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CONGRESS.

HOUSE OF REPRESENTATIVES.

Debate on the bill from the Senate authorizing the President under certain conditions to suspend the Embargo, &c.

(CONTINUED.)

TUESDAY, APRIL 19.

Mr. KEY said he well knew how painful it was to address gentlemen, who had already made up their minds; but the magnitude of this question, constitutional question compelled him to trespass for a few moments on the patience of this House. I shall (said he) confine myself to the constitutionality of the bill from the Senate, in hopes that of the House feel the impressions on the subject which I feel, they will reject it; and yet least, what it is that the power given to the President shall be constitutional. I was in hopes from the talents of the gentleman who spoke the other day, that I should have heard some reply, some attempt made to defeat the opinions and objections which I offered to the resolution; If they did not meet them with fair argument, that they would at least have shewn what part of the resolution which I had drawn was incorrect. Gentlemen say the argument is not true. They must either allow my conclusions, or say where I am incorrect in drawing them. I call upon the understanding of the House and the attachment to the constitution, to follow me out for a few moments, and see whether we can vest the power contemplated by the bill.

All the respective representatives of the people of the states, with the and the sovereignty in a political capacity of each state, must concur in either a part, or the whole of the power. If, as honorable gentleman from Tennessee (Mr. Campbell) admitted that the power to suspend is not co-ordinative with the power to make, If it be admitted, I will not fail to convince you that in the manner in which this law is worded we cannot constitutionally assent to it. Gentlemen say, that they give the President of the United States power to repeal an existing law now in force—upon what? Upon the happening of certain contingencies in Europe? No; but if those contingencies when they happen in his judgment, shall render it safe to repeal the law, a discretion is committed to him upon the happening of those events to suspend the law. It is that discretion to which I object. I do not say it should not be properly placed at all; but the power and discretion to judge of the safety of the United States is a power legislative in its nature and effects, and as such, under the constitution, cannot be exercised by one branch of the legislature. I pray gentlemen to note the distinction; that whenever the events happen, if the President were to give his judgment upon those events, and suspend the law, it is the exercise of a legislative power; the people by the constitution of the country, never means to confide to any one but the power of legislating for them.

If the suspension of the law a legislative act, Can any man deny it? It is as much a legislative act as to repeal or make a law; and the same power which can give any man a right to suspend a law, can give him an equal right to make a law. I say if these powers are not alike, we may infest to any one who will consider them? Is the power to suspend a law a legislative act? Certainly because it changes the law to a new rule of conduct. For instance—the law is full free, no ship or vessel can depart from our ports. That prohibition ceases and a new rule is established, by the suspension of the law. Hence the suspension of a law by repealing an old rule and enacting and establishing a new one, is unquestionably a legislative act. If I am correct—and I call upon gentlemen to shew it with respect I am not correct; I call upon them by argument or reasoning to prove that the power of suspending a law is not the power of repealing one—I then beg of you to lay your hand on the constitution of the U. States, and say where is the power of confiding the election (repeal and enaction) requisite, the same power, if I say so any individual whatever? None can be found; and till some can be found, we must recognize it as a sacred truth that under the constitution none does exist.

I have endeavored to shew that it is a legislative power, and my reason for so doing was to testify to a gentleman from Massachusetts (Mr. Quincy) with this explanation I will give the reason and authority of this opinion. I do not say that we cannot give the President upon certain prescribed events a power by which the embargo may be taken off. Such may be done. But when it is done, a repeal or suspension must be the act of the Congress of the U. States, operating upon events or facts to which the President by his proclamation may give publicity. Very different this bill from this; and from the idea of a gentleman who the other day said that the President was only to judge of the fact. (What fact?) Not of the happening of the events solely; for after they do happen, he is to exercise an discretion upon whether it will comport with the safety of the United States to suspend the embargo.

