have turned their eyes to a particular case—a court of enquiry which has been called relative to conduct coming within the cognizance of the articles of war; they then however lose sight of my idea of the purpose for which the court of enquiry has been convened. What is this court to enquire? Most certainly into the conduct of this person as a military officer? The charges brought against gen. W. do not go to his conduct as a military officer, but as a citizen—he is not charged with an offence which I can find specified in the articles of war. Now the gentleman from Pennsylvania has exceedingly mistaken the idea of the majority on this resolution if he supposes they wished general W. to be arraigned before a court martial. A court martial has nothing to do with the subject; it was not a transaction to be enquired into in a military point of view. Now let me change the name of James Wilkinson for that of James Monroe, and here I must beg pardon of the latter gentleman for using his name, for I cannot conceive a possibility of his being placed in this situation, believing him a man of unblemished character. Suppose it were James Monroe, I repeat, and for the sake of argument that he had received money of a foreign power—would gentlemen say that a military tribunal was the proper authority to enquire into that transaction? Certainly not; neither is it in the case so often alluded to. Military men might be as proper for the purpose as any others for aught I know, but the idea of a military court to try such an offence is an absurdity which no gentleman can for a moment admit. The difficulty is this; a military officer of high rank is accused of having done an improper thing, not mentioned in the articles of war. Shall it not be enquired into? Certainly. How shall the enquiry be made? The President in this will use his own discretion as to the mode of ascertaining facts. But say gentlemen shall the accused not have an opportunity to exculpate himself? Certainly. What is this opportunity? The same as would be given to James Monroe in the case stated, or to any other citizen. In making a law therefore to regulate courts martial, I consider it an absurdity to have an eye to a particular case.

I think it improper here to speak of General Wilkinson; I feel no animosity towards him, but a charge has been brought against him which if true renders him unfit in my opinion to command the army of the United States. I am willing that he shall have every opportunity of exculpation which a citizen of the United States could have. An officer who has been heretofore accused has written a book in his defence; Gen. W. or any other officer may adopt this mode. James Monroe might as well be arraigned before a military tribunal for the commission of such an offence as gen. Wilkinson; for the offence is not designated or comprised within the articles of war. But it is an improper thing which ought to be enquired into in some way. Suppose a charge were brought against gen. Wilkinson that whilst in the command of the army he had been guilty of a violation of the law of his country—for instance, of violently arresting citizens and sending them from New Orleans. How would this be tried? Certainly not by a court martial, but by a jury sworn to try whether gen. W. were guilty or not. This is a possible case. If he were accused of murder, being also a civil crime, he would certainly be tried for it before a civil tribunal. Such a law as this cannot certainly be passed with an eye to such cases as these. Surely if gentlemen would confine their view to the amendment under consideration, they would certainly be at a loss to find an argument against it. If our citizens are to be harrassed and sent to a military court, let it be for something beneficial, and not on jack-a-lanthern adventures, to enquire whether a man has acted in a gentlemanly manner or like "a man of honor," but let a substantial charge be specified. This is all I contend for.

A gentleman has said that charges under military law cannot be specified, because the crimes are not defined. If the articles of war are even subject to this aspersion they are not a ground for this act. But suppose it were alleged against a man that he had been guilty of unsoldierlike or unmilitary conduct, and this were considered good ground for coercing testimony, could not the charge be specified that on a certain day in a certain year he was guilty of unmilitary conduct, &c. it would be so far a specific charge that under this amendment witnesses could be summoned to support them. This is but reasonable. Those who oppose this bill should not suffer themselves to be wrought upon by an insinuation that in so doing they would oppress the citizen.

I say that it is necessary in some cases that courts martial should have the power to procure witnesses. But witnesses may be put to hardships; their examination may be public or private according to the discretion of a court martial; they know not what may be produced against them; no opportunity is given them to support their character. But still I do not contend against the principle that under certain situations it may be necessary to have compulsory process to bring forward witnesses. I wish to guard it as much as possible.

