THE

PATRIOTICK PROCEEDINGS

OF THE

LEGISLATURE OF MASSACHUSETTS,

During their Session from Jan. 26, to March 4, 1809.

CONSISTING OF

The Lieutenant Governour's Speech,

Answer of both Houses,

Report of the Joint Committee on Petitions,

Gore's Report on Crowninshield's Resolutions,

Report on the Lieutenant Governour's Military Orders, with three Speeches,

Memorial to Congress,

Address to the People.

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this laudable custom, and will seize the earliest moment, which is free from other occupation, to deliberate upon this important subject, and to devise such plans as will best promote the object in view.

Good publick roads certainly afford very great facilities to husbandry, commerce and manufactures; and Massachusetts in this respect, is not behind any portion of the United States. It is matter of much satisfaction to the House of Representatives that these advantages have been obtained by the voluntary exertions and enterprise of our fellow citizens, without resorting to the general government for any aid from that superfluous wealth with which we are officially informed, the national treasury overflows. In a period of general prosperity, encouragement to the ornamental planting of our publick roads would certainly be entitled to some attention from the Legislature, but at this awful crisis, when our very existence as a nation is almost in question, it is respectfully submitted to Your Honour, whether the occupation of much time on this subject might not be considered by our constituents as trifling with the publick expectations.

To cherish the interests of literature, at all times, and under all circumstances, the House of Representatives will consider among the first and most pleasing of their duties. Upon this subject we shall always be ready most cheerfully to co-operate with Your Honour.

The House of Representatives accept with gratitude, and reciprocate with perfect sincerity, the wish which forms the conclusion of Your Honour's address, and prays Your Honour to be convinced that nothing, on their part, shall be wanting to bring the session to a termination consistent with the wish so devoutly expressed.

REPORT

OF THE JOINT COMMITTEE ON PETITIONS.

In SENATE, *Thursday, Feb.* 1.

THE committee to whom were referred the petitions of sundry towns in this commonwealth on the subject of the embargo, and other subjects connected therewith, have paid the earliest possible attention to the very important and interesting subjects therein mentioned. These numerous representations, made as if by one consent from different parts of the country, afford strong proof of the injustice and impolicy of the measures complained of, and exhibit a striking display of the disastrous consequences of those measures. The members of the legislature, having lately assembled from all quarters of the state, cannot require any new evidence of the grievances which are universally oppressing their fellow citizens. The committee, therefore, instead of dwelling on the picture of private distresses, or enumerating the disgusting catalogue of publick wrongs, displayed in these petitions, have proceeded to analyze the whole, to select the leading subjects of complaint, and to consider whether there be any remedy within the power of this present legislature.

The principal subjects of complaint in all these petitions may be comprised under these general heads.

First, The impolitick, unnecessary and unconstitutional interdiction of commerce, by the several acts of the Congress of the United States, falsely called embargo laws.

Secondly, The apprehension that the nation is to be speedily plunged into a war with Great Britain; and consequently entangled in a fatal alliance with France.

Thirdly, Some peculiarly oppressive and unjust provisions of the last embargo act, passed on the ninth day of January in the present year.

The first of these subjects has been repeatedly under consideration before the legislature of this state. And here the committee cannot avoid observing that the misapprehension of our true interests and feelings by some of our representatives in Congress, must have contributed very much to the continuance of these embargo acts. The government of the United States would not probably investigate very critically those rights, which appeared to be abandoned or disregarded by those who were peculiarly entrusted with their defence: and they must, from the same cause, have been led into the greatest mistakes as to the feelings and dispositions of the people. Even if the constitutionality and justice of these measures had been less questionable, it is impossible to believe that they would have been so long persevered in, if the government of the United States had been early and truly informed of their ruinous operation on the commercial states, and the universal disaffection they excited among the people.

When this subject was first discussed in the legislature of this state, the opposers of the system could only reason from the general principles of our constitution, the necessities of commerce and the feelings of human nature. They depicted in strong colours the destructive tendency and consequence of this system. They have long since seen the accomplishment of their predictions; their most gloomy presages are verified by the event; and the whole people now feel and acknowledge the force of those truths, which then employed the ablest of our statesmen to explain and demonstrate.

The people of New England do not need to enter into any refined reasoning or deep research on this subject. They recollect that the extension and protection of commerce was one of their principal motives to forming the present union. This was one of the three great objects enumerated in the former articles of confederation; and the want of a competent power for this purpose in the antient government, was among the primary causes of our present constitution.

They will always acknowledge with cheerfulness and gratitude, any efforts of their brethren of the south, against a common enemy: but most certainly expectations of this kind were not among their strongest inducements to desire a union of all the states. It had long been a prevailing opinion, confirmed by the experience of the revolutionary war, that in times of great peril, the remote parts of our country would require aid from this quarter, instead of being able to afford any to it. We shall readily comply with the terms of this compact, and fulfil all the stipulations incumbent on us; and we have a right to expect at the same time from the other members of the Union, a constant respect for those rights, which we never surrendered; and attention to those interests, which the national government was instituted to extend and preserve, not to destroy.

The people of this state have been most severely disappointed in this expectation. The commerce of the country has furnished almost the whole revenue of the United States; has given vigour and energy to the government; has encouraged universal industry, and rewarded with plenty every description of people. While this commerce was thus productive to an unexampled extent, a portion of the general profit should have been applied to preparations for its permanent protection: and when it was unjustly assailed, the whole power of the nation should have been exerted for its defence. The people recollected the glorious example of a former administration in

1798, and they have seen the present administration reserving all their strength and all their energies to be employed in the annihilation of that commerce which they ought to protect. By a timid and unwarrantable compliance with the wishes of a foreign power, we are suddenly excluded from the ocean; our trade is destroyed; our industry paralyzed; and poverty and ruin are rapidly overspreading our land. Contemplating this state of things, and recollecting their views and objects at the time of adopting the constitution, the people do not require any further argument to convince them, that the primary objects of that compact are now neglected; that their most important interests are wantonly sacrificed and their most essential rights flagrantly violated.

But the committee forbear to pursue these reflections. It is painful to dwell on those evils and distresses which it is out of our power to relieve. The committee are not at present prepared to recommend any adequate and satisfactory remedy, which could be applied by the two houses of the legislature alone. The most efficient, and perhaps the only certain remedy, rests with the people, who will soon have it in their power to unite the whole government of the state in one joint effort, with other states, whose interests and objects are similar to our own, for the support and vindication of their just rights by constitutional and peaceable means.

The committee, however, being deeply impressed with the importance of this subject, and anxious, if possible, to afford some temporary alleviation to the publick distresses, ask leave to reserve this object of their commission for further consideration.

As to the second subject of these petitions—the danger of an unnecessary and ruinous war with one nation, and a destructive alliance with another—the committee, with the most painful emotions, have perceived but too much ground for this apprehension. The puerile suggestion of maintaining a war at the same time against the two great belligerent

nations, is too absurd to deserve attention. If then the United States are to select their enemy, and the choice is left to the present administration, the fears of these petitioners will eventually be realized. Even if this measure is not seriously intended by our government, yet the course of policy pursued by them, must, if persisted in, soon terminate in such a war. The committee here would observe, that an examination of the different measures of the two nations referred to, would leave them to elect the other alternative. These measures and acts are before the publick. Some of the most important of them have been so fully displayed, and thoroughly considered, in a late report to one of the houses of this legislature, that it would be equally unnecessary and improper to exhibit them anew at this time. Whatever impressions may have been felt as to the conduct of Great Britain, every man will now perceive that the aggressions of France have been uniformly first in order of time, and most injurious in their nature. The gross injustice of her decree of November, 1806, was aggravated by the consideration, that we had at that time a commercial treaty with her; while with Great Britain, in the following year, when her retaliatory orders were passed, we not only had no treaty, but had just refused to ratify one made by our own ministers; and therefore had no right to expect from the latter any peculiar respect to neutral claims which we neglected to vindicate against the encroachments of her enemy. Every man, who values the welfare of his country, and the honour of its government, must regret that the first outrage was not resisted in a manner becoming a great and powerful nation. Such a course would in any event have removed all occasion or pretence for retaliatory measures on the part of the other belligerent; and would have prevented our being embroiled at the same time with the two most powerful nations of the world. It would also have produced another most salutary effect; it would have saved us from

the danger of an alliance with France, which experience has shown is more to be deprecated than a war with any nation on the globe.

The committee cannot dismiss this subject without observing, that from the known spirit and patriotism of the people of this state, they will undoubtedly be always ready with their lives and fortunes to defend the country in any just and necessary war; but they will require of their rulers to shew them that the war is just and necessary; and from the partial disclosure made by the government, of their negotiations with these two nations, the publick, we apprehend, are by no means satisfied that a liberal and impartial policy, and a sincere disposition to conciliate, on our part, would not at once prevent the necessity of a war with Great Britain, and secure to us from that nation the entire respect that is due to all our just rights.