The honorable gentleman does not seem to think that I draw a sufficient distinction. I think the bill does not restrict the power of the President to judge upon the happening of certain events. The President is to exercise his sole judgment, upon the happening of these events, whether it is consistent with the safety of the United States to remove the embargo. Is he then to judge whether the events to take off the embargo? Then, something more is to be done. He is to exercise a sound discretion whether the trade of our country may be safely prosecuted. He is not even to repeal or suspend the whole of the embargo act; but to suspend the same with such modifications, restrictions or restrictions. Who is to make these restrictions and restrictions? The President of the United States. Then when under this power of suspension, he makes restrictions to which you are dissatisfied, it cannot be not make that suspension a law of the land. Most manifestly. If it does, it will be the exercise of the imposition of new circumstances? He exercises a legislative act by the suspension, and by fixed terms and conditions on which the commerce of the United States may be afterwards carried on. In both cases he exercises a legislative, not an executive power. I will ask whether they that to give a President of the United States power to suspend any law, was equal to giving him a power to suspend all laws. And I ask any gentleman attached to the constitution where they will find such power. I do not say it is not; it is true in the whole as to the power; though we may not in our discretion consider it as a power to give such power to him. Now I ask where the constitution gives us power to create him to suspend any law? Is it not the powers on earth, even were it clear that we possess it, it ought to be exercised with the greatest hesitation. It was perhaps the most dangerous prerogative of the crown of Britain for several centuries in England—the power of suspending the effects of laws enacted by the people. I call the attention of gentlemen to recollect that when the last of the unfortunate race of Stuarts was driven from the throne, one of the greatest reasons for the abdication was his suspending laws, and the authority he assumed the penal laws respecting the Catholic system, and intended to carry. The contests of those days attempted to justify the power not only as a prerogative of the crown, but as often given to it by the people; and in ransacking the history of England, the Stuarts were driven from it. Not sooner did the patriot convention meet, but in the most solemn manner they declared that such a power ought not to exist; and governed as that parliament are now by corruption and intrigues, they would have been ready to give to give the king the power of suspending laws. My observations flow from a sense of obedience to the Constitution. I am in conscience and conversion opposed to our having the right to impart a legislative power at all. In England it might be done, because the legislature is omnipotent; but we are limited within the sphere of our constitution; and if the power is not there to be found, it can no where exist. Hence I state that in forming this constitution it was declared that all laws to be enacted must have the assent of the three branches representing three distinct interests of the community; and to repeal them the same formality is required.

I have been asked what powers analogous to that now attempted to be given, have been exercised. One in the case of non-intercourse with France, was the power to suspend was contained in the body of the law itself. I can satisfy the gentleman from Massachusetts that the powers which he refers to were all exercised in the office of being a case by any one as well as by the President. If we have authority to give the President of the United States the power of suspending a law, have we not a right to select any other man to exercise, and give him the same power? We cannot transfer it any where. I ask the gentleman if we are capable of giving power to the President of the United States to suspend a law, can we not to any officer of departments? If we cannot, what limits us? How are we bound? By what chart of discretion are we and on what principle? The President is true is the person to whom, if we had the power, it would be most properly confided; but there is nothing which confines its exercise to him only, or which prevents us if we have authority to delegate the power at all, from giving it to any officer.

The honorable gentleman from Tennessee (Mr. Campbell) has expressed that there is a distinction to be taken in the construction of the constitution, from another gentleman. I will so remove from him that I could not distinctly hear him. But I cannot see the shadow of a shade of distinction in our power from the nature of things, the whole constitution, and the rules of construction, limitations to our power; nor from necessity, for if that is to have any weight, the constitution is a perfect nonsense. The constitution has limited our power and never even though it name or authorize any one thing to revolve in the sphere prescribed by it, yet, in the construction, there can be no distinction is it on earth; it is a simple unique power of our legislative government and restrictions so dangerous had been given. Instead of pursuing them, for where way would be to resort lately to retrace our steps and rally round the constitution. It will take a weight off my mind, if I can be convinced, I That the phraseology of this bill does not give to the President a legislative power, and 2, If it does, that there should be a concurrence of sentiment on the House as to vest the power in such a manner as to make its exercise consonant with the constitution.

