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CONGRESS.

[*In Senate of the United 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 scourges, to work like galley slaves, whither 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 seaman, 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 these 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, & 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 ministers at London, during three successive administrations, have been specially charged with it, and we have witnessed their diplomatic exertions to bring this lawless & 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. 483 § 332.] "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, sir, 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, § 59.] "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, [Fost. C. L. 156.] "In pursuance of his majesty's order in council, dated the 19th day Jan. 7 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 not 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 & seamen for sea service or service beyond sea," which soon after expired, being of short duration. They might also have been of the same opinion in the time of [2 & 3 Ann, c. 19, 3 & 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 these 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, [Fost. C. L. 154] "If it be asked where are the adjudged cases, on which he groundeth 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 [Fost. c. l. 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] these tenures were abolished, and I question much whether the stat. Charles I. extended to the feodal tenants, who were bound to serve only in England. By a statute of Henry VII. [7 H. 7, 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 VI. [18 H. 6, c. 19] against desertion was construed 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. Hen. 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 inlisted 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 word means "money paid to a soldier or sailor to enlist"—nor is it 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, as necessity has no law, the physical force of a press gang. And although this right of the seaman 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 retains the evidence of this violation. It is in these words: [Fost. 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 I have shewn, that British subjects are not legally bound unless they receive *prest*, or bounty to enlist. And to avoid imposition it is provided by statute [5 & 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 inforced on those sailing under the flag of the U. S. without the limits of the British empire. A practice, judge Blackstone inform us, Britons have submitted to with great reluctance; and will it not be said "that we are wanting to ourselves" if we should 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 no restraints and may pass into any region.—[Vat. 172 sec. 225.] By the law of nations every subject has a right to expatriate himself & seek his fortune where he can best promote 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 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 expatriation, 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 the people, and is founded in compact only, and intended for the good of the whole, "that protection and allegiance are reciprocal obligations, each so important, that in all governments, in all ages they have been secured by the solemnity of an oath.

I ask then, is not the conduct of Britain a violation of the rights of our seamen? Are they not secured in these rights by the Constitution, & are we not bound by the most solemn obligation to protect them to the utmost of our power? By the law of nations [Vat. 251. sec. 1.] "Whosoever uses a citizen ill indirectly offends the state, which *ought to protect* their citizens, and his sovereign should *revenge* the injuries, *punish the aggressor*, and if *possible* oblige him to make *intire satisfaction*, since otherwise the citizen would not obtain the *great end* of the civil association, which is *safety*.

I cannot then permit myself for a moment to suppose that a right so important, *secured by ties so solemn*, and so palpably violated, will not be protected, to the utmost of the power of the Congress of the U. S. by all the legislative means they possess, consistent with the sound principles of legislation, and good government.

By the constitution, Congress are to define and punish piracy: in defining piracy, I wish them not to exercise a wild but legal *discretion*, which is itself defined, "to discern by law what is just." I will therefore call their attention to the subject, as it has been considered by the law of nations—the common & statute law of Great Britain. By the law of nations, [Mol. d. j. m. 57.] "the attacking a ship at sea and taking away some of the men to make them slaves is piracy."

By the common law, [4. Blac. Com. 72—3. Inst. 109.] piracy consists in committing those acts of robbery and depredation upon the high seas which if committed upon land would be felony—

[4. Bl. C. c. 71] Every *community* have a right to inflict that punishment upon a pirate by the rule of self defence, which an individual would in a state of nature have been otherwise intitled to, for any invasion of his person or property. By the statute of Elizabeth, [43. Eliz.] it is enacted that whoever shall hereafter without *lawful authority* take any of her majesty's subjects against their will and *detain them with force*, or to make a prey or spoil of his person or goods upon deadly feud, *or otherwise*, should be adjudged and taken to be a felon, and should suffer the pains of death without benefit of clergy.