As to the third subject mentioned in the petitions—the late act for enforcing the embargo—the committee have examined it with great attention. The first remark it is calculated to excite is, that a system of policy which requires such violent, arbitrary and unprecedented measures to enforce its execution, must be in the highest degree repugnant to the feelings and habits of the people, if not hostile to their dearest interests. And even if this policy were admitted to be founded on the soundest reason, and the most correct motives, yet no man could justify the numerous violations of natural and civil liberty, and of constitutional rights, which are authorized by this act.

The people of this commonwealth, in establishing their constitution, have seen fit to declare and set forth certain natural rights of a free citizen, and certain fundamental principles of a free government. It is painful to observe how many of these rights and principles are violated, or disregarded, by the act under consideration.

It is declared in the tenth article of the declaration of rights, that "Each individual of the society has a

right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws." By the second section of this act of Congress, no vessel can be laden without the special permission of the collector, which that collector is authorised to grant, or refuse, at his discretion. And even when from his knowledge of character and circumstances he may think it safe and proper to grant such permission, he is prohibited from doing so, if the president of the United States shall have given instructions to the contrary. By the third section of the same act, owners of vessels already laden are required to give bonds in six times the value of the vessel and cargo, or to unlade the vessels; and even when the owner, in compliance with this unjust regulation, has procured and offered the bond required, the collector may refuse to receive it, and by his own arbitrary mandate, compel the unlading of the cargo. Thus the laws, which regulate the use and enjoyment of our property, instead of being standing and permanent, may be as mutable and uncertain as the whim and feelings of an executive officer can render them. What is allowable on one day may be unlawful on the next, and what is permitted to one citizen may, under circumstances precisely similar, be refused to another. Means and temptations will be presented to the officers of government for indulging the asperity of political hatred, and the rancour of personal resentments; and a petty tyrant may be raised in almost every town, to whose caprice or malevolence our most important rights may be subjected.

By the eleventh article of our declaration of rights it is declared "that every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character." But by the tenth section of this late act, when any officer is sued on account of his proceedings under it, instead of relying on the laws, he may produce

the instructions and regulations of the president, for his justification and defence. Thus the remedy of the injured citizen may depend, not on publick laws, but on secret executive instructions; which may never have been known to the party aggrieved, till the moment when they are thus produced to defeat his constitutional remedy.

The constitution of the United States, as well as that of this state, expressly prohibits unreasonable searches and seizures of the persons, houses and effects of the citizen. Yet by the ninth section of this act, every collector is authorized in the broadest terms to seize any property, not only when in carts or other carriages, but when *in any manner* apparently on its way towards the territories of a foreign nation, or the vicinity thereof; and he may detain it until bond is given, the amount of which is not limited by the act, and of course he is left to the arbitrary discretion of the officer. It is obvious that the terms of this section do not confine the collector to a seizure in cases only when the goods are in *actual motion* towards the suspected place. Of course there is no limitation to this tremendous power; and he may seize effects in any dwelling house in which they may have been deposited, if he chooses to suspect any ulterior destination, and so to conclude that they are in *that manner apparently on their way towards a foreign country*. This provision in both the constitutions referred to, evidently contemplates the necessity of a warrant to authorize these searches and seizures; which is to be issued by a civil magistrate upon probable cause, supported by oath. But under this section, the collector is made the only judge; no oath, no civil process, no formalities, are required. His only warrant is his own despotick will; and this may be executed, not by a peace officer of the government, but by a file of soldiers from the standing army.

Both these constitutions reprobate the exacting of excessive bail or sureties, and the imposing of excessive fines. If the general objects of these acts were in a high degree salutary, and generally approved, yet most men, it is believed, would agree that the fines they impose are in many instances excessive. But the amount, for which the citizen is required to give bonds with sureties, by many different sections of this act, is most manifestly a violation of the spirit and principles of these constitutional provisions. The smallest sum mentioned is six times the value of the goods, and in a case before alluded to, there is no limitation whatever; and a collector may demand sureties to any amount which his arbitrary will deems fit. It should be observed too, that in these cases the party is not charged with a previous offence, or even with intention to commit any; but all this security is deemed a necessary precaution against future possible offences by the most peaceable and orderly of our citizens.

Both these constitutions expressly sanction that principle of natural justice, that no man ought to suffer for actions which were lawful at the time of committing them. But by the third section of this act, many citizens are exposed to heavy pecuniary losses, are required to furnish excessive sureties, or finally to suffer a forfeiture of their property: and all this in consequence of proceedings, which were not only allowable, but expressly sanctioned by the laws of the United States, and specially permitted by their officers.

By the seventh sectiou of this act, the owner of a vessel is made responsible for the inevitable accidents of navigation, and even for depredations of a foreign power on the ocean. The only mode of defence allowed, will be found in most cases physically impossible. The party must produce the whole surviving crew on the trial, who must all be sworn as *competent witnesses*. If any one of them should accidentally be absent; if he should die in a remote part of the world, and his death not be clearly proved; if he should have any interest in the

event of the trial, which would prevent his being a *competent witness;* if he should by the visitation of Providence have become insane, and incapable of testifying; if he should have become convicted of any crime which would authorize the rejection of his testimony; or finally, if he should be suborned, concealed, or spirited away, by any corrupt officer of the customs; in each of these cases, the innocent owner, in addition to the loss of his vessel and cargo, will be sentenced to pay the whole penalty of his bond, amounting to six times the value of the property he has lost.

In the tenth section of this act it is pretended to furnish a remedy for any unjust proceedings of the collectors. The party aggrieved is not indulged with a trial by jury, but must apply to a single judge of the United States Courts. If the judge should consider a seizure as altogether unnecessary and unjust, he cannot restore the property without receiving such bond as the act prescribes to be taken by the collector in the same case; in which event the aggrieved party will have obtained no redress whatever; and if the judge should otherwise determine, the complainant is liable to treble cost.

The committee will notice only one other part of this act which appears to be as dangerous to the publick peace as it is injurious to publick liberty. By the eleventh section, the president, or any person empowered by him, may employ any part of the land or naval forces, or militia to enforce the execution of the embargo laws, and to prevent and suppress all opposition to them. Without commenting on the loose and indefinite description of the objects to which this military force is to be applied; the committee would remark, that almost every power given to the collectors may be enforced at the point of the bayonet; excluding the aid and the interference of the laws and magistrates of the country. The military power will no longer, in the language of our constitution, "be in subordination to the civil au-

thority." And we are liable, at any moment, by the indiscretion of a petty executive officer, to be subjected to military despotism, or to be involved in all the horrours of civil warfare.

On viewing these provisions of the act under consideration, the committee do unequivocally declare their solemn conviction, that it is in many particulars, unjust, oppressive, and unconstitutional. They would by no means contend that this opinion, if confirmed and adopted by the legislature, would be decisive of the question. While the laws continue to have their free course, the judicial courts are competent to decide this question, and to them every citizen, when aggrieved, ought to apply for redress. It would be derogatory to the honour of the commonwealth to presume that it is unable to protect its subjects against all violations of their rights, by peaceable and legal remedies. While this state maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice in the strong arm of the state government.

Any forcible resistance, therefore, by individuals, to the execution of this act of Congress, is not only unnecessary, but would be highly inexpedient and improper; it would endanger the publick peace and tranquillity, and tend essentially to injure and put at hazard that cause, on which nearly the whole people are now so zealously united. The committee are deeply sensible of that accumulated distress which has so long oppressed the whole community, and borne with peculiar aggravation on some particular parts of it. They cannot too highly applaud the unexampled patience and forbearance which has been already exhibited under this pressure of undeserved calamities. And they would earnestly recommend the exercise of the same forbearance, until all those peaceable and orderly means which the constitution and laws of our country will permit, and all those political expedients, which our habits and usages can suggest, shall have been exhausted in vain.

It is to be regretted that no immediate and efficacious remedy can now be proposed for these numerous and aggravated evils. The committee, however, consider it their duty to recommend, without loss of time, all such measures as have appeared to them to be now practicable, and calculated to remove or alleviate the publick distress; they therefore ask leave to

Report in part, A bill to secure the people of this commonwealth against unreasonable, arbitrary and unconstitutional searches in their dwelling houses—and also the following

RESOSUTIONS:

Resolved, That the act of the Congress of the United States passed on the ninth day of January in the present year, for enforcing the act laying an embargo, and the several acts supplementary thereto, is, in the opinion of the legislature, in many respects, unjust, oppressive and unconstitutional, and not legally binding on the citizens of this state. But notwithstanding this opinion, in order finally to secure a certain and permanent relief, it is earnestly recommended to all parties aggrieved by the operation of this act, to abstain from forcible resistance, and to apply for their remedy in a peaceable manner to the laws of the commonwealth.

Resolved, That a suitable remonstrance be prepared, and immediately forwarded to the Congress of the United States, from this legislature, expressing their opinions and feelings on the several subjects of complaint contained in the said petitions, and particularly urging the repeal of the said act of Congress, passed on the ninth of January last.

