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Senate of the United States.

January 20, 1806.

Agreeable to notice given on the 16th instant, Mr Wright asked and obtained leave to bring in the following bill, which was read and passed to a second reading

A BILL,

For the protection and indemnification of American Seamen.

Whereas, by the treaty of amity, commerce and navigation, made between his Britannic majesty and the United States, at London, on the nineteenth day of November, one thousand seven hundred and ninety four, by the first article of said treaty, it is agreed, "That there shall be a firm, inviolable and universal peace, and a true and sincere friendship between his Britannic majesty, his heirs and successors, and the United States of America and between their respective countries, territories, cities, towns, and people of every degree, without exception of persons or places. And whereas, in direct violation of said treaty, his Britannic majesty has caused to be impressed out of the ships of the United States, sailing on the high seas divers citizens of said U. States; and has compelled them serve on board the ships of war of his said Britannic majesty, in violation of their liberty, and at the hazard of their lives; and in despite of the remonstrance of the government of said United States, continues said unjust practice; and the seamen of the United States so impressed, by force, retains in his service. And whereas, the United States are solemnly bound to protect all those who are bound in allegiance to said United States.—Therefore,

Be it enacted by the senate and house of representatives of the United States of America, in Congress assembled, That from and after the day of next, any person or persons, who shall impress any seamen on board any vessel bearing the flag of the United States, upon the high seas, or in any river, haven, bason or bay, under pretext or color of a commission from any foreign power, shall for every such offence be adjudged a pirate and felon; and on conviction shall suffer death. And the trial in any such case may be had where the offender is apprehended, or may be first brought.

Sec. 2 And be it further enacted, That, it shall be lawful for any American seamen, sailing under the flag of the United States, on any person or persons attempting to impress him by force, from on board any vessel of the United States, upon the high seas, or in any river, haven, bason, or bay, to repel such force by shooting, or otherwise killing and destroying the person or persons so attempting to impress him, and shall, as an encouragement to resist, be entitled to a bounty of two hundred dollars, to be paid to him or his order, or legal representatives, out of any money in the treasury, not otherwise appropriated.

Sec. 3. And be it further enacted, That on information being given to the president of the United States, proving satisfactorily to him, that any citizen of the U. States, who shall have been impressed or forced by violence or threats, to enter on board any foreign vessel, shall suffer death, or any other corporal punishment by the authority of such foreign power; it shall be lawful for the president of the United States, to cause the most rigorous and exact retaliation on any subjects of that government, whom he is hereby authorised to seize and take for that purpose.

Sec. 4. And be it further enacted, That every American seaman heretofore or hereafter impressed and compelled to serve on board any foreign ship or vessel, shall be entitled to receive as an indemnification for his slavery and hardships on board the ship in which he has been, or shall be compelled to serve, from the day of his impressment, the sum of sixty dollars per month, for every month he has, or shall serve, on board said ship or ships; and that the said seaman, his heirs, executors, administrators, or assigns, shall be entitled to recover the same in the district court of the state in which the port lies, from which the vessel cleared for the voyage in which he was taken, by attachment of any private debt, due from any citizen of the United States, to any subject of that government, by whose subjects he had been impressed; and that any sums of money so attached out of the hands of any debtor, shall be a payment of so much of said debt, and may be pleaded in payment or discount to the amount of the said sum so attached, and all the costs of said attachment, which shall be allowed as a payment of that amount in any suit for said debt. And that so much of the treaty of London, of nineteenth of November, one thousand seven hundred and ninety four, as secures the inviolability of such debts, as will be infringed by the attachments or recoveries, hereby authorised, shall not (so far as is necessary in the execution of this act only) be regarded as legally obligatory on the government or citizens of the U. States.

On the bill for the protection, and indemnification of American seamen.

MR. WRIGHT—Mr. President—As introductory to the consideration of the merits of this bill, I feel it my duty to call the attention of the Senate, to the present degraded state of impressed American seamen, thousands of whom have been pressed on board British ships of war, and compelled by whips and scourages, to work like galley slaves whether they have been forced by the hand of violence, from on board our own ships, sailing on the high seas, under the flag of the U. S. carrying the spare productions of the toil of the American planter and merchant, to a foreign market, or returning with their proceeds.

In doing this I wish not to enlist your sympathies, but only to present to you a correct state of the facts on which this bill is predicated; facts that stand recorded in the official reports of the Secretary of State—the black catalogue of impressments.