This statute was predicated upon a state of things in that country, not more intolerable than the present state of American seamen; nor can it be considered as an incorrect exercise of the discretion of Congress in defining piracy, to declare the impressment of our seamen, and consigning them to so abject a slavery as they are subject to on board British ships of war, piracy—when by the law of nations, by the common law, and by the statute of Elizabeth we discover ourselves perfectly justified in so doing. And I trust *we* can never find ourselves less disposed to protect *our citizens*, than *Britain* has been to protect *her subjects*, nor of declaring that act *piracy* committed on the *high sea*, that Britain considers a *felony of death* committed on *land*. Nor can we feel any difficulty in imposing the pains of death on the offender, for a piracy on *personal liberty*, when we impose it in all cases of piracy on *property*, and when we consider that it is the punishment imposed, by *all* nations, in *every* case of *piracy*. This brings me to the second section of the bill, which justifies the repelling force by force, and gives a premium for destroying the pirate, whom all writers denounce as out-laws and enemies of the human race, and hold it lawful to destroy. Sir Edward Coke [3 Inst. 113] says a pirate, to use his own words, is "*Hostis humani Generis*," which is an enemy to the human race. [Marr. C. 4, s. 4, Co. Lit. 128.] that an out-lawed felon is said to have *Caput Lupinum*, that he might be knocked on the head like a wolf by any one that should meet him, and judge [4 Bl. 70.] Blackstone, tells us in more modern times, that a pirate has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature; by declaring war against all mankind, all mankind must declare war against him: so that every community hath a right by the rule of self defence, to inflict that punishment upon him, which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or property. By the law of nations [Vat. 137, § 169.] "The right of punishing, which in a state of nature belonged to each individual, is founded in the right of safety. Every man has therefore a right to preserve himself from injury, and by force to provide for his own security, against those who unjustly attack him. Nor are we left to the elementary writers alone to support this doctrine. "The very point has been judicially determined in the [Fost. C. L. 154.] case of Alex. Broadfoot, who was indicted for the murder of Cornelius Calahan, and acquitted by Judge Foster's direction to the jury. The case was this—captain Hanway had a press warrant, with this direction inserted in the body of it. "You are not to intrust any person with the execution of this warrant but a commission officer, and to insert his name and office in the deputation on the other side hereof." He indorsed, "I do hereby depute A. B. a lieut. of the Mortar sloop to impress, &c. On 25th April, 1742, Capt. Hanway being at anchor, in Kingroad, at Bristol, ordered the ship's boat down the channel, to press as they should see an opportunity; the lieut. staid on board with the captain. In the evening the boat came up with the Bremen Factor, in that part of the channel, in the county of the city of Bristol, some of the crew went on board in order to press men, who being informed that one or two of the Bremen's men were concealed in the hold, Calahan with three others went thither in search of them; whereupon Broadfoot, one of the Bremen's men (who had provided a blunderbuss for defence against the press gang) called out, and asked them what they came for; he was answered by some of the press gang, "we come for you and your comrades." Whereupon he cried out keep back, I have a blunderbuss loaded with swan shot." Upon this the other stopped, but did not retire. He then cried out, where is your lieutenant? and being answered "he is not far off," immediately fired among them; by this shot Calahan was killed, and one or two of the press gang wounded—And in this case, as you perceive, Broadfoot was acquitted by the direction of the Judge. Then if an Englishman may kill an Englishman in the attempt to impress him, because the authority was incorrectly executed, can we feel a doubt that an American may kill an Englishman when by no possibility there can be any *colour* of authority; and that too without the jurisdiction and limits of the British empire, when sailing under the protection of the American flag—I can feel no doubt.

And as to giving a bounty for killing this *hostis humani generis*, wearing the *caput lupinum*, I trust there can be no objection, when we consider the practice of other states and nations, particularly Britain herself, who by the statute of George II. [8 Geo. 2, c. 24] gives a bounty to encourage the destruction of pirates. The statute is in these words: "That to encourage the defence against pirates, the commanders or seamen wounded, and the widows of such seamen as are slain in any piratical engagement, shall be entitled to a bounty to be divided among them, not exceeding the value of one fiftieth part of the cargo on board." Can we then with the example of Britain before our eyes giving *bounty* for the protection of *property*, feel any reluctance in giving a *bounty* for the protection of *liberty*? Can it be possible that *Britain* shall protect the *property* of her *subjects*, with more vigilance and circumspection than *America* will