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CONGRESS.

HOUSE OF REPRESENTATIVES.

TUESDAY, APRIL 19.

A bill to authorise the President of the United States under certain conditions to suspend the embargo, having been received from the Senate, and referred to a Committee of the Whole—

The further consideration of Mr. Campbell's resolution was dispensed with; and the House resolved itself into a Committee of the Whole, Mr. DESHA in the Chair, on the bill from the Senate.

MR. RANDOLPH said that they had lately gotten into a strange habit of calling things by their wrong names. The other day said he, we received a bill from the Senate for making an addition to the peace establishment, *without* limitation; we christened the bill by the style and title of a bill to raise *for a limited time* an additional military force. Here is a bill authorising the President of the United States under certain conditions to suspend the operation of the embargo; and for *certain* conditions certainly none ever were nearer *uncertainty* than these are. What are the conditions? They are not positive, and of these, such as they are, the President at last is to determine. The President under certain conditions is to suspend the embargo, and when you enquire what those conditions are, you find them uncertainties—contingencies of which, when they happen, he is the sole and exclusive judge. Now if we do authorise the President to suspend the embargo under certain conditions, let us ascertain them. Let them not be uncertain. Let him not have a discretion whether he will suspend the embargo or not.

It is not my purpose now to recapituiate my former argument on this subject; but I do say that if the President of the United States is to have a discretion at all, it ought to be absolute and unqualified, not only substantially so but nominally so; and the objection to this bill is that under the pretence of qualification to discretion, under the mask (not by this intending any disrespect to the other branch of the legislature) of restricting the power, you do in fact give him an unqualified power; and no gentleman who reads the bill can for a moment hesitate to acknowledge the correctness and soundness of the doctrine. I rise not so much to enter into discussion (for I feel myself unable) as to offer an amendment, which, if it be lost in committee of the whole, I will reiterate in the House to ascertain its sense. I move therefore to strike out from the enacting clause in the first section to the end of it and insert "that the act laying, an embargo on all ships and vessels in the ports and harbers of the U. S. and the several acts supplementary thereto shall be repealed, so far as they prohibit trade with France and her dependencies, and states associated in common cause with her, so soon as the U. S. shall be exempted from the operation of her decrees of the 21st Nov. 1806 and Dec. 1807, and the President of the U. S. shall have officially been notified thereof and shall have received assurances that the existing stipulations between the U. States and France will be respected by her.

And be it further enacted, That the said acts shall be repealed so far as they prohibit trade with G. Britain, her dependencies and states associated in common cause with her, as soon as her orders of council of Nov. last shall be revoked, so far as they affect the commerce of the U. S.; and the President of the U. S. shall have received official assurances thereof, and that the neutral rights of the U. S. shall be respected by them. And the President of the U. S. shall be and he is hereby authorised and required, on the receipt of such assurances from either of the two belligerents, to notify the same forthwith by proclamation; Whereupon the embargo shall be removed in regard to such belligerents. And if such assurances be received from both belligerents, proclamation shall in like manner be forthwith issued; whereupon the acts aforesaid and the several acts supplementary thereto shall cease and determine."

I will state in a few words why I have not inserted in that amendment any condition respecting reparation for the affair of the Chesapeake. It was not because the bill from the Senate contains no such principle; but because the embargo has never been considered that I recollect, certainly it was not so considered by the gentleman who moved the resolution, as a re-action on our part in consequence of that outrage; because the step was not taken till some time after that outrage; and because it was taken before we knew whether reparation would be made for the outrage or not. In fact it was never said by any gentleman who advocated it, to have any connection with that transgression, which stood on its own demerits. The embargo grew out of the French decrees and British proclamation; and if justified by the British proclamation, was assuredly yet more justified by the orders of council which followed it. It was then a measure intended to meet the aggressions on our commerce by the two belligerents; and not a measure of resentment in consequence of the aggression on the Chesapeake. It is therefore that I have thought proper not to mingle subjects which at all times ought to have been and I understand now are kept separate and distinct.