Resolved, That the legislature of this commonwealth will zealously co-operate with any of the other states, in all legal and constitutional measures, for procuring such amendments to the constitution of the United States, as shall be judged necessary to obtain protection and defence for commerce, and to give to the commercial states their fair and just consideration in the government of the Union; and for affording permanent security, as well as present relief, from the oppressive measures under which they now suffer.

Resolved, That the honourable the president of the senate, and the honourable the speaker of the house of representatives, be requested to transmit a copy of this report, and the resolutions thereon, to the legislatures of such of our sister states, as manifest a disposition to concur with us in measures to rescue our common country from impending ruin, and to preserve inviolate the union of the states.

MR. CROWNINSHIELD'S RESOLUTIONS.

Commonwealth of Massachusetts.—In the House of Representatives, Nov. 16, 1808.

RESOLVED, as the sense of this house, that the British Orders in Council, of November, 1807, interdicting all neutral trade with France, and the nations under her controul, except the neutral shall first enter her ports, and there receive her licence to proceed, and pay such duties as they shall and have imposed; and the Decrees of France, interdicting all trade with the English nation and her depen dencies, and subjecting to capture and condemnation, all neutral vessels, and their cargoes, for the absurd cause of being spoken with, or visited, by force, by her enemies, are violations of the neutral rights of the United States, and their independence and sovereignty, and if they cannot be removed by fair negotiation, ought to be resisted by all the means in their power.

RESOLVED, That in case it shall appear to Congress that all fair attempts to remove said Orders and Decrees by negotiation, shall have been exhausted, and they shall find it necessary to assume any other attitude of resistance, it will be the duty of the whole people of the commonwealth of Massachusetts, to rally round the standard of their own nation, and its government, and to afford them their utmost support by all constitutional means in their power.

REPORT.

The committee, to whom was referred the two resolutions that accompany this report, and which were proposed for the consideration of this house, have duly attended to their commission, and ask leave to report, that, in their opinion, it is inexpedient to pass the same, for the following reasons.

BY the constitution of the United States, the foreign relations thereof are exclusively vested in the

national government—with that government rests the obligation to consider of, and act upon, the doings of other nations—with it rests also a knowledge of the conduct of other nations—their motives and pretensions, and how far the same may have been sanctioned or encouraged by the government of the United States.

The communications which have passed between the United States and the nations referred to in the proposed resolutions, are in a great degree unknown to the legislature of Massachusetts; any opinion, therefore, of the House of Representative on this subject, would be founded on an imperfect knowledge of what relates thereto, and might, from the same cause, be erroneous.

The house could not rely on the partial information which is allowed to escape from the executive cabinet, much less on that diminished portion with which the citizens or legislature of Massachusetts are deemed worthy to be entrusted, from the secret sessions of Congress, for the correctness of any opinion they might form on so important a matter. Influenced by the limited information with which the government of the Union has seen fit to indulge the publick, some persons might be induced to adopt the sense of the first resolution, and conclude, that both nations therein mentioned, had, at the same time, with equal wantonness, and like disregard of our rights and their duties, enacted the offensive decrees and orders—that the same measure of opposition, to both nations, was alike required by the dignity and interests of the United States, and would be attended with similar effect—whereas a complete understanding of the conduct of our government towards these nations, and of our relations to each of them, with the grounds or pretence for passing their several decrees and orders, might lead to a different result, in the minds of men who endeavoured only to arrive at a correct and impartial judgment.

While the committee entertain no doubt of the

soundness of the above reasons for the opinion they have offered on the inexpediency of adopting the proposed resolutions, yet, as from the language of the same, it would appear to be the sense of the mover, that the same motives and causes produced, from both foreign nations, the decrees and orders complained of, it may be advisable to state such information, both as to the dates of the several decrees and orders, as well as to the alledged grounds of passing the same, as have come to the knowledge of your committee. It is also important that the House should be possessed of whatever information can be procured on a business so interesting to them, and which is made a pretence for the deep and universal calamities, which the government of the United States has seen fit to inflict on the citizens—calamities, which press with peculiar and aggravated distress on the good people of Massachusetts.

It will readily be conceived that the decrees and orders, intended by these resolutions, are that of France, promulgated at Berlin the 21st of November, 1806; and the orders of Great Britain, passed at London on the 11th of November, 1807.

The French decree declares, that the British islands, their colonies and dependencies should be considered as in a state of blockade—that all trade in British goods, should be prohibited, and that all vessels, with their cargoes, sailing to or from Great Britain, or having on board cargoes of British origin, should be subject to seizure and confiscation. On the 31st December, 1806, certain commissioners of the British government, having then just concluded a treaty with a minister of the United States, which treaty was never submitted to the senate for their advisement, by direction of their government, presented a memorial to the American minister, in which it was distinctly declared, that if the enemy (referring to the emprour of France and the decree of November, 1806) "should carry his threats into execution, and if neutral nations should, contrary to all expecta-

tion, acquiesce in such usurpations, his majesty might probably be compelled, however reluctantly, to retaliate in his own just defence, and to issue orders to his cruisers, to adopt, towards the neutrals, any hostile system to which those neutrals should have submitted from his enemies." On the tenth of January, 1807, his Britannic Majesty issued an order for preventing all commerce from port to port of his enemies, comprehending in said order, not only the ports of France, but those of other nations, as, either in alliance with France, or subject to her dominion, have, by measures of active offence, or by the exclusion of British ships, taken a part in the present war. In the letter which accompanied the communication of this order to the secretary of state of the United States, this order is stated, by the British minister, to be authorized by the acknowledged principles of the law of nations, and to have been induced by a knowledge, on the part of the British government, that the measures announced, by the decree of the French government of the 21st November 1806, had already, in some instances, been carried into execution, by the privateers of his enemy.

The American minister at Paris, in the month of December 1806, requested of the French minister of Marine, an explanation of the decree of the 21st of November, preceding, and was answered that "an American vessel could not be taken, at sea, for the mere reason that she was going to or coming from a port of England." The French minister of marine, however, advised the American minister, that it was proper that he should "communicate with the minister of exterior relations, as to what concerned the correspondence of the citizens of the United States of America with England." Another article, declaring all merchandize belonging to England, or coming from its manufactories, or colonies, though belonging to neutrals, liable to seizure, was to be carried into execution. This it seems was to be acquiesced in by the American government, if to operate

only in the ports of France, as conformable to publick law, although in direct contravention to the stipulations of an existing treaty between the United States and the emperor of France.*

Notwithstanding the hopes that were indulged by the American government, in consequence of the reply of the French minister, it appears, from a letter of Mr. Madison to Gen. Armstrong, that, as early as May, 1807, it was known in the United States, that the French privateers in the West Indies had, in virtue of the edict of November, 1806, committed depredations on the American commerce—and in October, 1807, an American ship called the Horizon, bound from Great Britain to Lima, having been wrecked within the territorial jurisdiction of France, was finally condemned under the French decree of November, 1806.

If any doubt ever existed, as to the intention of France, to execute this decree against the United States, it must have been removed, after the conduct of her cruisers in the spring of 1807—her condemnation of the Horizon, in the following October, left not the smallest pretence for questioning, that her violence and injustice would be limited only by her power.

The pretensions of the emperour of France, that his decrees were a retaliation on Great Britain, for similar violations of the laws of nations, previously committed by her, through the commerce of neutral nations, could never be admitted as true in fact, or if true, as just in principle, in regard to the United States.

The principle said to have been assumed by Great Britain in 1756, which has been pressed into the service of those who are desirous to find an apology, if not a justification, of every outrage committed by France, although adopted in the early part of the last war, was so modified as to afford no cause of com-

* see page 15 of Madison's letter to Armstrong.

plaint to the United States during the latter years of that contest, and it is believed, that a similar temper of accommodation has been manifested by the same power to the United States, in the present war.

While it has been said "that Great Britain is the only nation that has acted upon or otherwise given a sanction to it," the edicts of France from 1704 to the present day, with but small intervals of deviation, either in principle or practice, declare the reverse.

The Decrees of France in 1704 and 1744 declare all goods, of the growth or fabrick of an enemy's country, liable to confiscation, unless bound from an enemy's port direct to the port of the neutral owner. An ordonnance by the court of France, delivered to the States General of the United Provinces, and published by authority in the Utrecht Gazette, July, 1756, declares, if any Dutch ships carry any goods or merchandize of the growth or manufacture of the enemies of France, they shall be esteemed good prize, but the ships shall be discharged. On the 9th of May, A. D. 1793, France authorized the capture of neutral vessels, laden with provisions belonging to neutrals, but bound to enemies' ports. This decree was prior, by one month, to the order of Great Britain, of similar import. On the 23d of the same month, she declared it should not extend to American vessels, which latter decree she repealed on the 28th of the same month of May, and the first remained in force. On the 1st July she again decreed as on the 23d May. Twenty-seven days afterwards, this decree was repealed, and that of the 9th May remained in force until 4th of January, 1795. On the 27th of November, 1796, the French commissioners at Cape Francois authorized the capture of all American vessels bound to or from English ports. February 1st, 1797, commissioners at Cape Francois ordered the capture of all vessels bound to any port in the West Indies, delivered up to the English, and all vessels, cleared out generally for the West Indies.