Mr. LLOYD said, as the gentleman from Pennsylvania (Mr. Smilie) had made a charge of inconsistency against those who voted for the enquiry into the conduct of gen. Wilkinson, in as much as they were opposing the bill on the table with a view to exclude testimony, he would make a few observations in reply to him. The gentleman, said Mr. L. must excuse me if I correct him in an error which he has fallen into in point of fact, and if I say that the court of enquiry now pending was not convened in consequence of any resolution which passed this House. This is a fact which the gentleman will not deny, for before the resolution passed this House a court of enquiry had been instituted. We passed a resolution requesting the President to make an enquiry; the enquiry by a military court had commenced and the court was in session when the resolution was passed. If this court of enquiry does not possess the power to prosecute the object, it is not a fault to be imputed to those who requested the President to institute an enquiry. But admit for the sake of argument that the enquiry took place in consequence of our resolution, and that it is now necessary to give further power to courts of enquiry to take testimony, will gentlemen contend that the law now on the table will have that effect? Let me call your attention to an amendment which has taken place this day, and ask whether it is possible that the amendment could have the desired effect. You have said that no evidence shall be summoned who resides at a greater distance than 100 miles from the place where the court is held. Admit that power ought to be given to the court of enquiry now pending to carry the enquiry fully into effect, the object will not be answered by the passage of this law, because in all probability, all the important witnesses in this transaction live at a greater distance than 100 miles from this place. The law then will not have the effect desired by its advocates. As to the power of taking depositions, it is one already given in all cases where punishment does not extend to [illegible] of life [illegible] in the regulations for the army. Why is it necessary to give the power here if it be already given in the articles of war? I will ask if the offence with which gen. W. is charged is one for which he is amenable to a court martial or court of enquiry? If so, any power here given can have no effect. He is charged with an offence on which if a military court have cognizance (which I believe they have not—for if a court of enquiry find him guilty to-morrow he cannot be tried for it) a deposition can have no bearing, as it will not apply in a case affecting life or reputation. If the bill be intended to give power to the court now sitting in this city, it falls far short of its intent, and cannot have effect; and gentlemen will be convinced the more they investigate the subject, that it is impossible to give power without infringing the rights of the citizen and encroaching on the civil institutions of the country.

The gentleman from Pennsylvania has read us an article from the constitution, and in so doing was a little more prudent than when he read the same article once before. I recollect when the resolution requesting an enquiry into the conduct of gen. W. was before the House some time ago the gentleman from Pennsylvania was so unfortunate as to stumble on another article: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or the militia when in actual service," &c. Here it will be found that in the constitution itself to which we look as the safeguard of our rights and privileges, this very provision is not to be extended to persons in the army or naval service. If therefore there be any inconsistency it grows out of the constitution itself. It has been thought wise and proper, experience, custom and habit have induced us who so often shew our zeal for the rights of the citizen, to believe that the liberty which is allowed to the citizen, cannot be extended to cases in the military service. The principle is recognized in the constitution, and we have acted under it.

The gentleman says nothing is said in the constitution with respect to the witness. True the word witness is not used. But let us examine the rights of the citizen as guarded by the constitution, and look at the first clause as it stood before it was amended, and see how far it comports with the letter and spirit of the constitution, which says that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The bill, as it was, required that every paper, document or record in the power or control of any person, should be produced at the requisition of a military court. If this then did not violate the spirit of this clause of the constitution, I can put no construction upon it.

I should not have said any thing on this subject but to rebut the impression that we who voted for the resolution for enquiry are unwilling to give the power necessary to carry the enquiry into effect. I profess myself to be perfectly impartial on this subject; I feel no favor to the accused or to the accuser. I wish no one guilty of an offence to remain unpunished; but I respect the rights of the people too much to pass a law to drag them before a military court unnecessarily.

Mr. BACON read a section which he should move if the present proviso should be negatived, allowing depositions to be read in certain cases.

While up he said he would again express his surprize at the amendment, and at the operation which it would have. It is certainly this, said he; by passing it we say that if a person on trial for an offence, will not take advantage of the statute of limitation (the 88th art.) if he will not take advantage of what is generally esteemed a dishonorable exception, we will afford him no remedy whatever. This will be its unquestionable operation. Gentlemen say as we have permitted this limitation, it ought to have effect; and that if it is wrong we should have thought of it before. Sir, was there any limitation in the case spoken of this day? The resolution of enquiry says "relative to his having at any time whilst in the service of the U. States, corruptly received money, &c." Suppose it had been objected at the time this was under consideration that General Wilkinson was not guilty, for the offence was barred by the articles of war—would gentlemen have allowed this to have been a sufficient reason against an enquiry? But when we have gone over [illegible] and instituted this enquiry, after, to use the words of the gentleman from Kentucky (Mr. [illegible]) the nation has moved, and I find, sir, that he has moved with it—shall we say that this individual shall be driven to a dishonorable defence or he shall have none at all?

