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CONGRESS.

HOUSE OF REPRESENTATIVES.

MARCH 29.

Mr. Dana's Speech concluded.

Permit me, sir, to call your attention to the causes of these outrages, with the view of providing some effectual remedy. One general cause is to be found in the habitual rapacity of those who cruise under the belligerent flags. But we must expect the rapacity to exist, whatever we may say about justice or generosity. The men who roam the seas in quest of prey, will not be deterred from rapine and violence by general declamations about the principles of virtue or the rights of neutrality, while they can seize their object with ease and impunity. Adopt means of prevention, which cut off their hopes of success! These will be found more effectual than any vague professions of patriotism.

There is another cause—The defective nature of the existing law of the U. S. This we may reform, unless restrained by some of the duties of neutrality. In June, 1794, was passed "*An act in addition to the act for the punishment of certain crimes against the United States.*" You will find it in the third volume of the laws. Originally the act was temporary; but, after being once continued in force for a further term, it was ultimately made permanent, by an act passed in the year 1800. By the sixth section it is provided, *That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the U. States or within a marine league of the coasts or shores thereof.* The comprehensive form of expression assigns to the district courts the cognizance of libels for damages, in cases of capture, as well as of libels for restitution. Before this act was passed, a question had existed, whether the district courts, as courts of admiralty, were authorised to take cognizance of such complaints, even where the captured property was within a port of the U. S. and nothing more than restitution was the object of the complaint? The fact may be ascertained by recurring to the state papers of the time. I presume, sir, it is well recollected by yourself. The act of June, 1794, terminated the question about the judicial cognizance of such cases, but by its very terms did not permit the district courts to extend the claim of jurisdiction from the shore to a greater distance than a marine league.

In the case decided in S. Carolina, and noticed in the memorial from Charleston, it would seem, that considerable dissatisfaction had been felt in consequence of the opinion, judicially given by the district judge: and, if my recollection is not fallacious, some censorious remarks were published in a paper or papers of the day. That serious discontent should exist when the very entrance of such a harbor as that of Charleston was officially pronounced to be without the verge of territorial protection, ought not to excite surprise in any reflecting mind. There was serious cause for inquietude. But, if I understand that case, I can have no hesitation in declaring my opinion, that in his construction of the law, which marked the extent of his authority, the decision of the district judge was correct. And, instead of censuring, we ought to approbate and hold in honor that spirit of judicial independence which pronounces sentence according to the existing law, however unacceptable may be the result even to persons worthy of high estimation. If no relief is provided for cases of this nature, the fault is not in the district judge, but in the existing law. The evil is one for which we have the power to authorise a remedy. It belongs not to any judge or court of the United States under the law as now existing: and, while no other provision is made by congress with respect to the extent of the territorial protection of the U. S. it is not to be expected, that the President will assume the responsibility of attempting to enforce any extension of the principle in any case whatever beyond a marine league from the shore.

Does our duty, as a neutral power, require us to submit to this limitation in all cases? According to my apprehension of the subject, the act of June, 1794, ought to be considered as defining the limits within which this country would assume the national duty of protecting the interests of all in friendship with us. It assumes a public obligation in favor of foreigners as well as citizens: but the extent of that obligation is not the whole extent of privilege which we may claim for our own national interest and security, for the safeguard of our commerce and the supply of our treasury.

Among the documents laid before congress, I find a letter, of the 5th of January 1804, to Mr. Monroe from the Secretary of state; in this, there is a reference to the British extension of territorial jurisdiction to *four leagues* from the shore. The Secretary observes, "*The extension of the British claim to four leagues from the shore is inferred from an act of parliament passed in the year 1736.*"—The fact of this British extension of jurisdiction, I believe to be unquestionable. According to the view which I have entertained of the subject, a jurisdiction to this extent is legally established for purposes of revenue, and not on account of any supposed claim to the honors of the flag within the "*narrow seas.*" One thing at least is certain. A like extension of jurisdiction is established on the part of a country whose government makes no high claim to honors of the flag within any seas contiguous to the territory. Allow me, sir, to turn your attention to the *act to regulate the collection of duties on imports & tonnage.* By the 99th section, *the officers of the revenue cutters are required to go on board of all ships or vessels, which shall arrive within four leagues of the coast, if bound for the U. States, to search and examine the same: and to affix and put proper fastenings on the hatches, and to remain on board until they arrive at the place of destination.* The 102d section requires the revenue cutters and boats to be distinguished by a characteristic ensign and pendant; *and in case any ship or vessel liable to examination shall not bring to, on being required or chased by any cutter or boat having displayed the pendant and ensign prescribed for vessels in the revenue service, it shall be lawful for the person having command of such cutter or boat to fire at or into such vessel which shall not bring to, after such pendant and ensign shall be hoisted, and a gun shall have been fired by such cutter or boat as a signal.* Here we see a jurisdiction asserted by the U. S. to the distance of *four leagues* from the coast. It is exercised for the protection of the national revenue.—Officers in the immediate service of the government, with a body of men constantly paid and supported out of the products of the customs, are employed to enforce the law, and are armed with a power to wound or kill those who refuse to conform. Merchant vessels bound to the U. S. *within four leagues of the coast,* are to be placed under the charge of public officers, who are to remain on board until the arrival in port. While the vessel is thus under the charge of the officer within the actual jurisdiction of the United States, will you permit a foreign cruiser, within this space of sea, to bid defiance to your law, to seize the vessel with your officer on board, and proceed with vessel and cargo and officer to a foreign port for adjudication?