In January, 1798, France declared that the condition of ships in every thing, which concerns their character as neutrals or enemies, shall be determined by their cargoes, and every vessel found at sea, laden in whole or in part with merchandize, coming out of England, or its possessions, shall be declared good prize, whoever may be the proprietors of such commodities or merchandize, and this decree is founded expressly on the ordonnance of 1704.

It is therefore an incontrovertible truth, that France, from the earliest time, and certainly prior to the year 1756, has adopted, in principle and practice, broader rules for limiting the commerce of neutrals, and condemning their property, and with fewer and shorter intervals of regard to their rights, than has been assumed by her enemy, and of course could on no ground be justified by the pretence, that the decree of November, 1806, and the subsequent one of Milan, condemning the property of neutrals, because the vessels had been spoken with by British cruisers, were a retaliation for similar violations of publick law by her foe.

The second resolve proposed assumes as a fact, that the measures adopted by the Congress of the United States in the last year, which were the acts imposing an embargo on the trade of her citizens, were measures of resistance against France and Great Britain. An assumption, which would be scarcely decent for this legislature to adopt, when the president has pledged his word, which ought to be sacred, to both these nations, that they were not measures of hostility, as appears by the letter of the secretary of state to the minister of the United States at the court of France, under date of February 8, 1808, and by a similar letter to our minister at the court of London, under date of December 23, 1807.

And surely the legislature of Massachusetts would be altogether unmindful of its duties, should they attempt to pledge the people of this commonwealth to sanction any measures the Congress might see fit to adopt, after the fatal experience of their measures for

the last year—measures which, however intended, have produced only distress and wretchedness at home, disgrace and degradation of our national character abroad.

A short review of the circumstances and condition of the United States, from the adoption of the present constitution, and the conduct of the different administrations under them, may serve to shew what the interests and honour of the nation did, and do require to be done, on the part of our government.

It is well known, that, when Congress first assembled under the existing constitution, the administration was encompassed with the most serious embarrassments at home and abroad—embarrassments arising out of the waste of capital, the defect of credit, and the want of revenue, at the conclusion of the war—embarrassments, proceeding from the reciprocal claims of the United States and Great Britain, relative to the execution of the treaty of peace—embarrassments concerning the navigation of the Missisippi; and embarrassments, aggravating all such as before existed, which arose out of the French revolution, and that were followed by extensive depredations, committed on our commerce by England, by France and by Spain.

With these obstacles to contend with, the peace and neutrality of the nation were impartially asserted, and maintained—with England, our antient controversies were satisfactorily adjusted—the posts on our frontiers were given up—Indian wars extinguished—adequate compensations, for depredations committed upon our trade, obtained, and the national faith redeemed, by provisions for the final settlement of British debts. By Spain, our right to the navigation of the Missisippi was recognized, and indemnity secured for the illegal capture of our vessels.

With France a new treaty was concluded, annulling her unjust decrees, granting us security, as far as the faith of nations can be so considered, against their future re-establishment, and containing her

submission to the act of Congress, which declared the old treaties void, by reason of their violations on her part.

Thus with foreign nations our antient controversies were adjusted, and those of a recent date, and which had grown out of a fierce and unexampled war, were composed.

At home, agriculture, manufactures, the fisheries, navigation and commerce, were encouraged and extended—the credit of the nation was revived, its capital enlarged, its revenue established—the publick arsenals were replenished, a naval force created, and the American name upheld and revered throughout the world.

In this condition of unexampled prosperity at home, and of peace and consideration abroad, our present rulers were called to the administration of the publick affairs—and what has been the fruit of their labours? Let the following facts answer:

Our agriculture is discouraged,
The fisheries abandoned, and
Navigation forbidden—
Our commerce at home restrained, if not annihilated;
Our commerce abroad cut off, and
Our navy sold, dismantled, or degraded to the service of cutters and gun boats;
The revenue extinguished,
The course of justice interrupted,
The military power exalted above the civil, and by setting up a standard of political faith, unknown to the constitution, the nation weakened, by internal animosities and division, at the moment when it is unnecessarily and improvidently exposed to war with Great Britain, France and Spain.

So great a change, accomplished in so short a time, is unexampled even in the history of weak and unfaithful administrations, and can have proceeded only from the want of that capacity, impartiality and prudence, without which no government can long

preserve the prosperity, or the confidence of the country.

The dawn of the present administration promised an impartial and patriotick course, and the citizens anticipated a continuance of the publick and private enjoyments which distinguished our land; but these expectations were soon disappointed, by the avowal of a system of political persecution and proscription which has interrupted the harmony of good neighbourhood, and gone far to destroy the happiness of social intercourse.

The conclusion of the late war in Europe afforded a favourable opportunity to enter into negotiations, for the purpose of establishing such maritime provisions as, in the event of future war, would secure the navigation and trade of the United States against a repetition of the injuries they had so lately suffered. This opportunity was wholly neglected, and the commercial and maritime treaty with Great Britain, the first naval power in the world, was suffered to expire without a single attempt, that we have ever heard of, to obtain its renewal.

The war in Europe recommenced in 1803, and thereby our commerce was again exposed to interruptions upon the ocean. These served as matter of ineffectual remonstrance until 1806, when France passed the decree of Berlin, thereby violating the provisions of her treaty with the United States, infringing the law of nations, and prostrating the commercial rights of all neutral states.

This decree is substantially and almost literally the same as that passed by the French Directory in 1798, and which president Adams in his speech to Congress in December following, pronounced to be "an unequivocal act of war, which interest, as well as honour, called on the nation firmly to resist."

Congress accordingly proposed to pass laws, annulling the treaty with France, prohibiting all commercial intercourse with the French dominions, and providing the equipment of a naval force, for the defence of our just rights.

The country cannot have forgotten the protection afforded to trade by these measures, so honourable to the nation—measures by which our flag was respected in every sea, and the skill and courage of our officers and seamen displayed in battle with the ships of France.

It was in consequence of these decisive acts, that an early communication was made to our government, of the desire of France to return to the relations of peace and to the authority of publick law, and the convention, which was soon after concluded by our government, with the person who now sways the sceptre of France, accomplished those important objects.

Had our rulers, after the promulgation of the decree of Berlin, followed the example of their predecessors, the English orders would not have been issued, nor should we now have to deplore the distress that afflicts the country.

If, then, these evils might have been avoided, by imitating the example of 1798, may they not yet be removed, by retracing the erroneous steps which have been taken, and by adopting *now* those measures which *then* proved efficacious?

To this end, let Congress repeal the embargo, annul the convention with France, forbid all commercial intercourse with the French dominions, arm our publick and private ships, and *unfurl the republican banner against the imperial standard.*

This done, the English orders would cease to operate, we should hear no more of the unparalleled folly of contending, at the same time, with all the great powers of Europe—our trade to every region of the globe, except France and her dependencies, would again recover and flourish—our agriculture would feel the influence of the emancipation of trade, and hand in hand with general prosperity, the revenue of the nation would once more exceed its expenditure.

Therefore *Resolved*, That it is inexpedient for this house to adopt and pass the resolutions proposed.

By order of the committee,

C. GORE.

REPORT

Of a Committee of the House of Representatives,

RESPECTING CERTAIN MILITARY ORDERS ISSUED BY HIS HONOUR *LEVI LINCOLN*, LIEUTENANT-GOVERNOUR AND COMMANDER IN CHIEF OF THE COMMONWEALTH OF MASSACHUSETTS.

THE committee appointed "to inquire what military orders have been issued by His Honour the lieutenant governour of this commonwealth, or by the adjutant general, for the purpose of calling on the militia of this commonwealth to enforce the embargo laws, and the manner in which such orders have been issued and executed," with orders "to proceed on said business, and report on the subject at large to this house as soon as possible," have attended to that service, and ask leave to report—

That on the first day of February instant, military orders were issued though the adjutant general's office, by His Honour Levi Lincoln, lieutenant governour and commander in chief of this commonwealth; a copy of which orders accompanies this report.

They find by the statement of the adjutant general, that these orders were directed and sent to the following officers severally, viz. Thomas Badger, lieutenant colonel commandant; Charles Turner, lieutenant colonel; Ebenezer Lothrop, brigadier general; David Nye, lieutenant colonel; Baker Loring, Ebenezer Bowditch and Thomas Williams, captains; James Brickett, major general; Charles Bean, Simon Nowell and Moses Bradbury, captains; James Merrill and Charles Thomas, lieutenant colonels; Joshua Danforth, captain; Samuel Reed, lieutenant colonel; and John Cooper, brigadier general: with the exception that the following words were not inserted in the order sent to Colonel Badger; which the adjutant general states to have been omitted by mistake, viz. "Recollecting that in the happy government established by the American people, the character of the citizen is not lost in that of the soldier, and that coolness, firmness, prompt obedience, and a sacred regard to the rights of society and individuals are essential to both; you will duly appreciate this opportunity of serving your country, and of even increasing the confidence she has placed in you."

