powers in legislation to say what punishment shall be and to what extent it shall go.

The bill says that an officer making a contract with a member of Congress shall be deemed guilty of a high crime and misdemeanor, shall be removed from office and disqualified. If I were to stop short of this, what would induce me? The belief that having declared it was wrong, the officers of government would carefully avoid it. A bare declaration might for several years to come produce the desired effect; but I wish to legislate for times to come, on the principle of the unfortunate disposition of human nature to deterioration. It is to provide against future casualty that we are called upon by this bill; and to meet that object I am willing to say and I hope the House will also, that if any officer shall violate that plain rule which you will lay down, that he shall be removed from office, and incapable of again holding office under the U. States.

In answer to the case put by the gentleman from North Carolina of the President of the U. S. I can satisfy the gentleman at once. If the President makes a contract, the gentleman asks shall he be removed from office? It may be doubted whether the President or Vice-President are considered as "officers" in that point of view. "The President, Vice-President, and all civil officers of the U. S." says the constitution, "shall be removed from office on impeachment for or conviction of treason, bribery, or other high crimes and misdemeanors." If the President choose to infringe one of the standing laws of the country, ought he not to be punished? Has not the constitution provided that if guilty he shall be punished? Shall we make it a question that if the President do wrong he ought to be punished? This is an hypothetical case, and may be answered by saying that we would punish every body guilty of the offence. We have no right to remove them from office by law; the law does not remove, but recites that it shall be a high crime and misdemeanor. To whom is given the power of declaring what shall be a high crime and misdemeanor? Unquestionably to the legislature. Look over the powers of the legislature, and you you will find that theirs is the power to make all laws to secure the nation against the failings incidental to human nature. Need I repeat again to gentlemen who possess any political thought at all, that it is in the legislative department that is vested the power of defining high crimes & misdemeanors? Was there ever a government in which any other department than the legislative has prescribed these rules? If we want illustration of this power in the legislature, we need but look into the code of laws. We find one instance affording a double illustration. The Secretary of the Treasury is proscribed from carrying on commerce. Is not this a case in point? Does it not shew that the legislature has practised upon the principle of prescribing what shall be the duty of an officer of government, and that if he does not abide by it he shall be removed? I have been told of another instance: in case a captain of a ship shall make a false return he shall be deemed ever after incompetent to hold any office under the U. S. I will recite, because examples are forcible, the practice of the U. S. in another instance: in case of persons having undertaken enterprizes against a foreign government, the act of Congress has declared it to be a high crime. Would not a man say on reading this that the person guilty should be removed from it if holding an office under the U. S? Would any man doubt it one of your officers were tried in a court and found guilty of this crime, that he could not also be impeached and removed, because the constitution has expressly said that for the crimes of treason and bribery they shall be removable?

Bing anxious for the passage of this bill, I and others coadjutors with me, were anxious to take from it all objection; and our very caution in this respect is brought up against as. It is made an objection that we have excepted contracts immediately executed. I am one who would go the full length. But when I act in concert with others, I do not wish my own opinion to be the guide, but feel disposed to yield to the wishes of the majority. With this view the proviso was inserted to free the bill from an apparent objection: it might have been objected without this, that if an officer of government were to go into market and buy a load of flour or wood, upon the pressure of the occasion, not knowing to whom it belonged, he might be guilty of a crime by contracting with a member of Congress. So soon as the bargain is made, it is carried into effect, and all kind of influence prevented; he is not subject to be acted on as by a person with whom he has made a contract; and thus, though the objection of the gentleman from Massachusetts (Mr. Quincy) was ingenious, I cannot admit its force. I shall be much obliged to that gentleman or any other who will aid us with such phraseology as shall make our meaning more clear.