MR. QUINCY. Mr. Chairman—The amendment proposed to this bill by the gentleman from Virginia (Mr. Randolph) has for its object to limit the Executive discretion in suspending the embargo to certain specified events;—the removal of the French decrees: the revocation of the British orders. It differs from the bill, as it restricts the range of the President's power to relieve the people from this oppressive measure. In this point of view, it appears to me, even more objectionable than the bill itself. To neither can I yield my sanction. And as the view which I shall offer will be different from any which has been taken of this subject, I solicit the indulgence of the committee.

A few days, since when the principle of this bill was under discussion, in the form of a resolution, a wide field was opened. Almost every subject had the honors of debate except that which was the real object of it. Our British and French relations, the merits and demerits of the expired and rejected treaty, as well as those of the late negociators and of the present administration; all were canvassed. I enter not upon these topics. They are of a high and most interesting nature. But their connexion with the principle of this bill is, to say the least, remote. There are considerations intimately connected with it, enough to interest our zeal and to awaken our anxiety.

The question referred to our consideration is, shall the President be authorised to suspend the Embargo on the occurrence of certain specified contingencies? The same question is included in the proposed amendment and the bill. Both limit the exercise of the power of suspension of the embargo to the occurrence of certain events. The only difference is that the discrection given by the former is more limited; that given by the latter is more liberal.

In the course of the former discussion a constitutional objection was raised which, if well founded, puts an end to both bill and amendment. It is impossible, therefore, not to give it a short examination. It was contended that the constitution had not given this House the power to authorise the President at his dicretion to suspend a law. The gentleman from Maryland (Mr. Key) and the gentleman from Virginia (Mr. Randolph) both of great authority and influence, in this House, maintained this doctrine with no less zeal than eloquence. I place my opinion, with great diffidence, in the scale, opposite to theirs. But as my conviction is different, I must give the reasons for it; why I adhere to the old canons; those which have been received as the rule both of faith and practice, by every political sect, which has had power, ever since the adoption of the constitution, rather than to these new dogmas.

The constitution of the U. States, as I understand it, has in every part reference to the nature of things and the necessities of society. No portion of it was intended as a mere ground for the trial of technical skill, or of verbal ingenuity. The direct, express powers, with which it invests Congress, are always to be so construed as to enable the people to attain the end, for which they were given. This is to be gathered from the nature of those powers, compared with the known exigencies of society and the other provisions of the constitution. If a question arise, as in this case concerning the extent of the incidental and implied powers, vested in us, by the constitution, the instrument itself contains the criterion, by which it is to be decided. We have authority to make "laws necessary and proper for carrying into execution" powers, unquestionably vested. Reference must be had to the nature of these powers to know what is "necessary and propre" for their wise execution. When this necessity and propriety appear, the constitution has enabled us to make the correspondent provisions. To the execution of many of the powers vested in us, by the constitution, a discretion is necessarily and properly incident. And when this appears from the nature of any particular power, it is certainly competent for us to provide by law that such discretion shall be exercised. Thus for instance the power to borrow money, must in its exercise be regulated, from its very nature, by circumstances, not always to be anticipated by the legislature, at the time of passing a law authorising a loan. Will any man contend that the legislature is necessitated to direct either absolutery that a certain sum shall be borrowed, or to limit the event on which the loan is to take place? Cannot it vest a general discretion, to borrow or not to borrow, according to the view which the Executive may possess of the state of the treasury and of the general exigencies of the country, particularly in cases where the loan is contemplated at some future day, when perhaps Congress is not in session, and when the state of the treasury, or of the country, cannot be forseen? In the case of the two millions appropriated for the purchase of the Floridas, such a discretion was invested in the Executive. He was authorized "*if necessary to borrow the sum or any part thereof.*" This authority he never exercised, and thus, according to the argument of gentleman on the other side, he has made null a legislative act. For so far as it depended upon his discretion, this not being exercised, it is a nullity. The power "to pay the debts of the United States" will present a case in which from the nature of the power, a discretion to suspend the operation of a law, may be necessary and proper to its execution. Congress by one law direct the Executive to pay off the eight per cent. stock. Will gentlemen seriously contend that by another it may not invest him with a general discretion to stop the payment; that is, to suspend the operation of the former law, if the state of the treasury, or even more generally, if the public good should in his opinion require? An epidemic prevails in one of our commercial cities; intercourse is prohibited with it; congress is about to terminate its session and the distemper still rages. Can it be questioned, that it is within our constitutional power, to authorise the President to suspend the operation of the law, whenever the public safety will permit? Whenever, in his opinion it is expedient? The meanest individual in society, in the most humble transactions of business, can avail himself of the discretion of his confidential agent, in cases where his own cannot be applied. Is it possible, that the combined wisdom of the nation is debarred from investing a similar discretion, whenever, from the nature of the particular power, it is necessary and proper to its execution?