Soon after the commencement of the French revolutionary warfare, the captures made by belligerent cruisers gave rise to enquiries with respect to the extent of the protective jurisdiction of the U. S. Amidst all the political agitations of the time, it became the duty of the administration to fix on some rule for preventing the disturbance of our public peace by foreign hostilities. Under the existing circumstances, it was determined to restrict the exercise of the authority of the United States, for that time, to the least distance claimed on the coasts of any nation in any case. That this was the fact, may be seen by examining the papers laid before congress by the President of the U. States near the close of the year 1793.

With respect to the right of territorial protection along the coasts of a neutral power, the general principle is clear. Questions have been made about its extent. The right to a reasonable distance is admitted. But this does not distinctly solve the difficulty. What is a reasonable distance?

If regard is to be had to the nature of our coasts and to our distance from all the nations of the civilised world, the general principle would allow to the U. S. an ample extension of the territorial immunity from hostilities. A right of protective jurisdiction over some portion of adjacent sea is founded in the general right of a neutral power to provide for the common safety, prosperity, and tranquility. It is essential to the neutral character of a country. It results from the principle of the great law of self preservation. It is a necessary attribute of territorial sovereignty. With respect to the practical exercise of this right, different distances from the shore are mentioned by writers on public law. Where the coast is prominent as well as free from shoals, the least distance towards the main ocean is the full range of a bomb or cannon shot, estimated at *three geographical miles or a marine league.* Authorities might be mentioned in support of other distances, *two leagues—three leagues—the distance at which ships may be discovered, and from which ships may discern the land—the extent of soundings,* unless the coast be so steep that soundings cannot be found near the land, in which case the measure is the reach of a cannon shot supposed to be fired from the shore: This opinion was entertained by Valin, the celebrated commentator on the marine ordinance of France. With respect to the U. S. the idea has occurred of extending the protection as far as *the Gulph Stream.* From the President's communication at the opening of the present session, it would seem as if he had some view to this in equipping a force to cruise for pirates within the limits of the Gulph Stream and to bring them in for trial.

Amidst all the variety of authorities and opinions on this subject, the general principle is not in dispute. And it is certain, that the benefit of the principle cannot be equally enjoyed if any specific measure be assumed for the extent of territorial protection in all cases. In a case where the coast is prominent, where the passage into the harbor is free from obstructions or hazard, & where the harbor is so situated that a vessel may be in port instantly on quitting the open space of the main ocean, the distance of a marine league from the shore may afford ample immunity to the navigation of such neutral port. But the case is materially different, where the entrance of a harbor is rendered difficult or hazardous in consequence of bars or shoals or other causes, where the principle of safety requires vessels employed in the trade of the port to remain for any time in a road or place of anchorage at a greater distance than a league from the shore, and to wait for the wind or tide, or pilot, or day light, or clear weather—in any such case, if the marine league is to be the uniform measure of territorial protection, the principle would be sacrificed to the particular rule; whereas every rule of this kind ought to be subservient to the principle. Another distinction is to be made with respect to ports and harbors situate in curvatures or recesses of the coasts more than a league from the open space of the main ocean; any specific distance from shore, if made the uniform measure of protection, will not allow to them the degree of maritime security which they might fairly claim in comparison with others. In principle, sir, the rule of a marine league or any other precise measure is applicable to coasts not curved or to the prominent portions of coast. Places of anchorage, such as I have mentioned, whether called roads or roadsteads or however denominated, are to be regarded as appendages of particular ports, and as such are within the protective jurisdiction of the country to which they belong.

In considering, therefore, the protective jurisdisdiction of a neutral power as a privilege which may rightfully be claimed for securing the interests of its commerce and revenue, the principle admits an extention to various distances from shore, according to the nature of the coasts as diversified by shoals, bars, curvatures, recesses, head lands, or small islands.