An objection has been made to the clause excepting contracts for public land. There also was a submission of my opinion to that of others. The public lands are regulated in such a way that there need not be that objection to this proviso which exists in the minds of some gentlemen. All public lands when put up to public sale, or if sold privately, are at a limited price. Hitherto under the general government, there has been no such thing as land speculation to any considerable amount; all speculations have arisen under the state governments, whose land systems are different from that of the U. S. I should have no objection, if gentlemen prefer it, even to include land; and I should presume, however tender of individual rights, that there could not be any man who would not forego the probable advantage which he might have in purchasing a few acres of land, or any little advantage which he might derive from other contracts of any sort, to secure even a probable good to his country.

It has been stated by a member, that the fears of gentlemen who advocate this bill are merely visionary. If he had extended his eyes across the water, & taken into consideration the observations of the gentleman from Georgia (Mr. Troup) in allusion to the British House of Commons, he would not have suffered the observation to escape him. What, sir, shall we not profit by example? What is the state of the only government in Europe now exhibiting a representative body, and what has brought it to this state? It has been caused by their participation in the loaves and fishes of the government. Annuities, sinecures, and the endless variety of peculations of that kind have destroyed its independence. I will refer gentlemen to the celebrated speech made by Mr. Fox on the subject of parliamentary reform, and leave it as an answer to those who suppose that our fears on this subject are visionary.

DEBATE

On the bill concerning courts martial and courts of inquiry.

FRIDAY, MARCH 11.

The bill was read the third time, and the question having been put "shall this bill pass?"

MR. ELLIOT said it was to have been hoped that the bill, after having gone through the purifying process of successive recommitments, would have been presented, for the final question upon its passage, in a shape rather less questionable than that which it had assumed upon its original introduction to the House. In this hope, at once a natural and a pleasing one, said he, the opponents of the bill have unfortunately been disappointed. In one of the pleasant hours of the past gloomy season, this new twig of the great tree of our jurisprudence put forth its slender form, with all its blushing honors thick upon it; the next day came a frost; it has since experienced the vicissitudes of various weather; it is again in bloom; but its blossoms are frail and feeble, and even the beams of a vernal sun cannot save it from decay and death. Quitting, however, a metaphor, which is no sooner hunted up than it is hunted down, he said he would proceed to state, with as much plainess and conciseness as possible, those objections to the bill which he deemed as unanswerable as he was convinced they were insuperable. If they were capable of being answered, he hoped the supporters of the measure would deign to answer them. My objections to the bill, said Mr. E. are that it is erroneous in principle, that it is defective in detail, that it will be inoperative in practice, as it respects the great majority of cases which it professes to comprehend, and that, as to the remaining cases, it will operate to the delay of military justice, and the injury and oppression of the peaceable citizen.

First, that it is erroneous in principle.