I will next present to your view the measures adopted by the legislative and executive departments of the government of the U. S. for their redress.

"In the year 1796 Congress by law, [3 vol. 322] directed agents to be appointed, to reside in Great Britain, and in such foreign ports, as the President might direct, whose duty it should be, to enquire into the situation of such American citizens, or others, sailing conformably to the law of nations, under the *protection* of the *American flag*, who had been, or should be impressed, by any foreign power, and to endeavor by all legal means to obtain their release; and to render an account of all impressments and detentions, to the executive of the U. States."

"They also directed the collector of the several ports, on proof being made of the citizenship of any seamen, to give him a certificate thereof, under a hope, that it would have been respected in foreign ports, and have protected him from impressment. This certificate acquired the *name* of a protection."

They also directed, "That every captain of a vessel, in case of any of the crew being impressed, shall enter his protest at the first port he shall arrive, with the name and residence of the person, and transmit immediately by post a duplicate of such protest, to the nearest agent, minister, or consul resident in such country, and also on his arrival in America, to the secretary of state."

"And that every captain on his arrival at any port of the U. S. before he shall be admitted to an entry of his vessel, shall be required by the collector to declare on oath, whether any of the crew have been impressed, which he shall take under the penalty of 100 dollars, and the collector is bound to return a list of all impressments, so communicated to him, to the secretary of state."

In 1799, the secretary of state is directed by law [4 vol. 503.] "To lay before Congress annually, a statement of all impressments reported to him, that they might be officially, and precisely informed of the state of our impressed seamen."

Under the legislative provisions and the intervention of our agents appointed for that purpose, hundreds of our seamen no doubt have been discharged by the board of admiralty, while at the same time and under the same authority, the impressments kept pace with the discharges, so that instead of redressing the wrong, it was only inflicted in routine, thereby adding insult to injury. This all important subject, from its commencement, has also been particularly attended to by the executives of the U. S. Our minister at London, during three successive administrations, have been specially charged with it, and we have witnessed their diplomatic exertions to bring this lawless and cruel practice to an end, but all to no effect. And now we are informed by the President of the U. S. in his message of the 17th Jan. last, that "On the impressment of our seamen, our remonstrances have never been intermitted, *a hope* existed at *one moment*, of an arrangement that might have been *submitted to*, but it soon *passed away*, and the practice, though relaxed at times in the distant seas, has been *constantly* pursued in those in our neighborhood."

This Mr. President, is the prospect presented to our view, whereby thousands of our unfortunate seamen, that hardy and invaluable class of citizens, are consigned to the most intolerable bondage, (by the imperious mandate of a British naval officer, whose word is the supreme law from which there is no appeal,) and which gloomy prospect we are now informed, by the highest authority, there is not a spark of hope left to enlighten.

Sir, I have invited you to investigate this subject with the eye of temper, but at the same time, I trust that the nation's justice will not be compromitted, by exceeding the bounds of moderation; for it has its limits; and we are informed by the law of nations [Vat. 433 § 352]—"That the true and just welfare of the nation is the grand rule. Moderation is always laudable in itself, but the conductors of nations ought to make use of it, *only* so far, as it is consistent with the *happiness* and *safety* of their people." Under this view of the subject can we submit to this state of things? That is the question. I have presumed not; and under that presumption, I have brought the subject before this Senate in the shape it is presented in this bill. Sir, I wish it to be recollected that the infant state of our navy suppresses every hope of redress on the element of our wrongs, and that this is a measure of *necessity*, not of choice. Wherefore I trust it will not be thought too nervous, when it is considered, that we have *just cause of war*. I will therefore, now, for, proceed to the consideration of the merits of this bill.

The first clause states, that in violation of the treaty of amity, commerce, and navigation, made at London on the 19th Nov. 1794, his Britannic majesty had caused the impressment of our seamen sailing under the flag of the U States.—The treaty [2 vol. L. U. S. 464] secures the inviolability of the citizens, and subjects of the respective powers, and we are informed by the law of nations [Vat. 655, § 39] "That a nation acts against the nature and essence of every treaty of peace, nay, against peace itself, by deliberately, and wantonly offending him, with whom peace has been made, and treating him or his subjects, incompatible with peace, and which he cannot suffer *without being wanting to himself*." But it may be said that this has not been authorised by the British government.—Let us examine that fact. It is declared by the law of nations, [Vat. 252 § 73, 74 76.] "That however as it is impossible, for the best regulated state, or for the most vigilant and absolute sovereign, to model at his pleasure, all the actions of his subjects, and to confine them on every occasion, to the most exact obedience, it would be unjust, to impute to the nation or to the sovereign, all the faults of the citizens, we ought not then to say in general that we have received an injury from a nation, because we have received it from one of its members."