The gentleman from Massachusetts (Mr. Livermore) thinks it improper to afford any opportunity to compel testimony on "jack-a-lantern" charges. We know the case to which he alludes; and will he call that a "jack-a-lantern" charge which the House danced after for a fortnight or three weeks? It does appear to me that we ought not to adopt the amendment, and I hope we shall not.

Mr. LIVERMORE thought gentlemen were much mistaken in taking Wilkinson's case into consideration on this question. It is true, said he, that this affair was before the House some time, and true that it was enquired into. Every thing I aver is this: that a military court was not the authority which I expected would have enquired into the transaction, because the offence charged was not of a nature cognizable by a court-martial. So that to make a law in allusion to this case is perfectly improper. Gen. Wilkinson until he disproves the assertions by plain proof, make what noise you will in this House, will not be cleared before the people of the charge against him. All exertions here can be of no benefit to him.

Mr. NICHOLAS was as little disposed as the gentleman from Massachusetts to legislate for any individual, but would not be deterred from his duty by any insinuations of that sort. The gentleman from Massachusetts should recollect, said he, that this proviso exactly fitting the case brought into question, subjects him as much to the imputation of having that particular case in view as any gentleman who supports the bill. If Gen. W. had never existed, if a case had never occurred, I would have voted for the bill on the table—and here permit me to say that I never was more surprised than when I ascertained that there was no provision in the laws on the subject, by which the government or a person charged with military offence could avail himself of the testimony of the citizen. Upon every principle it appears to me that there ought to be such a provision; it is necessary for the security of the government, and essential to the protection of the citizen. I will not go over again the observations which have been made on this subject; but I will mention one objection to the proviso which I have not heard urged. If the proviso pass, the public interest will be taken care of, but how? Is the individual meant to be sacrificed, to be made a victim? No summons under that proviso shall issue, unless a charge be made in writing and upon affidavit. This is in the power of the government alone; government without making a charge or affidavit, may prosecute a person in military service; but by no act of his can he have the charge reduced to writing or supported by affidavit, and therefore he cannot procure evidence in his favor from the civil ranks, though the government may, if they think fit, procure it against him. Government may conduct him before a military court; where, although he could establish his innocence by civil testimony, it is not in his power to do it, because he cannot compel the production of a written charge supported by affidavit.

The question on the proviso was decided by yeas and nays as follows:

YEAS.—Messrs. Culpepper, Durell, Elliot, Ely, Gardner, Harris, Hoge, Jenkins, Kelly, Lewis, Livermore, Masters, Milnor, Mosely, Pitkin, Rowan, Russell, Stedman, Tallmadge, Trigg, Upham, Van Rensselaer—22.

NAYS.—Messrs. L. J. Alston, W. Alston, Bacon, Bard, Barker, Bassett, Bibb, Blackledge, Blake, Blount, Boyle, Brown, Burwell, Butler, Calhoun, G. W. Campbell, Chittenden, J. Clay, M. Clay, Cobb, Cutts, Dawson, Deane, Desha, Eppes, Findley, Fisk, Goodwyn, Gray, Green, Heister, Helms, Holmes, Howard, Humphreys, Isley, Johnson, Jones, Kenan, Knight, Lambert, Lloyd, Love, Macon, Marion, M'Creery, D. Montgomery, J. Montgomery, N. R. Moore, T. Moore, Jer. Morrow, Jno. Morrow, Mumford, Nelson, Newbold, Newton, Nicholas, Porter, Pugh, Rea, (Penn.) Rhea, (Tenn.) M. Richards, Riker, Sawyer, Seaver, Sloan, Smelt, Smilie, J. K. Smith, S. Smith, J. Smith, Southard, Stanford, Storer, Swart, Taylor, Thompson, Troup, Van Allen, Van Horne, Verplanck, Wharton, Whitehill, Wilbour, D. R. Williams, M. Williams, Wilson, Winn, Witherell—89.

THURSDAY, MARCH 10.

Mr. *Dawson* having moved for the order of the day on the bill for [illegible] an additional military force.

A bill was received from Senate authorizing an additional military force; which was twice read, and on motion of *Mr. Dawson*, referred to the committee appointed on our military and naval establishments.

Mr. *J. Montgomery*, presented a petition from the surgeons of the navy of the United States, praying for an increase of rank in the navy; which was referred to the committee appointed on a like petition from the officers of the navy.

A bill from the Senate for the relief of Philip Turner was twice read and referred to a committee of the whole.