It has been a constant theme of declamation with the enemies of the equal rights of man, that in the science of [illegible] called, unlike all other sciences, there are no fixed, incontestible principles, upon which the mind can repose with confidence, and in which all enlightened men will unite. The friends of freedom, at least since the time when Locke began to question the divine right of kings, have protested against this dogma. They contend that these fixed principles, these self evident postulata, do exist in political as well as moral science—one of them forms the basis of all our institutions. "All men are by nature equal, & possess certain natural and unalienable rights." There is another which every true republican will cherish with all the ardor of affection, with all the energy of zeal, with all the inflexibility of patriotism. In a free government, the military should always be kept in a state of subordination to the civil power. If you admit that the military can become, even for a moment, co-ordinate with the civil power, you lay the axe to the root of the tree of public liberty. To make the military superior to the civil power, constitutes the very essence of despotism. This effect will be produced to a certain extent, by the passage of the present bill. Indeed a more appropriate title than it bears, that of "A bill concerning courts martial and courts of enquiry," would be "A bill to subject the civil to the military power, in certain cases therein mentioned." But we are gravely told that such will not be the effect of the bill. There may be a spice of arrogance in the assertion, but I shall venture to make it, that the authors and supporters of the bill do not appear to understand the nature and operation of the measure. To test the view which they have taken of it, let the first provision of the first section be critically considered. It is this which involves the pernicious principle against which we contend. The object is to coerce the attendance of civil witnesses before military tribunals; and how is this to be effected? The provision is in these words—"That in every case where the attendance of any person, not in the military or naval service of the United States, shall be necessary as a witness before a military or naval court martial, or court of inquiry, and who shall not reside at a greater distance than one hundred miles from the place where the court martial or court of inquiry shall be holden, a summons may be issued out of any court of the United States, and the clerk of any such court shall be, & he is hereby authorised and required, upon due application in writing by the judge advocate, or person officiating as such, or by the party accused, to issue such summons, requiring such witness to appear, and give evidence before such court martial or court of inquiry." Gentlemen I presume, will persist in telling us that a discretion is reserved to the judiciary by the expression "a summons may be issued out of any court of the United States." But who is so blind as not to see that those are mere words of form? That the court, instead of possessing a discretion, does not even possess an agency in the case? That the judge advocate is the efficient agent, and the clerk of the civil court the passive one? That the former may command, and the latter must obey? The clerk is authorized and required to issue the summons—by whose direction? That of the court or one of the judges? Not at all. "He is required, upon due application in writing, by the judge advocate, or party officiating as such, or by the party accused (before the martial tribunal) to issue such summons &c." Surely this will render the civil subservient to the military power, *quo ad hoc*. In the case contemplated in the next provision of this section, which may be called the military subpoena duces tecum, a sound and proper discretion is vested in the judge. "And upon good and sufficient cause shewn, verified by affidavit before any judge of any court of the United States, and the same being certified by such judge and produced to the clerk to whom application as aforesaid shall be made for any summons the said witness in such summons may be farther directed and required to exhibit in evidence before such court martial or court of inquiry, any public paper, document or record in his possession, power, or control, &c." The same discretion ought to have been given to the judge in the former case. It might have been placed in his breast with perfect safety. And thus the very advantage which it is contemplated to attain by the provisions of the present bill might have been attained without the sacrifice of principles which ought to be considered as sacred. If our military tribunals wish for the aid of the civil ones in the furtherance of public justice, they should not command it, but request it. The military should accost the civil power, not in the imperious tone of mandate, but in the lowly voice of supplication.

The bill is still defective in its details, and in some of them involves new principles of a most dangerous and destructive character.

That provision which embraces what I call the *military subpoena duces tecum*, has been well amended by the gentleman from Massachusetts (Mr. Bacon.) But it is even now not sufficiently definite and well guarded. "Any public paper, document, or record in his possession, power or controul; which said paper, document or record shall be specified in such affidavit and certificate, and described in such summons, and in the opinion of the judge shall contain evidence pertinent to the issue or subject matter which may be on trial before such court, and which such witness might be compelled to produce by the ordinary rules of proceeding in a court of civil jurisdiction." The latter part of this clause, embracing the gentleman's amendment, has removed, in a great degree, the original objections to this provision in the bill. But a person may have papers, documents or records, in his "power or controul," for specific purposes, which are not regularly in his possession, and which of course he cannot carry into court. The words "power or controul," therefore ought to have been omitted. That civil officers should in any case be required to carry civil records into military courts, is a very questionable principle. It would be going far enough to prescribe some method of authenticating copies of such records which should be received as evidence in courts martial. But if the principle is to be established, its exercise ought to be guarded with all possible care.

Passing over many objectionable matters of detail in the second and third sections, I proceed to the fourth section, which was also introduced as an amendment, by the gentleman from Massachusetts. "Sec. 4. And be it further enacted, that in all cases where the witness, whose testimony is required, shall reside at a greater distance than one hundred miles from the place where such court martial or court of enquiry may be holden, the deposition of such witness, taken in the manner prescribed, and agreeable to the directions contained in the third section of this act, may be read in evidence before such court martial or court of enquiry." The supporters of the bill, obliged to yield to the unconquerable objection to the bill as it originally stood, that the peaceable citizen might be dragged from Passamaquoddy to Natchitoches, from one extreme to the other of our vast territory, to attend the military courts, have endeavored to remove the difficulty by the introduction of this most extraordinary section. I have heard the rules and regulations for the government of the army called, upon this floor, the code of Draco—a bloody code. The volume of martial law must always be stained with blood. It cannot be avoided. For one, I think our own military code too severe and sanguinary, and was a member of a very small minority which voted in opposition to the system. But how greatly is the gloom of the scene increased by enacting that the lives of your soldiers shall be sacrificed by depositions—by written evidence! Fifteen or twenty crimes are punishable by death, and in all cases where the witness shall reside a greater distance than one hundred miles depositions may be read against the accused. In civilized countries, and in enlightened times this monstrous principle has never been adopted—not even in military courts. The soldier who is accused of a crime, is of course placed in a state of close confinement; he is not to be confronted with the witnesses against him, nor can he attend at the times and places where depositions are taken, which are to affect his life. In this free country, gentlemen ought to start at a law of this kind with instinctive horror!

