nesses not in the line or staff of the army may be taken before some justice of the peace and read in evidence: Provided, that the prosecutor and the person accused are present at the time of taking the same, or are duly notified thereof." With respect to courts of enquiry, an article says courts of enquiry shall have the same powers to collect evidence as courts martial. This description of courts then have all the powers of courts martial, and all the privileges extended to the soldier or officer in cases less than capital in the one court which he possesses in the other. Will any gentleman say that a party accused of a capital offence to a conviction of which infamy would be attached by the sentence, has one particle of relief from the existing laws? There is but one solitary provision, and that in cases less than capital. A person who is in the regular service may be brought up before a court martial, his life upon the hazard; and when he comes before them what will it avail him to say, that he has witnesses, but cannot compel them to attend? If we examine the articles of war we shall there find at least thirty offences punishable with death or infamy. Is it then wise, politic or humane to suffer such offences to exist, and prevent the accused from enjoying the opportunity of acquitting himself from the charges against him? I believe there is upon the present military establishment, from 2 to 3000 men; it is contemplated by a bill on the table to increase the military establishment by adding thereto six thousand men. A bill yesterday passed authorising a detachment of 100,000 militia. In what situation are they placed, the militia as well as the army? By the articles of war the militia when in service are subject to the same discipline as regular troops. Then those men who are to be drafted from the militia, those 6000 who are contemplated to be raised, and those now in service, are subject to the vilest punishments which can be inflicted on men; and ought we deprive them of the benefit of testimony to prove their innocence? If a militia man be charged with one of the offences contained in the various articles of war, and the only witness be a citizen not in service, no testimony could be had. No person acquainted with the transaction is in the military service; in what situation do you place him? Do you not forfeit his life by not applying a relief and remedy? Surely you do; if you refuse him the benefit of process, you certainly place that man in a situation to forfeit his life without relief. Am I or is any gentleman prepared to go home and tell our constituents that we have given our consent to a law for calling into service 100,000 militia, while death may stare them in the face in thirty different shapes, without having passed any law to establish their innocence? The moment malignity shall conjure up a charge going to life or reputation, that moment these men may be sacrificed. I am not prepared to tell my constituents that I have done this—that I have left them suspended in this dangerous situation.

This being the fact, that an evil does exist, is it such an evil as requires a remedy? I presume that no gentleman in this House is prepared to say that if such an evil does exist, there ought not to be a remedy provided.

Is this the proper remedy? In all cases under the provisions of the bill, where the witness is a citizen, neither court martials or military officers are authorized to issue process. It is to issue out of courts of justice. Whence do supœnas issue in all cases? Out of courts of justice. The bill then provides in all cases pending in military courts martial to give the same opportunity for obtaining witnesses that is provided in suits at common law.

It has been objected to the bill that by it the military institution is blended with the civil. It is so from the necessity of the thing. Whence should summons issue if not from the civil courts? Would gentlemen say that it should issue from courts martial? If not from them, where could the power be better intrusted than with courts of justice? Has not the military and civil already been blended in the laws now in existence? Look at the only article which provides for the obtaining testimony in civil cases, and how is it there provided? Do you there go to a court martial or a military officer for authority to take depositions? No; to the civil authority—to a magistrate. There is already in certain cases a provision that the party accused may have the benefit of the civil authority. Does this bill go further? It does—because we did not wish to go to an inferior authority for a summons: we would go to the same source from which all summons do flow—to the courts of justice.

But is objected that by this bill a person is compelled to submit documents to the inspection of a military court martial. Good cause is first to be shewn to a civil court; it is not to be issued upon a mere application; good cause must be shewn, verified by affidavit, and the paper must be described. But gentlemen tell us this is making the judges of the superior courts bend to the military. This provision was introduced for the purpose of guarding the right of the citizen to have his papers sacred. A magistrate therefore is not trusted with this power; the authority is given to the judge of a superior court. Can it be placed in safer hands than theirs?

The bill provides that in cases not going to loss of life or cashierment of a commissioned officer, where the witness shall reside within 25 miles, the party shall have the benefit of attendance; where the witness shall reside at a greater distance than 25 miles, his deposition shall be taken. This regulation was incorporated in the bill for the convenience of the witness. As the bill stood originally the party accused or the judge advocate might take a summons over the whole U. S. but gentlemen in favor of the principle considered the latitude given to this provision to be too great, and it was accordingly abridged.

As the bill is amended it gives the military court the same privilege of testimony which is given to the circuit courts. A party having suit in the district and circuit courts of the U. States can have a subpoena to compel the attendance of a witness if he lives within 100 miles. Here it is provided that a party being charged in a military court, his life on the hazard, should have the benefit of oral testimony, if to be had within one hundred miles; if beyond that limit he may take depositions.