Your committee find that the officers above named were designated and appointed as "the militia officers" near several ports of entry within this commonwealth, "to whom the collector of the district is to apply, if it shall be necessary, to accomplish" the "purposes of the national government," as "specified" in the orders. They are required to "be prepared and hold themselves in readiness with those under their command, armed and equipped, at the call of the collector, and subject to his discretion, to aid him with their whole force, or such part thereof as may be sufficient to enable him within his district to discharge his duties, prevent disorders and opposition to the authority of government, and carry the aforesaid laws into execution;" and to "make correct muster and pay rolls of such militia as shall be employed in actual service, and transmit the same to the war department of the United States."

The places of abode of the officers, and the ports of entry comprised within their several commands,

are stated in a schedule from the adjutant general's office, accompanying this report.

Your committee find, according to the statement of the adjutant general, that an officer has not been appointed "in or near to each port of entry within this state." No officer has been appointed, according to his statement, whose command appears to extend to either of the ports of Castine, Frenchman's Bay, Nantucket, Dighton or Gloucester; unless the name of Gloucester ought to be added in the schedule to the names of Newburyport and Ipswich, opposite the name of General James Brickett, of Haverhill; which the adjutant general "believes" ought to be the case, and which he says was accidentally omitted.

It will be seen by the said schedule, that Machias, Passamaquoddy, and Moose Island, were all placed opposite the name of brigadier general John Cooper, of Machias. By the same document it appears that the number of *infantry*, rank and file, of the entire command of the general and field officers afore named, amounts to fifteen thousand two hundred and sixty nine. The adjutant general does not state whether there are troops of any other description under their command. Your committee could not ascertain the number of men under the command of the seven captains, thus appointed, because the returns of companies never appear in the adjutant general's office.

Contrary to military custom and the uniform usage in this commonwealth, the orders to the brigadier generals, lieutenant colonels and captains were sent directly to them respectively, without passing through the hands of their superiour officers, and without consulting them, or giving them any notice of the same.

The adjutant general informed your committee, that he had seen a letter from the secretary at war to His Honour the lieutenant governour, upon the subject of these appointments, but that he had no copy of the same; and that he believed it had always been

the practice with other governours of this commonwealth, to retain any communications to them from the secretary at war of the United States.

Your committee did not think it expedient to apply to His Honour for any communications which he might have received from the president or the secretary at war.

Your committee, under the injunction to report as soon as possible, have confined their inquiries respecting the manner in which the orders of His Honour have been executed, to the district of Boston and Charlestown. They find that Colonel Badger received the orders of the commander in chief on the second or third of February instant; that by an order dated the seventh instant, he directed the commissioned officers under his command, to meet on the following evening on military business; that the officers having accordingly convened, the orders of the commander in chief were read to them, and they were required to hold themselves in readiness to march at a moment's warning with the men under their respective commands, for the purpose of enforcing the embargo laws, agreeable to the said orders.

Your committee find some of the officers so convened, belonged to a detachment consisting of five companies, with a suitable proportion of officers, which had lately been detached from said Colonel Badger's command, and put under the command of Colonel Barnes, of Roxbury; and that they form a part of the one hundred thousand men lately drafted for the service of the United States. Application was made to Colonel Badger, by some of his officers, at the time of said meeting, and afterwards, for a copy of said orders, but they could not obtain them. Application was also made to the adjutant general for a copy of the orders, but without success. It was stated to your committee, both by the adjutant general and Colonel Badger, that doubts have been entertained respecting the authority of the naval offi-

cer of the district of Boston and Charlestown; he had not been informed of these orders, and it was intimated that these circumstances had prevented the circulation of the orders in the usual mode.

Your committee find that by the constitution of the United States, Congress is authorized "to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;" and that the president is the "commander in chief of the army and navy of the United States, and of the militia of the several states, *when called into actual service of the United States.*"

Your committee also find that by a law of the United States, passed Feb. 28, 1795, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasion, and to repeal the act now in force for those purposes," it is enacted, "that whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress:" "*Provided always*, that whenever it may be necessary in the judgment of the president to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time."

Your committee find that when there was an insurrection in the western parts of Pennsylvania, in the year 1794, and the insurgents finally perpetrated acts which amounted to treason, being overt acts of

levying war against the United States; President Washington then proceeded most scrupulously, in conformity to the act of Congress then in force, "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions;" and troops were called forth from several states, at the request of the president, by the governours of the same, in the usual manner, according to the law and custom. The committee presume, however, that it will be readily perceived that nothing in the constitution or laws of the United States authorizes the president, under the existing circumstances, to call forth the militia of this state, or any part thereof.

By the tenth section of an act of Congress passed January 9th, 1809, it is provided, "That it shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, and keeping in custody and guarding any specie or articles of domestick growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons, resisting the custom house officers in the execution of the laws laying an embargo; or otherwise violating, or assisting and abetting violations of the same."

The present Legislature of this commonwealth have "Resolved, that the said act of Congress, passed on the ninth day of January, in the present year, for enforcing the act laying an embargo and the several acts supplementary thereto, is in the opinion of the legislature, in many respects unjust, oppressive and unconstitutional, and not legally binding on the citizens of this state."

But even if this act were admitted to be constitutional, your committee do not find that by the said act, Congress have provided any new mode of calling forth the militia; and they conceive that the militia cannot *legally* be "employed" by the president of the United States, or by any person empowered by him, till they have been called forth in the mode which congress had previously prescribed.

Your committee find that by the constitution of this commonwealth, chap. ii. sect. 1, art. 7, the governour is "entrusted" with all the "powers incident to the offices of captain general and commander in chief and admiral, to be exercised agreeably to the rules and regulations of the constitution *and the laws of the land, and not otherwise.*"

The same constitution, bill of rights, art. 17, declares that "the military power shall always be held in exact subordination to the civil authority, and be governed by it." This great principle is repeatedly recognized by our laws, and was respected even amidst the horrours of a rebellion. By a law passed February 20th 1787, the preamble of which states that an unnatural and dangerous rebellion actually existed at that time in this commonwealth, it is declared, that in a free government, where the people have a right to bear arms for the common defence, the military power is held in subordination to the civil authority."

In the 32d section of the militia law of this commonwealth, passed June 22d, 1793, which provides for calling out the militia "in case of threatened or actual invasion, insurrection or other publick danger or emergency," it is enacted that whenever a detachment is made in any such case, "the officers, non-commissioned officers and privates, being able of body, *shall be detailed from the rosters or rolls which shall be kept for that purpose.*" And your committee do not find that the commander in chief of this commonwealth is authorized, in calling out the militia, to select and designate particular officers and particular corps or men, without regard, "to the rosters or rolls which shall be kept for that purpose."

Wherefore Resolved,

That in the opinion of this house, the said military orders of the first of February instant, issued by His Honour Levi Lincoln, lieutenant governour, and commander in chief of this commonwealth, are irregular, illegal, and inconsistent with the principles of the constitution; tending to the destruction of military discipline, an infringement of the rights and derogatory to the honour of both officers and soldiers; subversive of the militia system, and highly dangerous to the liberties of the people.

All which is respectfully submitted.

ISAAC MALTBY, *Per Order.*

SPEECHES

Of the Gentlemen who composed the Committee, in the Debate, in the House, on accepting the foregoing Report.

Gen. Maltby.

Mr. Speaker,

FEELING, sir, a responsibility as one of the committee who submitted the report now under the consideration of the house, and believing it proper that I should communicate some of the reasons which induced me to unite in that report, I claim your indulgence, while I attempt to perform this duty. And when I consider the importance of the report as it

respects the commonwealth and the commander in chief; when it is known, that I have not been in the habit of detaining the house by my observations in their debates; I may the more confidently hope for a few moments' attention.

I shall not deal in round assertions, unaccompanied with proof. It is my design to examine the constitution and laws of the United States and the constitution and the laws of this commonwealth. This examination may perhaps be thought more properly to belong to those whose profession is the study of law; but, sir, in another capacity, not as a legislator (while studying the duties incumbent on me as a militia officer) I ought at least to know something of the duties of my superiours. While I turn the attention of the house to the constitution and the laws; the report on your honours' table and the documents which accompany it, shewing the manner in which the orders have been issued and executed, will enable them to determine, whether the constitution and the laws of the country and the privileges of its citizens have been duly regarded.