The other objections to this system are, that it will be inoperative in practice as to the great mass of cases which it comprehends, and that in others it will operate to the delay of military justice, and the injury and oppression of the peaceable citizen.

Gentlemen say that the soldier, by becoming such, does not cease to be a citizen, and ought to possess the rights of the citizen even in the camp. Why then do not they propose to give to military men the right of trial by jury, the privilege of being confronted with the witnesses against them, the right of compulsory process for witnesses on their own part, and the privilege of being heard by counsel? All this is delightful in theory, but can never be realized in practice. Men cannot carry all the rights of the citizen from their native fields to the tented plains, from rural scenes to the camp of Mars. The idea is a pleasing but a delusive one. But this new law, while it will subject the soldier to the loss of life in consequence of the depositions of men whom he never saw nor ever can see, will give him no new privilege. To illustrate this position, let us recur to the first part of the first section. "That in every case where the attendance of any person, not in the military or naval service of the United States, shall be necessary as a witness," &c. Who is to judge of the necessity? Will the court take a soldier's word for it? Will they allow him to file an affidavit stating the absence of a material witness? If they will, who shall form his affidavit? Your military code denies him counsel, except that the judge advocate is so far to act as counsel for the prisoner as not to suffer leading questions to be put to the witnesses against him, or to suffer him to be compelled to criminate himself. The officer, and the non-commissioned officer or private soldier, occupy very different ground upon a military trial. In most cases the officer is only deprived of his sword, and goes at large upon his parole of honor; the soldier is always placed in close confinement. To the officer is secured the most essential characteristic of a trial by jury; not so to the soldier. The officer is tried by his peers, by his equals and associates; the soldier by his masters, by men with whom he is never permitted to associate, and who are in the constant habit of exercising an iron despotism over him. To the officer, all those sympathies and sentiments which result from the common intercourse of gentlemen upon terms of equality, but above all those which connect themselves with the spirit of the corps, will secure, not only every legal advantage, but every reasonable indulgence. In favor of the soldier nothing of this kind can operate. As it respects him the law will be unavailing, except that his life may be sacrificed by depositions! The officer can avail himself of its provisions to send for depositions from every quarter of the Union, and thus impede the march of military justice as long as he pleases. To the industrious and peaceful citizen your law will be a constant source of injury. There are two principles upon which the citizen is called into courts of justice as a witness, unremunerated, for his legal fees are contemplated only as a bare compensation for his actual expences, and he receives nothing for the derangement of his business, or even for his time. One of them, that private inconvenience should always yield to the public good, will apply to military as well as civil tribunals. The other, which is a very obvious one, applies to civil courts alone. In attending the court as a witness, the citizen performs a service for some other citizen, which, in the course of the common concerns of life, he is under the necessity of asking others to perform for himself. In relation to courts martial, this reciprocity does not exist. The citizen can neither sue or prosecute others, nor be sued or prosecuted himself, before military courts. He commits no military crime, he wishes for no military witnesses.