The power of suspending laws, against which we have so many warnings in history, was a power exercised, contrary to the law, or in denial of its authority, and not under the law and by virtue of its express investment. Without entering more minutely into the argument, I cannot doubt but that Congress does possess the power to authorise the President by law to exercise a discretionary suspension of a law. A contrary doctrine would lead to multiplied inconveniences; and would be wholly inconsistent with the proper execution of some of the powers of the constitution. It is true that this, like every other power, is liable to abuse. But we are not to forego a healthful action, because, in its excess, it may be injurious.

The expediency of investing the Executive with such an authority, is always a critical question. In this case, from the magnitude of the subject, and the manner in which the embargo oppresses all our interests, the inquiry into our duty in relation to it, is most solemn and weighty. It is certain some provision must be made touching the embargo, previous to our adjournment. A whole people is laboring under a most grievous compression. All the business of the nation is deranged. All its active hopes are frustrated. All its industry stagnant. Its numerous products hastening to their market, are stopped in their course. A dam is thrown across the current, and every hour the strength and the tendency towards resistance, is accumulating. The scene we are now witnessing is altogether unparalleled in history. The tales of fiction have no parallel for it. A new writ is executed upon a whole people. Not, indeed, the old monarchical writ, *ne exeat regnum*, but a new republican writ, *ne exeat rempublicam.* Freemen, in the pride of their liberty, have restraints imposed on them, which despotism never exercised. They are fastened down to the soil by the enchantment of law; and their property vanishes in the very process of preservation. It is impossible for us to separate and leave such a people, at such a moment as this, without administering some opiate to their distress. Some hope, however distant, of alleviation must be proffered—some prospect of relief opened. Otherwise justly might we fear for the result of such an unexampled pressure. Who can say what counsels despair might suggest, or what weapons it might furnish?

Some provision then, in relation to the embargo is unavoidable. The nature of it is the enquiry. Three courses have been proposed: to repeal it; to stay here and watch it; to leave with the executive the power to suspend it. Concerning repeal I will say nothing. I respect the known and immutable determination of the majority of this House. However convinced I may be, that repeal is the only wise and probably the only safe course, I cannot persuade myself to urge arguments, which have been often repeated, and to which, so far from granting them any weight, very few seem willing to listen. The end to which I aim will not counteract the settled plan of policy. I consider the embargo as a measure from which we are not to recede, at least not during the present session. And my object of research is, in what hands, and under what auspices it shall be left, so as best to effect its avowed purpose and least to injure the community. Repeal, then, is out of the question. Shall we stay by and watch? This has been recommended. Watch? What? "Why the crisis." And do gentlemen seriously believe that any crisis, which events in Europe are likely to produce will be either prevented or meliorated, by such a body as this, remaining, during the whole summer, perched upon this hill?