By the United States constitution, art. 2d, sec. 2d, "The president shall be commander in chief of the army and navy of the United States, and of the militia *of the several states*, when called into the *actual service of the United States.*" Here it will be found, that the president has no power over "the militia of the several states" until they are "called into actual service." How then (it will be inquired) are the militia to be called into actual service? The constitution, art. 1st, sect. 8, authorizes Congress to "provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions." Here, sir, it is evident that Congress have the power to point out the *manner* in which the militia shall be *called into actual service*, and the president has no power to call them into service, in any other way than the one prescribed by Congress. It will be proper then to inquire, what provision Congress have made for this purpose. In the year 1795 Congress passed a law in pursuance of the above recited provision of the constitution; which you will find in the 3d volume United States laws, page 189, sec. 2d, which I beg leave to read: Be it enacted, &c. "That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations *too powerful* to be suppressed by the *ordinary course of judicial proceedings*, or by the *powers vested in the marshals* by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress. *Provided always*, that whenever it may be necessary in the judgment of the president to use the military force hereby *directed to be called forth*, the president shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes, within a limited time."

This is the law by which the president is empowered to *call forth the militia*, and by which he is bound *always* to *publish* his *proclamation* before he issues his orders, and never to do *this*, until the combination is too powerful to be suppressed by the civil authority. These are all the powers which Congress have thought proper to give the president, to call forth the militia. The law of 1792, respecting this subject, was repealed by the passage of this act.

But it seems by the general orders issued, Head Quarters, 1st February, by His Honour lieutenant governour Lincoln, that he relies upon the late law of the United States, passed Jan. 9, 1809. Here, sir, with your leave, I will read that part of the lieutenant governour's orders to which I refer, with the 11th section of the law which he has quoted. The lieu-

tenant governour observes, " In pursuance of these constitutional powers, to prevent a repetition of those *rash, indiscreet, unwarrantable and alarming evasions of the laws of the Union*, which have *disgraced* our state (Mass) and been injurious to the respectable citizen and fair trader ; it is provided by the eleventh section of an act passed January 9, 1809, that it shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to *employ* such part of the land or naval forces, or *militia* of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of and keeping in custody any ship or vessel, or of taking into custody and guarding any specie or articles of domestick growth, produce or manufacture ; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom house officers, in the execution of the laws laying an embargo, or otherwise violating and abetting violations of the same.

Now, sir, I contend, that this law *does not provide* for *calling out the militia ;* but only provides for the *employment* of them when they *are called out.* Here is no *new method* pointed out by which they may be brought into actual service. The law merely points out the object of their employment. If gentlemen will attend to this act, they must and will be convinced that the president is not authorized to *call out the militia* in any other manner, than that which is prescribed by the law of '95, which requires him first to issue his proclamation, &c. and when *called* into actual service agreeably to the provisions of that law, the president by *this act* is only empowered to *employ* them for the purpose of enforcing the embargo laws.

But admit for a moment that the president of the United States has a right to call out the militia in a manner different from the provisions of the law of '95. Yet when he calls on the governour as commander in chief of the militia of the commonwealth, the power to *call out* then rests with him, and he (the governour) must either abandon our *state sovereignty*, or he must proceed to make his detachments according to the *laws of the state.*

Let us see then, by an examination of the consitution and laws of this commonwealth, how far *they* have been complied with by the commander in chief.

By the constitution of Massachusetts, he is obliged (chap. 2nd, sect. 1st, art. 7th) " to exercise all the powers incident to the offices of commander in chief, and captain general, agreeably to the rules and regulations of the constitution and the laws of the land, and *not otherwise.*" Therefore if he departs from them, it is a violation of their principles.

By the laws of Massachusetts, passed in the year 1787 (vol. 1, page 366) it is expressly directed, that even in a time of insurrection (for this law was passed during the rebellion in the western counties) orders from the commander in chief should go directly to the major general, or commanding officer of the division, which with leave I will read. Be it enacted, &c. " That whenever an insurrection shall have taken place in either of the counties of the commonwealth, to obstruct the course of justice, or the due execution of the laws, or there is reason to apprehend that a dangerous insurrection for such purposes will be excited, it shall be the duty of the civil officers in such county, as well the sheriff as the justices of the several courts of judicature within such county, immediately to give information thereof to his excellency the governour, for the time being ; who is hereby requested thereupon, to exercise the powers vested in him by the *constitution*, and to give immediate direction to the *major general or commanding officer of the division where such insurrection exists, or is apprehended*, and if he shall think it necessary, to the ma-

jor general or commanding officer of any other division or divisions, to *detach* from his or their *division* or *divisions*, such part of the militia for the support of the *civil authority*, as he shall judge fully adequate for that purpose, and for the apprehension and safe keeping of those who may be concerned in such insurrection."

By this law the path is plainly marked; and the order from the governour is to be made to the next in command. But if it were possible that it should be made more plain, look at the militia law, passed in 1793, 32d sect. where it is enacted, "That whenever in case of threatened or actual invasion, insurrection or other *publick danger or emergency*, the militia or any part thereof shall be ordered out or *detached*," in all cases when the detachment is made, "the officers, non-commissioned officers and privates, being able of body, shall be *detached from the rosters* or rolls which shall be kept for that purpose." Therefore it is evident from the laws of Massachusetts, that orders for detachments must pass from the commander in chief to the major general, or next in command, and that inferiour officers, in different grades, are not to receive their orders directly from the commander in chief, but each is to look to his next superiour officer for his orders.

What, sir, would be the consequence, if these proceedings, so *unprecedented*, should pass unnoticed? The principle adopted is ruinous!—No military man can avoid seeing, that it goes to the destruction of every military principle. It divests the officers of their constitutional powers, and deprives them of their rights! When an officer receives a commission, it gives him certain powers and rights, of which he cannot regularly be deprived without trial. All the officers, a part of whose men are taken from their command without their knowledge or consent, are deprived of the right to exercise all the power given them by their commissions; and in the examination of these proceedings of the Lieutenant Governour, I

find one Brigadier General has but six companies left under his command; the remaining companies being detached, without his orders, knowledge, or consent, and subject *to the call* and *discretion* of the Collector. Upon the same principle by which the commander in chief is permitted to take a part, he may take all his men, and deprive him of his entire command. If the principle be admitted that he may designate officers, he may also select soldiers, and where there are ten, one favourite may be secretly armed for the destruction of the remaining nine.

It was not my design (when I rose) to point out the evil consequences of such irregular measures, nor my wish to occupy the whole ground. But before I sit down, I will state one fact, which perhaps may have a considerable effect in the decision of the question before the house. Governour Trumbull, of Connecticut, received orders from the Secretary of War, similar to those received by Lieutenant Governour Lincoln, and after advising with the best counsellors, he replied to the Secretary, that he would never have an agency in the execution of laws so unconstitutional and so destructive to the rights of the people. And it is to be exceedingly regretted by every citizen of Massachusetts, that this noble example had not been imitated by our commander in chief; who thus would have exhibited to the world a due regard to the *rights of the people and the* SOVEREIGNTY *of the* STATE.

MR. SARGENT.

Mr. Sargent observed that there was a time when certain gentlemen exerted all their talents and all their eloquence in favour of the constitution and the laws—the liberties of the people and the rights of man—The people were every thing—their rulers were nothing—or rather they were the servants or slaves of the people—no character was too elevated to be assailed, no reputation too fair to be attacked; no services a security against reproach. Jay, who made

a treaty, from which this country derived great benefit, was reviled, abused and burnt in effigy. Hamilton was persecuted, calumniated, and finally murdered; and even Washington himself escaped not the foul and bitter tongue of slander. But, sir, times are changed, and men have changed with them—To hear gentlemen talk now, one would think that the people had no rights, and that the constituted authorities were absolute—the maxim of the present day, is "The King can do no wrong."

It is no pleasure to me, sir, to animadvert upon the measures or conduct of men high in office; but when called upon to perform a duty, I hope to execute it without fear or favour.

Having had the honour to be one of the committee who made the report now before us, I will with your permission, sir, give some account of the manner in which the committee proceeded. Having ascertained the facts which are stated in the report, and which no gentleman has called in question, their first inquiry naturally was, had the President of the United States a right to give to the commander in chief of this Commonwealth the directions which by the orders of the Lieutenant Governour it appears he did give to him?

By the constitution of the United States, Congress is authorized "to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; "and the President is the commander in chief of the army and navy of the United States, and of the militia of the several states, *when called into the actual service of the United States.*" There is no militia of the United States.—The militia belong to the several states; and when they are to be brought into the service of the general government, they must be called forth according to the laws of the states respectively.

Pursuant to the powers vested in them by the constitution, Congress passed a law in 1792, providing for calling forth the militia, &c. and in the year 1794,

when there was an insurrection in the western parts of Pennsylvania, the militia of several states were called forth according to that law. By recurring to the history of those days, we shall see what was then the practical construction of the law, how scrupulously President Washington conformed to it, and with what exemplary discretion he conducted at that important and delicate crisis.