Upon the whole, although the policy of passing such a law at all is extremely questionable, yet the advantages which it is contemplated to obtain by it, might be obtained, without subjecting the civil to the military power. Let the martial approach the civil court, not with all "the pomp, pride, and circumstance of glorious war," but in the humble attitude of a supplicant, and in the humble tone of supplication. Every judge, in every case, should possess a sound discretion. This power would not be abused. If it were by one magistrate, application might be made to another. Mr. E. concluded by remarking that he would not pledge himself to vote even for such a law. But if a law upon the subject be to pass, it ought to pass upon that principle, and upon that alone.

(DEBATE TO BE CONTINUED.)

MONDAY, MARCH 14.

A report of the receipts and expenditures of the United States for the year 1806, was received from the Secretary of the Treasury, and referred to the committee of Ways and Means.

Mr. Van Horne presented a petition of a number of inhabitants of the city of Washington, praying a revision of the law respecting the writ of capias; which was referred to the committee on the district of Columbia.

Mr. Macon held in his hand a resolution on a subject which he wished to present to the consideration of the House. It was, to direct a committee of the House to enquire into the propriety of allowing a larger discount for prompt payment of the purchase money for public lands. The present discount was eight per cent. not so great as the profit which was derived from some stock of the United States, and thus an inducement was offered to withhold payment. It seemed to him that it would be good policy at this time to allow a greater discount for payment of ready money. Influenced by these reasons he offered the following resolution:

Resolved, That the committee on Public Lands be instructed to enquire into the expediency of allowing a greater discount to purchasers of public lands, for prompt payment, and that they have leave to report by bill or otherwise.—Agreed to without a division.

Mr. *Quincy*, after a prefatory address of near an hour [which will be given in our next] submitted the following resolution:

Resolved, That the President of the United States be requested to communicate to the House the dispatches addressed to this government by the American minister at Paris, touching the proceedings of the French government in relation to neutral commerce, which have been received since the dispatches of that minister, which were communicated to Congress by message on the 19th Feb. 1807.

And the question having been put "Will the House now consider this resolution?" It was negatived by Yeas and Nays. 66 to 44.

On motion of Mr. *Gardner*, the House went into committee of the whole, 52 to 35, on the bill to prolong the continuance of the mint at Philadelphia, Mr. CUTTS in the Chair.

Mr. *Love* moved that the committee rise, report progress and ask leave to sit again.

This motion was supported by Messrs. Love, Lewis, Key, and Nelson, and opposed by Messrs. Alston, Milnor, Livermore, J. Clay, Smilie, Kelly, and Southard.

[The supporters of this motion wished the House to rise in order to give time for procuring calculations, &c. to shew the policy and expediency of removing the mint from Philadelphia to Washington. The arguments in favor of this motion were nearly the same as those in favor of the continuance of the seat of government at Washington; in addition to that, the advantage of water for carrying on the works was stated, and which could not be had in Philadelphia. An objection to the passage of this bill also was, that a law is now in existence for prolonging the mint at Philadelphia till the 4th of March next; and by now continuing that law it would appear that gentlemen were afraid to trust the merits of its continuance at Philadelphia to an enquiry which might be had in the mean while.

The opponents of the motion contended that a removal from Philadelphia would be impolitic in the extreme, inasmuch as bullion could not be had at Washington; that the banks there were too limited in their operations; that the United States now possessed property in Philadelphia, houses, vaults, &c. which could not be disposed of to advantage; that the superintendants and workmen were residents at Philadelphia, probably would not remove, and others certainly could not be had at the seat of government; that the expence of removal also of materials, machinery, &c. and the erection of others here, would create a very great expenditure of money by the United States. It was also contended that the law for the continuance of the mint at Philadelphia expired on the 4th of March last.]

The motion for rising of the committee was negatived by a large majority.

A motion was made by Mr. *J. Clay* to strike out of the bill 1809, the time at which the bill provides that the further prolongation shall commence, and insert 1808, as the law was supposed to have expired on the 4th of March last.—Carried.

The committee rose and reported the bill as amended; when the House agreed to consider the report, 64 to 23.

Mr. *Love* moved that the further consideration of the report of the committee of the whole be postponed till to-morrow.—Negatived. Ayes 29.

The House concurred with the term of five years for its further continuance at Philadelphia, after some ob-