To the tempest which is abroad we can give no direction; over it we have no control. It may spend its force on the ocean, now desolate by our laws, or it may lay waste our shores. We have abandoned the former, and for the latter, though we have been six months in session, we have prepared no adequate shield. Besides, in my apprehension, it is the first duty of this House to expedite the return of its members to their constituents. We have been six months in continued session. We begin, I fear to lose our sympathies for those whom we represent. What can we know in this wilderness, of the effects of our measures, upon civilized and commercial life? We see nothing, we feel nothing, but through the intervention of newspapers, or of letters. The one obscured by the filth of party—the other often distorted by personal feeling or by private interest. It is our immediate, our indispensable duty, to mingle with the mass of our brethren and by direct intercourse to learn their will; to realise the temperature of their minds and to ascertain their sentiments concerning our measures. The only course that remains is to leave with the Executive the power to suspend the embargo. But the degree of power with which he ought to be invested, is made a question. Shall he be limited only by his sense of the public good, to be collected from all the unforeseen circumstances which may occur during the recess; or shall it be exercised only on the occurrence of certain specified contingencies? The bill proposes the last mode. It also contains other provisions highly exceptionable and dangerous; inasmuch as it permits the President to raise the embargo, "*in part or in whole*" and authorises him to exercise an unlimited discretion as to the penalties and restrictions he may lay upon the commerce he shall allow. My objections to the bill, therefore, are—first, that it limits the exercise of the executive as to the whole embargo, to particular events, which if they do not occur, no discretion can be exercised, and let the necessity of abandoning the measure be, in other respects, ever so great, the specified events not occurring, the embargo is absolute at least until the ensuing session; next, that if the events do happen, the whole of the commerce he may in his discretion set free, is entirely at his mercy; the door is opened to every species of favoritism, personal or local. This power may not be abused; but it ought not to be trusted. The true, the only safe ground on which this measure, during our absence, ought to be placed is, that which was taken in the year 1794. The President ought to have authority to take off the prohibition, whenever, in his judgment the public good shall require; not partially, not under arbitrary bonds and restrictions; but totally, if at all. I know that this will be rung in the popular ear, as an unlimited power. Dictatorships, protectorships, "shadows dire will throng into the memory." But let gentlemen weigh the real nature of the power I advocate, and they will find it not so enormous as it at first appears, and in effect much less than the bill itself proposes to invest. In the one case he has the simple and solitary power of raising or retaining the prohibition, according to his view of the public good. In the other he is not only the judge of the events; specified in the bill, but also of the degree of commerce to be permitted, of the place from which and to which it is to be allowed; he is the judge of its nature, and has the power to impose whatever regulation he pleases. Surely there can be no question but that the latter power is of much more magnitude and more portentous than the former. I solicit gentlemen to lay aside their prepossessions and to investigate what the substancial interests of this country requires; to consider by what dispositions this measure may be made least dangerous to the tranquility and interest of this people; and most productive of that peculiar good, which is avowed to be its object. I address not those who deny our constitutional power to invest a discretion to suspend, but I address the great majority, who are friendly to this bill, who, by adopting it, sanction the constitutionality of the grant of fresh authority; to whom therefore, the degree of discretion is a fair question of expediency. In recommending that a discretion, not limited by events, should be vested in the Executive, I can have no personal wish to augment his power. He is no political friend of mine. I deem essential both for the tranquility of the people and for the success of the measure, that such a power should be committed to him. Neither personal nor party feelings shall prevent me from advocating a measure, in my estimation salutary to the most important interests of this country. It is true that I am among the earliest and the most uniform opponents of the embargo. I have seen nothing to vary my original belief, that its policy was equally cruel to individuals and mischievous to society. As a weapon to control foreign powers, it seemed to me, dubious in its effect, uncertain in its operation; of all possible hostile machinery the most difficult to set up, and the most expensive to maintain. As a mean to preserve our resources, nothing could, to my mind, be more ill adapted. The best guarantees of the interest society has in the wealth of the mem-