This, in effect, agrees with the opinions of writers on public law, in relation to the neutral immunities of *havens, roads, gulphs, or bays.*

In support of the sentiments now suggested on this subject, I do not rely merely on the abstract principle of right or the opinions of writers on public law. In national usage, it is already established, "that in places where the land, by its curve, forms a bay or gulph, we must suppose a line to be drawn from one point of the enclosing land to the other, or along the small islands which extend beyond the head lands of the bay, and that the whole of this bay or gulph is to be considered as territorial sea." The principle has been clearly recognised in the practice of the predominant maritime power in Europe. It has been repeatedly acted upon in England. Two centuries have passed since it was unquestionably holden as a rule of conduct in that country. The tracts of sea within the recesses of the coasts are distinguished by an appropriate denomination; they are called the chambers. A particular statement of them was returned to the high court of admiralty in the year 1604.

In modern times, it has not been usual for England to remain neutral during maritime wars in Europe. But in the seventeenth century there was a period of such neutrality; when various reports were made to the king in council, with respect to alledged violations of the immunities of having roads, or chambers. They are to be found in the works of Sir Lionel Jenkins. I will not detain you at this time by reading those reports; as the law of the English admiralty on this subject is distinctly stated in a charge given at the admiralty sessions, by Sir Lionel Jenkins, who was judge of the high court of admiralty. I will read those parts of the charge to which I refer:—After speaking of the claim to the honors of the flag upon the four seas, he says, "The next thing is the right of sanctuary and safe conduct, which the king hath, time out of mind, exercised, not only in his harbors and ports, but especially in his chambers, that is, in those tracts of sea which are between some of the most eminent promontaries or points of land, a straight imaginary line being drawn between them, for instance, between Flamborough Head and the Sporn, between the North Foreland and the South Foreland, between Portland and the Start, between the Land's End and Milford; these chambers being so reputed time out of mind, and so returned in the year 1604, about seventy years ago, by jurors upon their oath, to the court of admiralty."

"You are therefore to enquire if any men of war, under foreign commissions from any of the parties now in war, do lie hovering near any of his majesty's ports, havens or harbors, or skulking within any of those places called the king's chambers, in order to surprise merchant ships belonging to the king's friends and allies, and to snap them as they are coming or going out of our ports. You are to present such, if you know any; and the king's majesty is to be informed of it out of the records and presentments of this court; that they may be seized and arrested, if they be driven or do come in, or else may be fetched in by his majesty's ships, and punished, as wilful violators of the treaties his majesty hath with his neighbors, and as malicious disturbers of our trade."

This authority is full, decisive. Possibly it may questioned as being of ancient date. How is the case in modern time? To prove, sir, that the same principle prevails, and is practically recognized as a rule of public law within the present century, I may appeal to the authority of a person distinguished for judicial talent and eloquence, and celebrated by his countrymen as the oracle of maritime law in Europe: It is the authority of Sir William Scott, the present judge of the high court of admiralty in G. Britain. The principle was brought into view in a case before him in the year 1801. The case arose on a capture made by a detachment from a British squadron employed in the blockade of Amsterdam. The vessels was proceeded against for breach of blockade. It was claimed as having been taken within the territorial protection of Prussia, then a neutral power; and the claim was given under authority of the Prussian minister. On the part of the captors it was denied that the vessel was so taken.

Sir William Scott held the claim not to be established. In speaking of the place of capture, he refers to the principle respecting maritime chambers as being perfectly understood and admitted. With respect to the place, he says, "It is quite open and patent to the sea; there are no head-lands that shoot beyond so as to make what are called chambers; no shores projecting extra."

After a principle of public law has been so fully recognized in practice on the part of the belligerent power which now holds the decided superiority on the ocean, I think, sir, we may fairly claim the benefit of it for our country against the cruizers of that and every other maritime power.

On this subject, I wish to be distinctly understood. Immunity from hostilities may be claimed to the distance of a marine league from shore, in any case, however bold or prominent the coast. To this extent the district courts have cognizance of complaints. Beyond this, it is at our option to extend protection along the coasts of the U. S. over the roads or places of anchorage, and over the tracts of sea within the principle head-lands. This is a privilege appertaining to our territorial sovereignty. It may be exercised without infringing the rights of any belligerent power: It is evidently for the benefit of the U. S.