In every instance where a person is put to inconvenience, he ought to be paid for his trouble, and provision is made in the bill for that purpose. It has been objected that in this bill there is no provision for payment. It was conceived that the common law would act in this as in every other case; that the witness had a right to have his expences tendered him, and if not paid that he might refuse to attend.

This bill has been said to be modelled after the mutiny act of England. I have examined that act with the bill and can see no similarity in their features. The mutiny act is annually passed for continuing the army, and one of the provisions of it is that the rules and articles of war shall be framed at the pleasure of the king! There is surely nothing like that in this bill.

Is it true that the civil authority is subjected to the military by this bill? What are the authorities given by this bill to the civil authority? They are to issue a summons and *subpoena duces tecum*; the manner in which process shall be served and punishment inflicted are specified in the bill. What authority does it vest in courts martial or of enquiry to exercise one solitary power? All the power that a court-martial can exercise under this bill is the mere simple power, when the witness does appear to receive his testimony. A court of justice issues the summons, it is served by a civil officer, returned to a civil court; if the witness or officer to whom the process be directed be guilty of disobedience, they are punishable by the court which issued the summons; and courts in civil cases possess the same power precisely in all cases of summons from the courts of the U. S. and disobedience, as this bill authorizes them to exercise on a matter over which before they had no jurisdiction. The power given by the bill to military courts extends to the mere examination of witnesses and no further.

The whole of this bill may be included in a nut shell. The principle is to provide a remedy for an existing defect in the rules and regulations for the discipline of the army, to which every citizen of the U. S. from 18 to 45 may by the laws of the land be subjected—it is merely a remedy to protect innocence and punish guilt. If we refuse to provide a remedy for the defect which exists, what will be our consequent duty? To repeal all those rules and regulations, or give the party under their operation some relief.

A gentleman from Massachusetts (Mr. Bacon) has already told us that the laws and regulations relative to the laws of the several states go a great deal further than this bill; and he has said correctly. In the state of Maryland the rule for obtaining testimony before courts martial is broad, and gives the court martial full power. It is in these words: [Here Mr. Montgomery read an article in the militia law of Maryland, passed the last session, by which courts martial have a power of iussuing summons for witnesses to run to any place within the limits of the state.]

Here then we find a provision in one of the articles for the regulation of the militia of a sovereign and independent state, vesting the power of issuing summons in the courts martial themselves—within twenty-five or 100 miles, or confined to the militia alone? No; a broad power to call for persons residing where they may. A court martial in Worcester may send for persons of whatever age or sex (the power being as broad as that of courts of law) even to Allegany, a distance of 3 or 400 miles. But the law does not stop here; it gives power to a court martial to issue attachment against a witness for non-attendance, and to impose a fine. Contrast this regulation, and I believe it is a good one, with the regulation on your table, which vests in a court martial no further power than to examine a witness when before them. All the powers granted by the bill are to be exercised by the civil courts under the laws of the U. States.

I think therefore the principles of the bill are correct, and the power vested in an authority by which it is not likely to be abused.

(DEBATE TO BE CONTINUED.)

On the passage of the bill for raising an additional military force.

MONDAY, APRIL 4.

(CONTINUED.)

MR. RANDOLPH had calculated on being in a very small minority on the vote which he should probably give on this question; but he was sorry to perceive that even that minority was likely to prove smaller than he had at first supposed;—for without any disposition to invade the consistency of any gentleman on that floor, he had humbly conceived that those, who, in the year 1798, had voted against armies and navies, would have voted against the bill. His object however, was not to make proselytes, but, like his colleague, who had preceded him, to give to the House and to the world (and particularly that portion of his own country which he represented) the reasons for the vote which his most deliberate judgment compelled him to give on this occasion.