The insurgents had finally perpetrated acts which amounted to treason, being overt acts of levying war against the United States. The facts were certified by an associate justice, according to the law in force—and President Washington issued his Proclamation, calling upon these deluded people to disperse and retire peaceably to their several homes, within a limited and reasonable time. The governour of Pennsylvania issued a proclamation, dated *on the same day* with and recognizing the President's. At the request of the President, *measures were taken* by the states of Virginia, Maryland, Pennsylvania and New Jersey, for calling forth part of their militia. The President issued *another proclamation*, and the troops were finally embodied. The governours of Virginia, Pennsylvania and New Jersey led on their respective troops, and Washington himself accompanied the army till his presidential duty required his return to Philadelphia. On parting with the army, he sent a message to Governour Lee, the commander in chief, in which he particularly recommended, "that every officer and soldier would constantly bear in mind, that he came to support the laws," &c.—"*That the essential principles of the government, confine the province of the military, when called forth on such occasions*, to these two objects—1st. To combat and subdue *all who may be found in arms*, in opposition to the national will and authority. 2d. To aid and support *the civil magistrates*, in bringing offenders to justice." He thus concludes—"The dispensation of this justice belongs to the *civil magistrate—and let it be your pride and glory to have the sacred deposit there inviolate.*"

I will now, sir, revert to the report, and as the hour is late and the house impatient, will comment only on some parts of it, which as I run it over, may strike me as important. The officers who have been designated and appointed by His Honour, are ordered to "make correct muster and pay rolls of such militia as shall be employed *in actual service*, and transmit the same to the war department of the United States." They are therefore to be considered as troops of the United States—are they to be under the law martial, sir? may they be dealt with according to the rules and discipline of war? Are gentlemen aware of all the consequences which may flow from this measure?

The number of men under the seven captains who have been designated and appointed, could not be ascertained, because the returns of companies never appear in the adjutant general's office. This circumstance of itself, sir, manifests the irregularity and impropriety of this mode of proceeding. Neither the commander in chief nor the adjutant general can tell how many men they have ordered out—in fact they don't know that the officers who have been designated, are in existence. Some of them may have been arrested by order of their superiour officers to be tried by a court martial. These and many other difficulties are avoided by the usual manner of issuing military orders.

By the orders of Col. Badger, 2346 of the militia of the town of Boston, in addition to other troops, may be put under the command of the collector of this district, be he whom he may; subject to his discretion, to aid him to discharge his duties, *prevent disorders and opposition to the authority of government.* If the collector should be of opinion that this house was acting in opposition to the authority of government, why might he not order his troops hither to disperse or punish us? Part of the officers and men of Col. Badger's infantry, who are now ordered to hold themselves in readiness at the call of the collector, were lately detached as part of this state's quota of the 100,000 men drafted for the service of the United States, and have been put under the command of another colonel belonging to Roxbury. This is another proof of the irregularity of the procedure. Indeed, sir, these men are now under *three distinct commands!* They may be ordered by the collector to march one way—by brigadier general Winslow another—and they may receive different orders from colonel Barnes.

The gentleman from Hopkinton says that he thinks the commander in chief has done perfectly right, and in his opinion there would have been no more propriety in his having transmitted the orders in the usual mode, through the hands of the superiour officers, than there would have been in general Washington's having sent orders to pass through the hands of the former commander at West Point after he had been informed of his treachery. Does the gentleman mean to say that all the major generals of this commonwealth are *Arnolds*, except general Brickett of Haverhill? I have had the pleasure to hear that general Brickett has sent in his resignation.

The gentleman from Dorchester says that by the constitution of the United States, all laws passed by Congress are binding, any state law to the contrary notwithstanding—and adds, that the militia are under the immediate command of the president, and he may call out or empower any individual to select any portion of them. I did not think, sir, that any gentleman in this house would rise in his place and advance a doctrine like this. I have no belief that the president has any command whatever over any part of the militia till they are legally and regularly called forth for the service of the United States. If it were as the gentleman says it is, what government could possibly be more arbitrary?

[*Mr. Morton rose to explain—he was sorry the gentleman should misrepresent him—he had not said that*

the president might send his orders to any individual, &c.]

I did not misrepresent the gentleman, said Mr. Sargent, and I am sorry that he should pretend I did—he certainly said so; and in confirmation of it, he added, that the lieutenant governour did not issue these orders as commander in chief, but as a *private man*, in whom the president had seen fit to place confidence, &c. Yet His Honour says in the orders, he had been requested, as commanding officer of the militia of this commonwealth, to appoint these officers—and the orders are dated at Head Quarters, and countersigned in the usual manner by the adjutant general—" by order of the commander in chief."

The argument of the gentleman went to prove that your militia laws are good for nothing.—Repeal them, sir, and where is your militia!

We say, sir, that these orders are irregular—military men will immediately pronounce them so. The committee inquired of the adjutant general if he had ever issued orders *in this way* before. He believed he had, to the Independent Cadets, in the absence of the major general. Col. Apthorp remembers no such instance, nor do other officers of whom we inquired. But if that was ever the case, it must be remembered that this corps does not belong to the line. The procedure is, therefore, virtually acknowledged to be without a precedent.

That the orders are illegal and inconsistent with the principles of the constitution, is shown in the report. They undoubtedly tend to the destruction of military discipline, and are an infringement of the rights and derogatory to the honour of both officers and soldiers. You would in this way make an officer a ridiculous cypher—you don't remove him from office, but you take the men from his command; while you would impose unequal burthens upon some part of the militia, you might deprive another part of their just share of honourable service. They

are subversive of the militia system. What would become of your divisions, brigades, regiments, battalions, and what would be the case of your brigade majors, and adjutants, your rosters and your rolls—if all the forms, regularity and order which belong to that system are to be despised and trampled upon?

Finally, sir, the orders are said to be *dangerous to the liberties of the people.* If the principle contended for is correct, it must be correct to morrow. If one president can give such instructions, so can another. And if they are to be obeyed, then any portion of the militia may at any time be selected and placed under the controul of any individual, subject to his discretion, to aid him in preventing what he may deem an opposition to the authority of government, &c. Let gentlemen of all parties duly weigh this subject, and then say if any thing can be more absolute or dangerous. If this principle is correct, sir, what necessity is there for drafting men, or raising volunteers? You have already a standing army, composed of the whole militia of the country.

Col. Thatcher.

Mr. Speaker,

As the house has voted not to adjourn, and there appears to be a disposition to take the question this evening, I shall confine myself to a course more limited than I intended. When gentlemen reflect upon the usages of other legislative bodies, when they recollect that the House of Representatives of the United States can be kept together all night to pass an additional embargo act, I hope they will discover no impatience on this occasion—and that they will allow us time to bring the whole subject before the house. But when, sir, I find no military man attempting to defend the late unprecedented orders—when I see gentlemen of talents in the minority searching in vain for law or usage to justify this procedure—it is rather because other gentlemen of the

committee, though they have defended the report with great correctness and perspicuity, have professed not to embrace the whole subject, than from any necessity of the case, that I address the house on this occasion. But, sir, we will endeavour to take a view of the objections raised to the report, and to examine such parts of the constitution and laws of the United States and of this commonwealth as seem most applicable to this subject.

And first, sir, it may be observed that gentlemen have bottomed their defence of the executive upon the position that the president, being the commander in chief of the militia of the United States, had, as such, a right to issue his orders to any officer of the militia. This, sir, is a gross errour in the outset. There is no such thing as *militia of the United States.* The constitution speaks of "*the militia,*" and of "*such parts of them as may be employed in the service of the United States.*" As in art. 1st, sect. 8th, "The Congress shall have power to provide for calling forth *the militia,* to execute the laws of the Union, and suppress insurrections and repel invasions, to provide for organizing, arming and disciplining *the militia,* and for governing *such part of them as may be employed in the service of the United States,* reserving to the states respectively the appointment of the officers, and the authority of training the militia, &c." (I quote this whole passage because I shall have occasion to refer to it again) and the constitution also speaks of "*the militia of the several states,*" as in art. 2d, sect. 2d, "The president shall be commander in chief of the army and navy of the United States, and *of the militia of the several states when called into the actual service of the United States.*" Until the militia of the several states are called into the actual service of the United States, in a mode provided by Congress, which can be done only in certain cases, the president has no command over the militia. As my friend from Boston (Mr, Sargent) has said, until this is done, there is no more privity between the president and

an inferiour officer of Massachusetts, than there is between that gentleman and the dey of Algiers.

It will be admitted that the federal constitution was a compact between independent states, possessing the rights of sovereignty, jealous of their state powers, unwilling to yield more to the general government than was absolutely necessary for the purposes of the Union. There was no point of which the states were more tenacious than the right of bearing arms, and the appointment of the officers of their own militia; and we may add, no rights more strongly secured to the states by the constitution. So jealous were the states of this power to controul the militia, that they would not invest the president of the United States with authority to call forth the militia even in cases of the greatest emergency. We find by the section of the constitution already quoted, that Congress alone has the power to provide for calling out the militia of the several states, and only in certain cases. Gentlemen contend that Congress has so exercised this power as to authorize the president, and his substitutes, to call out the militia for certain purposes contemplated in the last act respecting what they have been pleased to call an embargo. The gentleman from Dorchester (Mr. Morton) has read a part of the sixth article of the constitution, viz. The "constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land." I will thank the gentleman to take with him also the twelfth article of the amendments to the constitution.

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." All laws therefore which can constitutionally be made by the general government, must be founded on powers clearly vested in that government by the constitution.