"But if a nation or its leader approves and ratifies the fact committed by a citizen, it makes the act its own: the offence ought then to be attributed to the nation as the author of the true injury, of which the citizen is perhaps only the instrument.

"If the sovereign disavows the act he ought to inflict on the offender exemplary punishment."

So far I have called in aid the law of nations: I will now refer to the form of the authority in the case of impressment, which is in these words, [Foll. C. L. 156.] "In pursuance of his majesty's order in council, dated the 19th day Jan. 1742, We do hereby impower you to impress or cause to be impressed "so many seamen, &c.—and I will refer you to the facts in your own possession, that his Britannic majesty approves the act, both by continuing the impressments, and by his lately promoting the captain of the Cambrian frigate (whom he recalled to appease our complaints on that head) to the command of a ship of the line; so that in form, in law, and in fact his Britannic majesty has caused the impressment of our seamen, or he must have punished and not promoted so notorious an offender. On this point I presume then there can be no doubt.

Mr. President—I have thought it neither unprofitable nor irrelevant to the present subject, to examine the right of impressing British subjects.

British jurists have more than questioned this right, and the British parliament have, I presume, decided the question.

Sir Edw. Coke [2 inst, 47] says—The king cannot send any subject against his will out of the realm, not even into Ireland, for then under pretence of service, he might send him into banishment. [H. H. P. C. Notes 679]—In Hales H. P. C. it is declared "repugnant to the liberty of an Englishman and irreconcileable to the established rules of law, that a man, without any offence by him committed, or any law to authorize it, should be hurried away like a criminal from his friends and family, and carried by force into a dangerous service.

That the common law did admit of such a practice, must have been the opinion of the British parliament, who in the time of Charles I. passed a statute [16 C. 1, c. 5] "to authorise the impressment of soldiers and seamen for sea service or service beyond sea,"—which soon after expired, being of short duration. They must also have been of the same opinion in the time of [2 and 3 Ann, c. 19, 3 and 4 Ann c. 11, 4 Ann c. 10, 5 Ann, c. 15, 6 Ann, c. 10] queen Ann, when a number of statutes of a very short duration passed in parliament, in the same terms as the statute of Charles above stated. I presume they would never have passed laws to have *authorised* a proceeding that was justifiable by the common law. Judge Foster, who is quoted by Britons as an authority on this point, shall be examined. [Fos. C. L. 157] He states in the case of Broadfoot, who was indicted for the murder of Calahan, "That by pressing mariners on one hand, a very useful body of men seem to be put under hardships inconsistent with the *temper & genius of a free government*, on the other the *necessity* of the case *seemeth* to entitle the public to the service of this body of men, whenever the safety of the whole calleth for it. "I think the crown has a right to command the service of those people whenever the public safety calleth for it, the *same right* that it hath to require the personal service of *every man* able to bear arms in case of a sudden invasion or formidable insurrection. "The right in both cases is founded on one and the same principle, *the necessity of the case*, in order to the preservation of the whole." But he adds, [Fos. C. L. 154] "If it be asked where are the adjudged cases, on which he grounded his opinion? He freely confesseth that he hath not met with one in which the legality of pressing for the sea service hath directly come in question. He states that according to his best *apprehension*, (having thought much upon the subject) the right of impressing mariners for the public service is a *prerogative, inherent in the crown, grounded upon the common law*, and recognized by many acts of parliament." With great deference to his honor, I would ask if any thing can be evidence of the common law, but judicial decisions on the point which he admits are not to be found?—I will also examine the statutes on which he relies as recognizing this right. I would here observe that he holds the soldier and seaman alike bound by the same law, and it would [Foll. c. 1. 166] seem by Adm. Seymour's commission, that his power extended to impress ships, captains masters, pilots and seamen, as well as all other persons fit for the purpose. This was for the sea and foreign service, and did not extend to land soldiers, as till the 24th year of Charles II, all the lands were held by military tenures, whereby the tenants were obliged to furnish soldiers and every thing necessary for them in war; but by 24 C. II. [24 C. II. c. 12] the tenures were abolished, and I question much whether the stat. Charles I. extended to the feudal tenants, who were bound to serve only in England. By a statute of Henry VII. [7 H, c. 1] it is enacted, that if any soldier being no captain immediately retained with the king which shall be in wages, and retained, or take any *prest* to serve the king upon the sea or upon the land beyond sea, depart out of the king's service without licence from the captain, it shall be adjudged felony.