With his colleague he had ever been of opinion (and if he mistook not, had maintained this doctrine in 1799) that in times of danger reliance should be had on the militia. Amongst those gentlemen who were unfriendly to military establishments, some indeed seemed to think that after the first onset regulars might be necessary—but all had agreed that, in the first instance, dependence should be placed in the militia alone. *Now* it seems this doctrine is to be reversed, for although we are to rely on the militia as a *dernier resort*, they must be preceded by this advanced guard of regular troops, which the bill proposed to raise. And on what grounds? That this is a great and momentous crisis. It certainly is. But, sir, is it possible that these 6,000 men—(I have not attended to the details of the bill—the unexampled length of our sittings has prevented me—and indeed my little, I might almost say *no* knowledge of military affairs rendered it scarcely necessary)—is it possible that these 6,000 men, whom you are told it will take till next year to raise, are competent to the defence of our long line of sea coast, to say nothing of our still more extensive frontier? It is obvious that sixty thousand would hardly suffice, supposing the circumstances on which gentlemen reason and from which their conclusions are drawn to be correct. What therefore, *now*, any more than in the year 1798, calls for this encrease of our military establishment? In 1798 we were at actual, open war. We captured the ships of France, and they captured ours. And yet it was not then deemed expedient by gentlemen, who professed the tenets, which I then did and do now hold, to raise an army. It appeared from very high authority when our doors were lately closed that we are, not only, not at war, but that the circumstances of the world are such as imperiously to require that we should not go to war, if it can possibly be avoided—although under a different state of things gentlemen would have felt themselves authorised, nay obliged to lay a declaration of war on your table, against one, or both of the two great belligerents.

Mr. Randolph said he was extremely happy to observe, whilst in conclave, what a good understanding prevailed amongst the various and hitherto discordant parts of the House—with what good humor points were discussed and settled between them, and how totally devoid of asperity all their deliberations had been. He hoped that nothing would fall from him to change the temper of mind which then, and he trusted still existed. It was to justify his vote that he trespassed on the attention of the House; although he humbly conceived, if gentlemen would lend a patient ear, that he might convince them of the impolicy and inexpediency of the bill. He accorded with his worthy colleague (Mr. Burwell) respecting the opinions lately delivered by his respectable friend from North Carolina (Mr. Macon)—and if in politics, as in mathematics, things which agree with the same thing agree with one another, there could be no variance of opinion between his colleague and himself. He subscribed to every sentiment uttered by that excellent member, on the occasion to which he alluded. He regretted that they were delivered under circumstances which precluded the public from hearing them: he thought it a great public loss. He accorded also with the opinions expressed by the same gentleman ten years ago on a question like the present, and by the gentleman, who now presides with so much ability and so much honor to himelf, over the treasury department, on the proposition to raise a provisional army. They would never be forgotten. He wished he had the speeches, he would read them to the House; they would be heard with much more effect than any thing that he could say.

I wish it to be demonstrated (said Mr. R.) that we are more at war now than we were in 1798. Sir we are not. Nor are we in the slightest danger, as I apprehend, of any thing like invasion. The foe (I speak of both, for each is equally disposed) waits, as my colleague tells you, to strike the meditated blow. But will they strike that blow on your territory?—where alone this force may aid to ward it off. Does any man dream of invasion? No. The blow is aimed at your commerce, your ships, and in regard to them you have taken effectual precaution. They are both abandoned. The seamen indeed could not be embargoed; they have disappeared. England will now have no difficulty in manning her navy. Notwithstanding the eloquent speech of the gentleman from Boston, (Mr. Quincy) on Saturday, and his copious extracts from a French general's pamphlet, I do not dread invasion.

Is it possible that Great Britain, with the recollection of Saratoga and York-town fresh in her memory, can be so frantic as to think of invading the U. States? She cannot, and she has given the best proof of it. Instead of dreaming of invading you, she trembles lest you should invade her, for she knows the consequences, and for that reason she has repaired the fortifications of Quebec, and thrown reinforcements into Canada. What stronger proof could she give of her fears? I speak not of her inclination; for I believe that if she could reduce us to the condition in which we were in 1765, she would do it to-morrow. I speak of her ability, and suppose her to possess only common sense. Although, in some cases of late, she has evinced such a want of discretion, that too much reliance ought not, perhaps, to be placed upon that. But so far from entertaining a thought of invading us, she is taking precautions against invasion from us. And there is not a shadow of doubt that she would gladly enter into a covenant with you and exchange hostages to abstain from violating your territory, if you will abstain from attacking her provinces on your eastern and northern frontier. But if she were to invade us, any military force which she could detach for such a purpose, would be as incompetent even to the reduction of the state of Delaware, as to the conquest of Europe.