To enjoy this benefit, some legislative provision is requisite; there must be some amendment of the existing law of the U. S. Without altering the act respecting the jurisdiction of district courts perhaps the main object might be attained by vesting a discretionary authority in some of the departments of government. It has been supposed that the repetition of outrages, such as have lately been experienced near our ports and on our coasts, might be essentially checked, if not wholly prevented, by giving effect to some legislative provision, which would require no addition to the national expenditure, no augmentation of the naval force of the U. S. beyond what may be judged proper for a peace establishment. The Executive might have a discretionary authority to be exercised for the safeguard of merchant vessels employed in the trade of the U. S. and for this purpose might be empowered to interdict captures within the roads or spaces and precincts which have been menon ed.

Whether these sentiments are approved in their full extent or not, the House, I trust, will have no hesitation in agreeing, that the subject is of such importance as to deserve the examination of a committee, who may present some provision in a detailed form. For the purpose of having this examination, I propose that the following resolution be adopted by the House.

Resolved, That the committee, to whom was referred "so much of the message of the President of the U. S. as relates to aggressions committed on our coasts by foreign armed vessels, to the defence of our ports and harbors, the building of 74 gun ships, and preventing the exportation of arms and ammunition," be instructed to enquire into the expediency of providing by law for the further safeguard of merchant vessels in the vicinity of the U. S. and to report by bill or otherwise.

Carried without division.

FROM THE AMERICAN CITIZEN.

Defence of New-York——It is a subject of gratulation to our fellow citizens that a system of defence is now in operation for the city and harbour of New-York. The survey made by Col. Williams has for same time been under consideration at the War office. A plan of repairs for the works at Fort Jay has been agreed upon, and contracts have been made under the direction of Gen. Dearborn by Capt. Whilley, for the stone and other materials necessary for the work. A large quantity has already been delivered on Nutten Island. The undertaker of the masonary and his labourers are expected to begin their labours within a few weeks. It is understood that the whole of the ramparts and parapets are to be faced with brick and stone. New ravelines and curtains are to be added to the saline angles of the fort. The original design of the engineer is to be completed or improvement upon, and every additional repair and enlargement made that skill and labour can give. In consequence of these defensive operations, it is affirmed by competent judges that both the east and west sides of the city will be protected by the cannon of the fort so effectually, that an hostile fleet will find it impossible to lie at anchor in either of the rivers. Fort Jay will thus be made a very formidable work; capable of giving security to the city, and of destroying the ships of an enemy.

Orders are now in execution at Washington, Philadelphia and New-York, for mounting many pieces of heavy cannon.—At Mr. Foxall's foundary at George-town, and at other manufactories in the nation, the casting and boring of cannon for the public service has long been going on.—These home-made guns are of the most excellent quality, and when mounted will be at the disposal of the executive for the general defence. The mountings are to be of the best materials, and the cannon and carriages when finished to be transported to New-York, or to any other place where they may be wanted.

Proposals for contracts are likewise in circulation from the navy department, for the construction of a number of gun-boats upon the most modern and improved plan, at the city of New-York. Mr. Smith's agent has for some weeks been engaged in receiving proposals for building these powerful engines of offence to an enemy. As soon as the bargains can be made the business will progress. A marine guard has likewise been sent to the navy yard at the Wallabout. Measures are taking for the housing, storing, and preserving the timber. And it is expected the public ground will soon be enclosed and put into handsome fence.

With such rapid and auspicious beginnings, we may expect that in the course of a few years, our city, under the auspices of a wise and provident administration, will be placed in such a state of security that no one need be afraid of hostile invasion; but all the inhabitants pursue their occupations in peace, under an assurance that there is nought to make them afraid.

National Intelligencer.

THE BIRTH DAY OF INDEPENDENCE,

BY MR. JOSHUA J. MOORE,

Composed for the 4th July, 1806, and recited on the Banks of the Tyber, in the presence of a party of the Citizens of Washington, met to COMMEMORATE the DAY.

To hail the Dawn of her glad Jubilee,
Columbia's Genius mounts the highest point
Of wooded Allegany's lengthened Spine.
Beneath her hallow'd feet the licken'd Rock,
Laid by the Rillets of perennial springs,
Echoes to whispers of the balmy breeze.
Forth from the sinuous crag the laurel peeps,
Of polish'd leaf and coral delicate;
The Helianthus, grac'd with golden Rays,
Baring his conscious bo m to the sun;
And low Agalea of honied tube,
Beswarm'd with humming birds of thousand dyes:
High o'er her head aspires the hairy pine;
The maple sweet-distilling, and the oak,
Festoon'd exuberant by climbing vines;
The Liriodendron gay, of lofty mein,
And rich Magnolia, with essence fraught,
Exhaling odours exquisitely sweet,
(Perfume without compare) about the field.
And, higher still, in steady circle towres
Her noble Eagle, with his eye of fire.
O'er the calm silence of the fresh-ind morn,
Soft strains of temper'd music solemn steal,
With gradual rise, from the attendant train,