Mr. HOLLAND said when this subject had been first introduced he had intended it to be one of those cases which could require no illustration. But the gentleman seems to be doubted. He was dissatisfied with the gentleman from Tennessee because he had taken up ground on which that they did possess the power; he then thought all the time taken up on the subject was idle time. He was never been before questioned; the power had been exercised from the commencement of the government to the present time, and never before doubted; and therefore he had been dissatisfied with the gentleman from Tennessee because he took up a few minutes to shew that they possessed the power. I am yet ready to convince to see that the principle of the bill is backed by the arguments. He is not against it, although much ingenuity has been exercised on the subject by one or two gentlemen. I wish to come to examine their arguments, they are far from being plausible, certainly not valid. The gentleman from Maryland supposes that the maxim will not be contradicted that it takes the same power to repeal a law that it does to make it. None will contradict it; but does it apply in this case? I do not see a power to repeal a law? It is correct that it requires the same power to destroy as to create; that the power creating always has power over the thing which it creates, and can modify it in any manner, the same power which makes a law says at what particular period and under what particular circumstances, this law shall cease to operate, does it follow that the power of suspension given to an agent is an unconstitutional power? If a power be given by the creating power to suspend a law, does it follow that this power has subverted the original intention of the creator? When a power is vested in the repeal the operation of a law; the person who exercises this authority, acts in an Executive capacity and not in that which the law enjoins to be done. If I am correct to this, all the arguments of gentlemen to oppose the bill will fall to the ground. One gentleman says that in relation to the non-importation law, the power is vested in the state and not in the whole the law itself. Does he mean to say because this power was not contained in the original enactment, that we cannot give it by a subsequent act? Certainly the gentleman does not mean this, because this if proved will be a part of the same law; as it is an express principle that laws on the same subject shall be considered in the same manner as though contained together. It is not material that whether the power of suspension of a law be given in the body of the law itself, or by a subsequent act. The gentleman from Virginia who proposed the amendment under consideration says, if you will authorize a suspension until 20 days after the commencement of the next session of Congress, why not give him power to repeal it altogether? There is some reason why it should not be repealed altogether; for, were it to be repealed, it might be necessary to reinstate it, which would give us the trouble of re-enacting the law; and Congress will be better able then to judge whether it is necessary to repeal it, than they are now.

It may be proper, and perhaps it is not out of order, to take some notice of some observations of the gentleman from Virginia (Mr. Randolph) introduced on this subject, not relative to the principle of the bill, for it is no plain that it needs no comment; that this power may be given, and that it is expedient to give it; but to take some notice of observations made in the course of the debate.

In the course of this business he has found the bill that that he has now discovered that the embargo itself was unconstitutional. Great as this power ever did exist under this constitution as the power to lay an embargo, If it be unconstitutional, it is the necessity to act upon the subject at all; because the judges of your country, If it be unconstitutional will not permit it to continue in force. However, admitting that it is unconstitutional, he says it is inexpedient? I do regret the exercise of the power whether in the ground of constitutionality or expediency. The gentleman from Virginia has however answered all arguments in opposition to the repealing dispositions of all laws. Perhaps I may be as much liable to the gentleman's disposition as some others; having been once of a prominent character, and gentlemen in that have lately been in the habit of advocating right or wrong indiscriminately, no dependence is to be placed on that. It is hard for the last gentleman, if instead of an excess of political enthusiasm, he attended a little more to the subject matter, he would perhaps be more useful to this House; and he better satisfied with his conduct in the government of whether the gentleman is not guilty of the same conduct he has charged the same on other gentlemen. He tells the House that the present embargo is not the first embargo that ever he had did he have the journal read on the subject? Did he find it to shew that he opposed the first embargo? Such constitutional grounds? In what was not his embargo the same as that from the Senate which he opposed? The difference in nothing. Conduct of this kind in a lawyer or in out of court would be chargeable with what is called quibbling; it is too nice and would not relent honor even on a country court. I wish, I will not be so lost to the politeness which I owe to the gentleman to charge him with a conduct so quibbling in reasoning; but really it is a conduct I do not understand.

The gentleman complains that he is frequently misrepresented; that he is scarcely ever understood. It is not necessary for me to say that I by not misrepresent him by design. I will not clear myself of the general supposition by declarations I cannot speak louder than words; I agree with the gentleman from Virginia that those who make many professions certainly