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CONGRESS.

HOUSE OF REPRESENTATIVES.

Debate on the bill from the Senate authorising the President under certain conditions to suspend the Embargo law.

(CONTINUED.)

TUESDAY, APRIL 19.

Mr. Findley's speech concluded.

Passing other examples in our own administration that might be mentiontioned, he would introduce one precedent that applied completely to the case. In 1794, after the British orders of Nov. 1793, the execution of which had induced President Washington to recommend an embargo, had been restrained and after it was discovered that the embargo distressed other nations against whom it was not intended to operate, and after negociation was determined on, the embargo which had existed sixty days was dropped, even while some of the first commercial cities were petitioning for its continuance, and none for its removal; but a law was passed which authorised the President at his discretion—[Here Mr. F. read the law]—it authorised the President to lay, to regulate and to raise an embargo, as during the recess of Congress he in his discretion would judge expedient. By this law he was authorised to apply the embargo to ships of all nations or to our own only. By the bill before us no power is given to lay an embargo, but only to suspend the operation of that already laid; and this law, from the journals, appears to have passed unanimously. He said that he recollected well, that he himself voted for it, on the principles which he has just mentioned. There had been a difference of opinion about the expediency of laying an embargo when it was recommended. Some were apprehensive that it would lead to actual war, and all the alarms of the distress and ruin to be occasioned by it, were displayed with shut doors, as well on that occasion as this, but not so perseveringly; such however was the different spirit of party, between that time and this, that to prevent the impression going abroad, that we were a divided people, the minority did not call the Yeas and Nays on any of the questions respecting it; indeed party spirit had not then assumed the same form it has done since, nor the same temper.

During the early period of the administration of the government, various attempts were made to transfer large portions of the legislative authority to the Executive. The principle was avowed that the Executive branch was too weak and ought to be strengthened in this manner. He would not detain the committee with producing cases; but would assure them that to all these attempts he had been opposed, and generally with success, and yet he, even during that period, along with his then political friends voted for the law vesting the executive with a far more extensive discretion respecting the embargo, than is proposed by the bill now before the committee, and did not think that in so doing, they acted inconsistently. They distinguished between vesting the Executive with power to make or supply the defects of general laws for the government of the citizens, and by an express law authorising the President by methods prescribed in that law, to accommodate the administration of the government to probable emergencies that were not under our control, and that it was not in the power of Congress to provide for with certainty in any other manner. When it was considered that the cases to be provided for solely depended on the measures of foreign nations, to negociate with whom, the President was the constitutional organ of the government; it was certainly expedient to vest him with such legislative powers as were calculated to facilitate an amicable negociation.

Mr. F. said, he was not much affected with the imaginary alarms of danger which some gentlemen suggested. He was not apprehensive that the present or any other President would make the worst use possible to be imagined, of the powers vested in them for special purposes. Even supposing a President to be destitute of moral integrity, yet his common interest with the nation, his high responsibility, the short period for which he is elected, and his future prospects and fame, all contributed as a security against a flagrant breach of trust; but he could not admit that electors carefully selected throughout the whole United States, would ever choose a President destitute of moral virtue.

He knew well that a number of highly respectable members were opposed to the bill from the Senate, now before the committee, not from any apprehension of the abuse of the power proposed to be vested in the President; but from an honest opinion that the embargo will not have been long enough in operation to have produced its proper effect, either in convincing the belligerent powers of their error, or in promoting the manufactures of our own country, before the next meeting of Congress, nor even then, and that it is bad policy towards these powers to discover such anxiety for the suspension of the operation of the embargo, as the passing of this law seems to express. He confessed there was great weight in these reasons, and such were his own first impressions; but on seriously examining the circumstances and reasonable expectations of our own citizens, & the distresses occasioned to all over Europe, by the present unjust and unwise system of the belligerent powers; he believed upon the whole, it was best to afford on our part easy access to reasonable accommodation.

Other respectable gentlemen were for accompanying the powers with more specific conditions and restrictions, for which purpose resolutions had been laid on the table a few days since. Not knowing what circumstances might turn up in the changing and retaliating systems of Europe, he could not agree to such specific restrictions as would leave no latitude of discretion, and were calculated to prevent advances towards negociation. Others again were opposed to all restrictions prescribed to the Executive discretion; but would have it vested without other limitations than what arose from circumstances, as had been done by the law of 1794, already mentioned, and solely on the account of its not being so, were opposed to the bill. He confessed he wished the bill had been more simple; but he did not see the dangers arising from the details of the bill which impressed the minds of those gentlemen, and therefore would vote for it.