A supplementary report was received from the Secretary of War in relation to invalid prisoners. Referred to the committee of Claims.

On motion of *Mr Dawson*, the House when into commitee of the whole, Mr *W. Alston* in the chair on the bill procuring a train of artillery for the use of the U. S.

The statement of the Secretary of War, and Mr. Foxal's letter on the subject having been read,

Mr. Dawson said, by the statement from the Secretary of War it would be found that the United States are now possessed of about 1700 cannon. I am happy also to state, said he, that by the returns since made to the department of war the number is found to be about 1900. I will also state that the United States are possessed at this time of means of every kind, arms, cannon, powder, &c. for carrying on three years close war. The bill on the table authorises the purchase of more cannon. This I am told it is impossible to do at this time; they are not to be bought, and if bought, are not as good as of the manufacture of the United States. By the latter I mean iron cannon, of not more than one half the weight of ordinary cannon; a 6lb. cannon generally weighs 1200lbs. those made here generally weigh 600, the same weight as a brass cannon. One brass cannon costs perhaps five times as much as an iron cannon, of the same weight, which may be equal or superior to it for service. After giving this information, I will move to amend the bill so as to establish a national foundery for the purpose of manufacturing cannon for the use of the United States.

Mr. Stanford was totally against this principle and to supercede the motion of the gentleman from Virginia moved to strike out the first section.

The *Chairman* observed that the bill contained but one section; of course the bill could not be amended by striking out the first section.

Mr Quincy said he would make but one observation, and that was on the incorrectness of this proceeding; a resolution of establishing a national foundery, had been referred to another committee. This bill was for procuring field artillery; the object to be accomplished by the amendment made was to convert the bill into a bill for establishing a national foundery, thus in fact to defeat its present object.

Mr. Stanford moved the committee rise and report progress that the subject might come regularly before them—Negatived.

Mr. Dawson observed that this bill went to procure artillery by purchase; the only question proposed by the amendment was, whether they would procure artillery by purchase or manufacture it themselves. His opinion was that it should be of the manufacture of his own country.

Mr. Rhea (T.) moved that the committee rise, that this bill and the resolution on the subject of a national foundery should be referred to the gentleman from Virginia and his committee to report a bill for erecting a national foundery.

The question being taken on this motion, there were for it 48—against it 48. The chairman decided in the negative.

Mr. Taylor objected to the blending these two subjects together. He saw a wide distinction betwixt procuring a formidable train of field artillery and erecting a national foundery. He wished first to procure a train of artillery and then to take up the subject of a national foundery distinct from the other. He was unwilling to defeat this bill by inserting a provision which might perhaps enable them to manufacture in sufficient quantity some years hence.

Mr. Lyon supported the amendment as he conceived that the nation should possess within itself the means of manufacturing cannon.

Mr. D. R. Williams could not bring himself immediately to vote for a national foundery in the city of Washington, the more especially as he thought that cannon sufficient could even now be procured of the manufacture of the United States. He knew an individual company owning two different founderies who alone could supply the United States with cannon. He appealed to the gentleman from Rhode-Island to bear testimony to the fact that there was a foundery there unemployed for want of business, and the owners of which would be glad to contract to furnish cannon.

Mr. Dawson in reply to the genman last up, said he had not spoken of the city of Washington as the place for the foundery: this he should wish to leave with the discretion of the Executive. The sum of money proposed to be appropriated for the purpose of erecting a foundery was small and the advantage resulting from it would be great.

Mr. Dawson's motion for amendment was negatived by a large majority.

The *Chairman* enquired if the blank in the bill was to be filled.

Mr. Dawson said as the bill now stood he was opposed to it himself; nor had he thought of the sum with which it would be necessary to fill the blank in such case. To try the sense of the committee once more, he moved to to insert after purchase "or cause to be manufactured".

Mr. Bacon opposed this motion as being substantially the same, as that which had been negatived a few minutes ago, as this expression by a forced construction would warrant the erecting of the national foundery. He cited an instance in support of this, that under the late administration a law having passed for building a few ships of war, the Executive had thought itself authorized to establish Navy yards and in consequence had done so.

The amendment was negatived by a large majority.

On motion *Mr. D. R. Williams* the committee rose and reported progress, ayes 71; and obtained leave to sit again, 52 to 31.

On motion of *Mr. Boyle*, he House went into a committee of the whole, ayes 69, Mr. MASTERS in the chair, on the bill to extend the time for