that it is important that the accused should be confronted with his witnesses, but when I recollect that in 99 cases out of an hundred where the citizen is tried for his life, viz. in all prosecutions in state courts, he cannot obtain compulsory process to obtain evidence of a witness without the limits of a state, while this bill gives a court martial power to call a witness from any part of the United States, I must object to it. The inconvenience to result to the citizen from this bill will be much greater than he suffers at present from his liability to be compelled to attend in the federal courts. The constitution of the United States provides that all criminal offences shall be tried in the districts where the crimes are committed, and it is probable that persons who can prove the offence reside in the neighborhood. Not so in courts martial or courts of enquiry. Had the enquiry now pending been held in the district where the offence is charged to have been committed, it would have been in the district of Kentucky, where probably witnesses who could testify to the person's innocence or guilt could have been easily obtained. But when the offence is triable by a court martial, the offence may be alleged to have been committed in New-Orleans, and the witnesses residing in that district may be compelled to attend the court martial in the District of Maine. Therefore the power given by this bill to courts martial is much greater in that respect than the power of the courts of the United States.

With respect to the powers being confined to those cases which extend to the cashiering or dismission of a commissioned officer, when we consider how indefinitely offences are described in the military code and how much is left to the discretion of the courts to determine, we cannot say in many cases whether the punishment would be trivial or whether it would extend to loss of life or reputation. A judge when applied to for a summons will look into the articles of war, and if the punishment of the crime amount to cashiering, the witness must attend; a deposition cannot be taken. If an officer murders a citizen he cannot by any process I am acquainted with compel the attendance of a witness residing beyond the precinct of the state in which the crime was committed; while by this law, if he refuses to cut his hair or neglects any other requisite of military law, a citizen may be dragged from the place where the offence is committed, to any place however remote from his residence, where the court martial may be held. When I consent that a court martial in a district shall have the same power of compulsion as a civil court in that district, it is as far as I can go. If the bill be recommitted and amended, thus far I will go.

Mr. Bacon wished the bill to be re-committed that it might pass with as general a consent as possible. He went into an examination of the principle; he cited the laws of Pennsylvania and New-York giving to state courts martial the most unlimited power to issue compulsory process; similar laws he believed existed in Massachusetts and Maryland; in how many other states in the Union he could not say. He thought upon the whole that there was nothing objectionable in the principle of the bill, but as he thought it needed a little amendment in detail, he was willing it should be re-committed.

Mr. J. Montgomery said that the gentleman just sat down had very properly stated that this was a novel subject, presented for the first time in this form, and therefore it was not matter of surprize that the bill had been at first reported defective; it could not have been expected that it should be entirely complete at once. When the bill was first reported, said he, defects were found; it was re-committed and reported in its present form. The gentleman from Massachusetts (Mr. Livermore) has denounced this bill as a monster. We may conceive his idea of a monster by what he considers as perfection itself. He has told us that the rules and articles of war are not deficient, that they are unexceptionable. What are they? They present to the mind the very monster which the gentleman has represented this bill to be. If he examines them he will find that besides the liability to punishment for all civil offences in common with other citizens, the officer or soldier is liable to loss of life for crimes defined in sixteen articles of the rules and regulations for the army, and nine in those for the navy establishment. There are besides a number of articles affecting reputation for crimes exclusively confined to military conduct; and yet the gentleman says these are unexceptionable, and has denounced a bill for ameliorating these rules by giving the accused an opportunity of defending themselves. The House will decide on which side the deformity lies.

Mr. M. made some observations defending the detail of the bill; but as some gentlemen who were friendly to the principle had taken exception to some of its provisions, holding himself always open to conviction, and not meaning in this case to depart from that principle, he was willing that the bill should be recommitted; and therefore withdrew his opposition to the motion.

The bill was then recommitted to a committee of the whole without opposition.

The bill for remitting the duties payable on the importation of a monument, &c. was returned from the Senate with an amendment appropriating 1,000 dollars for railing and covering the same; which was negatived in this House by Yeas and Nays, 59 to 48.

The bill for incorporating the Baptist church of the city of Washington, was returned from the Senate with amendments; which were referred to a select committee.

A bill from the Senate to amend the act establishing circuit courts and abridging the jurisdiction of the district courts of Kentucky, Tennessee and Ohio, was twice read and referred to Messrs. G. W. Campbell, Jackson, and Holland.

WEDNESDAY, MARCH 9.

Mr. Newton, from the committee of Commerce and Manufactures made a report on the petition of Samuel Miller and others of the district of Maine, representing that the case comes properly within judicial cognizance, and therefore recommending that the petitioners have leave to withdraw their papers—Concurred.

Mr. Boyle, from the committee of Public Lands to whom was referred the act giving William Weld the right of pre-emption, reported the same with amendments; which was concurred in and the bill ordered to a third reading.

The House went into a committee of the whole, 55 to 35, Mr. Storer in the chair, on the bill concerning Courts Martial and Courts of Enquiry.

Mr. J. Montgomery said, that to meet the objections offered by gentleman to the bill on yesterday he had prepared amendments which he hoped would remove every objection. He then proposed an amendment restricting the power of a military court to call witnesses to the distance of 100 miles from the place where it shall be held, thus engrafting on these courts the principle of civil courts of the U. S.—Agreed to without a division.

Mr. Livermore had no objection to give military courts the power to compel testimony if it were so secured as not to be injurious to the citizen. He thought it should never be done but for a specified crime coming within the articles of war. Why compel a citizen 100 miles from his home if no end was to be answered by it. These charges should be supported by affidavit as cases submitted to a grand jury; when that was the case, witnesses might attend. To meet his own idea on this subject he moved the following proviso.

Provided always, That no summons shall issue unless some specific charge shall be made in writing supported by affidavit, of an offence, of which if the person accused should be afterwards convicted on trial before a court martial, such person would be liable to punishment, pain or penalty by virtue of the act entitled "an act for establishing rules and articles for the government of the armies of the U. S." made and passed the 10th day of April 1806, and of which the trial and punishment is not barred by the 88th article of said act, or of any offence committed in the navy of the U. S. cognizable by a court martial."