A few members advocated an immediate repeal of the embargo. In favor of this, the gentleman from Maryland (Mr. Key) had delivered a long and eloquent argument, in which, however, the distresses arising from the embargo had been much overrated; but it having been ably refuted by the gentleman from South Carolina (Mr Williams,) he would only take notice of one illustration he had introduced in opposition to the bill. He had mentioned the arbitrary conduct of Charles 1st of England, which produced a civil war, and brought himself to the scaffold, and the dispensing power of king James, which drove him and his family from the throne, as similar to that proposed by the bill. Mr. F. said he was much astonished to hear a member of that gentleman's information and candor, introducing such an argument; but few members of the committee, if any, could be imposed on by it; all in any measure acquainted with the history of that period, which he presumed every member was, knew that these high prerogative acts of the Stuarts were not only done without the authority of the legislature, but in express opposition to the acts and authority of Parliament, that they were exertions of the royal prerogative agreeably to the doctrine of hereditary right, passive obedience and non-resistance, then claimed and taught, and consequently had not the most remote bearing upon the question before the committee, which provided only for vesting the President with a provisionary power for a specified purpose, and no longer than during the recess of Congress, and by a special law for that purpose.

A motion was made that the committee now rise. Negatived—Ayes 19.

MR. ROWAN expressed his opposition to the passage of the bill as it now stood. I believe said Mr. R. that the constitution does not permit us to pass it, if expediency does. Permit me to say, that not having on my shoulders any of the pressure of the embargo, yet believing that it is severe, I would join the majority in any constitutional measure to lessen it. I am willing to repeal it; or to define certain events upon which it shall be repealed; but am unwilling to vest a discretionary power in the President to repeal or modify it. It does not satisfy my mind to vote for this, because precedents are produced of the power having been granted heretofore; for there never has been a departure from principle, in which the climax has not been preceded by a progressive deviation. Precedents can have no effect on cases defined by our charter; they have effect only where the exercise of power is left to a sound discretion, and founded on no written rule. Where we have a defined course, precedent should not interfere; a precedent in which it has been departed from, only shews that the constitution has been violated. A repetition but doubles the violation; and no argument can be drawn from precedent where that precedent is manifestly incorrect. Argument of this kind cease to have weight when attended to; because they are found to have been used in all nations which have travelled from liberty to vassalage. Authority of this kind grows immensely, and materials are never wanted. It seems to me however that a plain process of reasoning, if we are influenced by the constitution, ought to be satisfactory to us that we do not possess the power. I take it as correct, that our power is itself derivative. Those who have given powers to us have carefully guarded them. They have defined and circumscribed with caution portions of power which they have delegated. To this House, the Senate, and the Executive, they have delegated a legislative power: to this House one kind of responsibility, to the other branch a different responsibility, and to the other department a far different responsibility. The people then are the fountain of power; and power must be derived from them by delegation or usurpation. If by delegation, it must be by a decided expression of their will. The constitution is the instrument which contains this expression. To the legislature of the union they have by it delegated a legislative power, to the Executive a qualified legislative power, being a veto on the proceedings of the two branches, except sanctioned by two-thirds of the members of each branch. This bill involves a kind of absurdity. No act can have force until sanctioned by the President's assent. The President then by approving this law is to give an assent by which he gives to himself a power with which the people never intended to vest him; and by the bill he is to exercise a legislative power with Executive responsibility. We are accountable to the people at the end of every two years, the Executive at the end of every four years, and the Senate (by the renewal of one third of its whole number) every two years. By this bill the responsibility is confounded, and the legislative responsibility committed to the Executive. Is there any such authority delegated by the constitution? Certainly not; and the very idea of our delegating it is absurd. You cannot empower another to exercise his discretion for you, except you have the power of transferring the exercise of it. No such power is to be found in the constitution. Therefore it seems to me that the people have not conceded to this House the power of vesting the Exective with responsibility of this high kind. The absurdity of a man's exercising a legislative power by which he vests himself with the power of legislating (for so will the President act in approving this bill) must be evident to every one. If the two Houses of Congress pass this law, and he gives it his sanction; he gives himself power to exercise an authority, for which there is no ground in the constitution or in the genius or nature of our government.

The argument of the gentleman from Maryland that if we authorise the President to do this, we can authorise any other person, possesses great force. If we derive our authority to pass this bill from precedent and not from the constitution, we are not confined to the President more than to any other person. Any other person may be selected with the same propriety as the President. So far as the constitutional principle would interfere, Congress have a right to take any other man in the nation.