The stat. of Henry VII. [18 H. 6, c. 19] against desertion was confined to extend to soldiers found by *tenure or covenant* to serve on land—and a question was made whether soldiers who had taken *prest* to serve against the rebels in Ireland, were liable to the penalties of that law, which was cleared up in parliament in these words, "That the said stat. Henry VI. in all pains, forfeitures and penalties did, doth, and hereafter shall extend as well to every mariner and gunner having taken, or who hereafter shall take *prest* or wages, to serve her queen's majesty, as it did, or doth, to soldiers, any opinion to the contrary notwithstanding." These are the statutes from whence the right is pretended to be inferred; which, I presume, go to shew that the mariner and soldier must be enlisted before they are liable to the penalties of desertion, and that it is by *contract* and not by *force*, the soldier becomes bound to serve, and that the right is founded in the prostitution of the sound of the word [Boy. D. Cow. Inst. J. L. D.] *prest* for the sense, which would mean "money paid to a soldier or sailor to enlist"—nor is at all to be wondered at, that a right founded in *necessity*, *the tyrant's plea* should rest on a pretext so flimsy, or that the barriers of etymology should not be able to withstand the physical force of a press gang, as necessity has no law. And although this right of the seamen to be exempt from service but on their enlistment, has been under the claim of prerogative substantially violated, yet the form of the commission to impress remains the evidence of this violation. It is in these words: [Foll. C. L. 15 c.] "We do hereby empower and direct you to impress or cause to be impressed so many seamen, &c. giving unto each man one shilling for *press money*" &c. Thus have I shewn, that British subjects are not legally bound unless they receive *prest*, or bounty to enlist. And to avoid imposition it is provided by 8 Geo. [c. 8 & 6 W. & M. c. 15] "that no person shall be enlisted for the land service, who did not in presence of a magistrate, high constable &c. declare his free consent to be enlisted as a soldier."

Can we then submit to the exercise of this *royal prerogative right*, to be enforced on those sailing under the flag of the U. S. without the limits of the British empire. A practice, Judge Blackstone informs us, Britains have submitted to with great reluctance; and will it not be said "that we are wanting to ourselves" if we could not guard our seamen against this outrage by all the means in our power? But it may be said the British government have a right to the service of her own subjects.—I have shewn, not by impressment, and I will now shew that they have the right of becoming American citizens, and being protected in that right. [Tuck. Black. 1 vol. p. 145] "By the law of nature, man is subject to restraints and may pass into any region.—[Vat. 172 sec. 225] By the law of nations every subject has a right to expatriate himself and seek his fortune where he can best procure his interest. [1 Blac. Com. 265 F. N. B. 85] And by the common law every Englishman may go out of the Realm without the king's leave for any cause he pleaseth. And so far has Britain recognised this right, in *others* by parliament—that by the navigation act, one fourth of every ship's crew may be foreigners.—[6 Ann. c. 37] By the statute of Ann three fourths may be foreigners, and by the statute of Geo. 2d [13 Geo. 2, c. 3.] it is provided "that any foreigner serving on board of any merchant ship or ship of war for two years in time of war, shall ipso facto become a British subject, entitled to all the privileges of a native born subject." Thus we see Britain invites foreigners into her service, and secures them in all the *privileges* of her native born subjects, among which, *protection*, is the most important. Can it be then that Britain will exercise a right that is not legitimate?—or claim for herself what she will deny to others? If not, then she admits the right of expatriations, which is established by the law of nature, of nations, and the common law, and tested by the authority of the British Parliament. Can we then feel ourselves at a loss for authority to protect those who sail under the flag of the U. S. when we see Britain not only inviting foreigners into her service but securing them *protection* by the *solemnity of a statute*? Can we then, I say, want authority or zeal to protect our citizens in their rights secured to them by the solemnity of a *Constitution under the solemnity of an oath*.

Mr. President, permit me here to observe, that all legitimate government is derived from this source, and is founded