Let us see, then, on the other side, what danger there is of invasion from France. On all hands it is agreed that during the present preponderance of the British naval power, France cannot send an army into the U. S sufficient to make an impression upon us. It is true, the British naval power may not retain its present pitch. France may, she probably will, crush G. Britain, and it is against that event and such a colossal strength as France will then possess, bestriding both continents and every sea, that you are raising a force to be commanded by two brigadier generals! Sir, when gentlemen talk of attack from the two greatest powers on earth, and at the same time provide such means of defence, they invite, they provoke that which they would guard against. They hold us up to the derision of the world—we may indeed find security in the contempt of the enemy for this force, not in his fears of it. But notwithstanding the power which France even then would possess, I do trust that there is spirit and virtue enough in the U. S. to maintain our independence. I do trust that the enemy would find it impossible, at such a distance—for I hope he would be unable to do here what he has done elsewhere with such signal success—make use of one half of the people to subjugate the other—I trust that he would find it impossible to maintain a force sufficient to keep possession even of our great maritime ports, much less to reduce the surrounding territory. I believe that in case of invasion by a foreign enemy—and until that event happens you need not expect to raise a military force—our people being too happy and too wise to subject themselves to the slavery of military life until its necessity is not to be avoided—and hence the odium in 1798 against the then rulers, and the difficulty, nay the impossibility of obtaining men; in case of the actual invasion of our territory, I hope we shall make war in a very different style from that in which it was waged during the revolution; and this I say without disparagement to the heroes who atchieved it. We were then, in the phrascology of kings and despots, in rebellion against our lawful sovereign—an awful situation; fighting with halters about our necks, dubious of our untried strength, and consequently afraid to risk every thing upon a single action. But if invasion were now to be attempted, no sooner would the enemy set his foot upon our shores than we should push him back into the sea. The people would rise with one accord, the continent would move like one man, and he would be met by a force however inferior in skill, in military tactics, his equal at least in courage & so superior in numbers as at once to overwhelm him, with all his factitious, artificial advantages. Such, believe me, would be the event. We should deserve to be conquered, if through timidity and irresolution, we suffered the war to be protracted for years, and every quarter of our country to become in turn the theatre of it. France, in better days, set us the example how to meet an invading enemy, it will not be lost upon us.

But your towns may be laid under contribution, and so they might have been in 1798; and what is worse, this force of 6,000 men could not prevent it, even if it were now embodied, instead of requiring till next year to enlist the troops. They could not prevent the destruction of a single town, even if they were all collected together on the spot. It is obvious that a strong squadron, in defiance of such a force could destroy N. York—I take this city, as a favorite example—could lay it in ashes, or batter it to the ground. Sir, if every man of them were thrown into that rich and flourishing city, whose defence is of primary importance, they could not prevent an enemy's fleet from offering to its inhabitants the hard alternative of submitting to contribution or seeing their habitations burnt over their heads. What resistance then are we to expect from them, when they shall have been divided and subdivided amongst our various seaports and western garrisons? I therefore fear, that instead of working the good effects ascribed to it by some gentlemen, and by my worthy colleague amongst them, that it will be attended with no other than to drain the treasury (we are now drawing upon our capital, rather than our income) to increase the thirst of office, that disgraceful spirit of living by any means, rather than honest industry, or our own property; and tend in an equal degree to diminish the disgust and abhorrence which the people feel against standing armies; and be it remembered that a standing army is the death of which all republics have died. I have another objection to the bill. If this force be raised, although for purposes of defence, it is contemptible, in another point of view it is truely formidable—It will almost ensure war, and why? Certainly these persons will not wish to be disbanded—they will shrink from the idea of returning back upon their own resources—they will keep the fever up to the war-pitch and precipitate the country into war with some power, they care not who; for what will public considerations weigh against their own private advantage? And this was in 1798, and ought now to be one great objection to raising troops before you have actual war. If you raise these troops to provide against war you may be certain it will not be their fault if the war does not ensue which they were raised to avert. If you leave the country to its natural defence and bestow your pains and treasure in strengthening that defence, instead of taking money out of the pockets of the people, of the militia, to throw it away on a few useless hirelings, you will not only ensure the requisite number of men when they shall be actually wanted, but avoid the dreadful effect of a standing military force (without active employment) upon public & private morals; and I am one of those who do not think lightly of the expence of this establishment. Remember that the present state of our treasury is unexampled—many outgoings, no in-comings—living, in the language of the compting house, upon our principal instead of our interest. I am therefore unwilling to diminish the sum which we have in hand, and which it is our duty carefully to husband; (for where are we to look for a supply when it is gone?) by feeding and clothing and paying a parcel of men merely to look at one another; who, in my sincere belief, so far from doing any public service, will be a public detriment. For the very moment that this bill is passed; nay, they have begun already; every man without some fixed, determinate mode of life, will be pressing to get a subsistence out of the public purse; and this is not the description of men to whom, in my opinion, the defence of any country ought to be entrusted. I see indeed a striking instance to the contrary in this morning's paper. The annual expence of our present establishment is about a million; by the bill that expence will probably be trebled; however, let us say that it will only be doubled, will the House throw away an annual million? On what? Mere parade; on a force inadequate to the crisis which it is