So far then as we chuse to confine ourselves to the constitution for authority, it seems to me that none will be found there, which will sanction the delegation of the power contended for. The bill does not say that the President shall perform an executive act; it would be unnecessary; for the Executive, from the nature of his office, has the power of executing every law which Congress shall pass. If we empower the execution of a law the President of course is to execute it. Were we to pass this law for that purpose only, it would be unnecessary: but that is not the thing. It vests him with the power of legislation. If we can vest him with the power to suspend our laws, can we not vest him with power to enact new ones? It requires no more legislative force to enact a law than to repeal it; and upon the principle that it requires the same force to destroy as to create, when you vest the power to destroy you vest all power to create; and this bill is only a particular modification of the power for a particular purpose. The arguments which support a transfer to the Executive in this case, would equally apply to a proposition to vest a power in the President to legislate upon his will for the whole nation. You may amuse yourself with names; but names do not change the nature of things; for he will be a despot. For if to govern yourselves be an attribute of freemen, so far as you exercise it by deputation to a single man, you cease to be free; and it is this way the most dangerous despotisms have been constructed, not by grasping but by progressive concessions. An individual does not originally possess power; but when owing to any cause, there shall be gradual concessions of power, and the people shall be ready for vassalage, having armed him with the power, they are gone. This is the way that liberty is lost; and upon this ground, precedent on constitutional questions should have no weight. Recur to the history of republics. No man was ever so hardy as to step forward and overturn them at once; but the people have been influenced to give power unconsciously, until their habits have become favorable to subversion, and enabled an individual to avail himself of their dispositions. It is therefore that commencements in relaxation of principles should be guarded against. Pass this bill, and see what will be its effect. When such a precedent as this has been set in the time of Jefferson's administration (a more popular one never did exist, and for the sake of civil liberty I hope in God never will again) who will dare to resist it? I think we ought to pause on this question. Those on the same side of the question as myself are charged with subtility. It requires none; for it is as plain as day. Who are to legislate? Every man will answer the legislature. Would any man point out the President as legislator-general? It would not occur to any man in the nation that the situation of this country in relation to foreign powers, and its commercial prospects, should depend upon the legislative power of the President of the U. S.

The pressure and weight of the embargo should not have influence in deciding this question. It seems that the feelings of gentlemen are interested in it. The gentleman from Massachusetts wishes to be relieved from it. As you regard civil liberty and the rights of individuals, take it off before you go, sit till you will take it off, or go away & come back to do it. Do not be influenced by sympathy for the people suffering under the pressure of the embargo, to make a sacrifice of the rights of these very people under color of sympathy for whom you are about to pursue this course. These evils may not be the immediate consequence of this course; but you are not less responsible for it from the remoteness of its consequence. We are answerable for all the proceedings of future legislatures upon this precedent. That is the misfortune of it. We cannot see what consequences is attached to it. It may be improved upon by our successors further and further till it is impossible for them to retrace their steps: and it is in that point of view that I am strongly opposed to the vestiture of this power. Is it possible that in this early state of our government this thing should be deliberatebly done? We know very well the popularity of our first President, when the first precedent of this kind was set. It is unfortunate for the happiness and well-being of society that there sometimes are men whose opinions have such a weight as to overturn deliberation. We need no longer deem so extravagant the custom of ostracism, which banished every man whose popularity and influence was too great. Strip this question of men, and resort to the constitution, and it will be impossible to sustain the bill. Even its advocates do not deny that it is unconstitutional. It is not to be found in the fountain of our power; they go back to precedent for authority to pass it, and the resort to precedent is itself one of the strongest arguments against it. They do not find a specific delegation to us of authority to transfer our power. The true ground is abandoned, and those materials resorted to as a substitute for argument which have always ruined republican governments—precedent and feeling. Judgment is silenced by feeling; and then precedent is called in to aid the overthrow of principle. Instead of looking into the constitution and deriving our authority from the fountain, we agree that others shall have thought for us. Here are precedents; the persons who formed them were republicans; no doubt they examined the constitution; we will confide in them, and bottom our decision on their opinion. The first attribute of freedom is to act for yourself; and when others think for you, you evince that you are ready to be governed by them. For if others think for you and act for you, you have little else than vassalage left.

I am opposed to the bill then upon principle. I will join heartily in any constitutional mode of repealing the law. I would say to the gentlemen who passed the embargo law, "I have no doubt that you meant to serve the country by passing it; upon you rests the responsibility, and I will act with you to repeal it in any way which shall be constitutional."

There is a provision in this bill which is more dangerous still. It not only belongs to Congress to regulate commerce, but to declare war. Pass this bill and the Executive has it in his power to declare war. For he is to take off the embargo when in his judgment the interests of the nation requires it; and then under such restrictions as his judgment shall dictate, determine with which of the powers of Europe he will go to war, or whether with both; for he may so exercise the power which you shall give him as not to leave it optional in the nation whether it will declare war or not. Our honor may be assailed in such a manner in consequence of it as not to leave us at liberty to enquire whether properly or not. The power if given at all should be confined to a total repeal, and not put it in the power of the President to say with whom we shall be embroiled. How do gentlemen reason? I have not heard any reasoning, though I have heard it said, and no doubt a course of reasoning might have served to prove it, that this bill only confers Executive power. What did Congress more when they laid the embargo, than that which they now authorise the Executive to do—to legislate upon existing circumstances and probable events. He is to exercise his judgment whether the embargo shall be suspended upon ratification of a treaty of peace, suspension of hostilities, &c. and the modification of the suspension rests with him. If this be not legislation, I am at a loss to know what is. Enforcing a law constitutes an Executive duty; but not exercising a judgment upon the circumstances which form the basis of a law and then acting upon it. The executive cannot combine in himself two powers which the constitution declares shall be for ever separate. Reason and the constitution direct that the Executive and legislative departments shall be kept separate and distinct.

Being young in legislation, I may learn to repose upon the opinion of others, and not be governed by my own interpretation of the constitution; I have not as yet however learned it, and must be governed by my own understanding.