This then being admitted, Mr. Speaker, and also that Congress alone has power "to provide for call-

ing forth the militia to execute the laws of the Union, "to suppress insurrections and repel invasions," let us inquire in what manner Congress has exercised this power—whether any of the cases in which the militia may be called forth, exist in Massachusetts, and if so, whether the requisitions of the law for calling out the militia have been complied with. With respect to the first point, we find that by a law of the United States, passed Feb. 28, 1795, entitled "An Act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," "whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any state by *combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals, by this act*, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed, and the use of the militia so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress."

Sect. 3d, "Provided always," that whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, "by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

In the 4th sect. we find that "no officer, non-commissioned officer or private of the militia, shall be compelled to serve more than three months, after his arrival at the place of rendezvous, in any one year, nor more than in due rotation with every other able bodied man of the same rank in the battalion to which he belongs."

The 9th sect. of this law ordains that the marshals of the several districts, and their deputies, shall have

the same powers in executing the laws of the United States, as sheriffs and their deputies in the several states, have by law, in executing the laws of the respective states."

This law repeals a former one upon the same subject, but the law which I have now cited is the only one now in force, in which Congress has exercised this power agreeably to the provisions of the constitution.

Do any of the cases in which the militia may by this law be called forth exist in this state? Have the laws of the United States been opposed, or the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings? It will not be pretended that the least obstruction or impediment has been opposed to the courts of the United States or to their ordinary course of judicial proceedings in this commonwealth. Have the marshals or their deputies been resisted? Have there been combinations to oppose the government too powerful to be suppressed by the marshals, armed with the whole power of the sheriffs with the posse comitatus at their heels? No such thing is pretended. The gentleman from Worcester, (Mr. Bangs) indeed tells us that a man was taken from a vessel some time since by a few individuals in disguise, but he also informs us that he was almost immediately released; surely he will not say that this case was one contemplated by this law. Is it necessary "in the judgment of the president" "to use the military force directed by said law to be called forth" in certain cases? Has he discovered any insurgents in Massachusetts? And has he, as he did in regard to certain people in Vermont, issued his proclamation to the poor deluded rebels of Massachusetts, ordering them to disperse, and go to their places of abode! "You all do know" that there has been no such thing. The gentleman from Boston has stated with what caution—with what moderation—with what delicacy—the militia was called

forth by the illustrious Washington, at a time when a most alarming rebellion existed in Pennsylvania. The steps pointed out by a law then in force, similar to the one before recited, were strictly pursued. There was no attempt then made by the president to *select and designate* particular subordinate officers to enforce the laws. An order, or rather a request, was made to the commanders in chief of several states to call forth a certain number of militia, and the command was given to one of the governours, even after the militia was in the field. The whole business was conducted with a scrupulous regard to the constitution and the laws and to military usage.

But, sir, gentlemen, conscious that the late orders cannot be justified under the laws previously passed, have called to their aid the 11th section of the last embargo law. Let us inquire whether this 11th section be constitutional, and if so, whether it has repealed the former law for calling forth the militia in certain cases, or enacted any new mode for exercising this power. Here, sir, I wish to be understood not to intrench myself behind the opinion expressed by this legislature with respect to the unconstitutionality of this law. I am desirous to examine it without reference to this opinion. The substantial part of this section is, that "It shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces, or militia of the United States or the territories thereof, as may be judged necessary in conformity with the provisions of this and other acts, respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of and keeping in custody and guarding any specie or articles of domestick growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom house officers in the execution of the laws laying an embargo;

or otherwise violating or assisting and abetting violations of the same." With respect to the constitutionality of this section, it is to be observed that in order to make way for the power intended to be given, the militia are in this section called *the militia of the United States*, because as I have already stated, the president has no power over the militia of the several states until they have been called forth by law in certain cases. But "it shall be lawful for the president, or such other person as he shall have empowered for that purpose, to employ the militia," &c. Thus then, sir, it appears that Congress has attempted not only to invest their favourite president with all the powers of generalissimo of the land forces," &c. lord high admiral of the seas; but he is to "employ" the whole militia, if he thinks proper, for the purpose of enforcing the embargo laws, without the least notice or formality. But this is not all. The president is not to exercise these tremendous powers himself solely, but he is anthorised to "empower" any person with like authority—so that if this be constitutional, the president can invest any person, citizen or foreigner, officer or soldier, with powers superiour not only to all our officers, but which "puts at nought" all our state governments and all our laws. We have heard of a people who have invested their chief magistrate with high powers during life, with power also to name his successour; but I believe it was reserved for this Congress to authorize an individual not only to exercise supreme power himself, but to invest him with power "of substituting one or more agents under him" who should be clothed with the same plenary powers. To shew this is not a construction merely imaginary, if you will turn to His Honour's orders you will find that he has actually accepted this power of attorney, and that he has gone even beyond the president's power, which extends only to employing the militia "efficaciously to maintain the authority of the laws respecting the embargo." For His Honour has issued his orders

to these officers "to be prepared and hold themselves in readiness with those under their command, completely armed and equipped, at the call of the collector, and *subject to his discretion*, to aid him with their whole force, or such part thereof as may be sufficient, to enable him within his district, to discharge his duties, *prevent disorders and opposition to the authority of government*, and carry the aforesaid laws into execution. Thus, sir, you perceive that we have already fifteen or sixteen thousand soldiers in this state, with officers who have been *selected* for their "known respect for the" embargo "laws" and at the call, and subject to the discretion, of the collectors—among other things to "prevent disorders and opposition to the authority of government." If the collector, or in his absence the deputy collector, should imagine that this legislature had manifested "an opposition to the authority of government," I see nothing to prevent him, under his power of attorney, from putting himself at the head of the whole militia of Boston, and ordering his columns to march to this House, and *compelling* the Legislature to disperse. If, sir, Congress have power to make such a law as this, what shall prevent them from exercising the most unlimited and arbitrary powers? If Congress can invest the president and his substitutes with these powers, there is no longer any constitution—your liberties are a name—your forms of legislation a mockery. Instead of free republicks united by solemn compact, under a federal government with limited powers, we have become a consolidated empire under the absolute controul of a few men—we have sunk into the deep abyss of a frightful despotism. Sir, are gentlemen willing to maintain principles which inevitably lead to these consequences? Are the boasting "republicans" of Massachusetts ready to sacrifice the state governments upon the altar of party? Are they ready to abandon the favourite maxims of Hancock and Adams, and to prostrate all our rights—all our institutions, to carry into effect this mad system of destruction?

But, sir, enough has now been said respecting the unconstitutionality of this section; let us inquire whether it has repealed the former law for calling forth the militia in certain cases, or enacted any new mode of exercising this power. It is a given principle that a law touching the same subject as any former law, but neither respecting nor noticing it, the last does not repeal the former law, except so far as the two laws may be contradictory or inconsistent with each other.

In the case under consideration, this law not only does not contradict or repeal the law respecting the manner of calling forth the militia in certain cases, but it does not prescribe *any* mode of calling them forth. Gentlemen have been obliged to dwell upon this word "employ," and they would make this single magical word contain within itself a virtual repeal of the law for calling forth the militia before cited, and also a new law for this purpose—to such a subterfuge are gentlemen driven in an attempt to justify what cannot be defended. Sir, the gentleman from Hatfield, General Maltby, has very justly said, that neither the president nor the lieutenant governour can constitutionally "employ" the militia until they are called forth agreeably to the provisions of the law for that purpose. If gentlemen say this is reductio ad absurdum, it makes the laws a mere nullity—we answer that we are bound to give their full effect to the constitution and the laws, and to weigh them in the scales of common sense and sound construction. But if the Congress of the United States, either from want of discrimination, or from their extreme haste to rivet the chains upon the necks of the people, have omitted a link in one of their chains; it is not for us to supply the deficiency.

I think then, Mr. Speaker, we have made out our case so far. We have shown that Congress had no right to invest the president or his substitutes with these powers. Consequently that he exceeded his constitutional authority in attempting to carry them

into effect. It follows of course that His Honour the lieutenant governour cannot be justified in acting under this void authority. But even if this difficulty did not exist, we consider the mode in which the orders have been issued and executed, as highly irregular, as deviating from the provisions of our state constitution and laws, and in short deserving all the expressions of disapprobation contained in this resolution. It is indeed extremely to be regretted that His Honour had not, like the patriotick governour of Connecticut, refused to have any participation in carrying into effect this most oppressive and unconstitutional law—that he condescended above all to select and appoint these officers, and to order out these men in a manner unknown to our laws, and to military usage, and to give offence to the whole body of the militia. Sir, I conceive this has been a greater offence to those selected than to those omitted. It clearly implies that they were considered as fit instruments to be employed, under the command of *a new species of military officers, the collectors, to be subject to their discretion*, and to do what the great body of the militia could not be expected to perform. Sir, let me not be understood to convey any censure upon these officers or men.—I know but one of them personally. I do not believe that they will generally conceive themselves honoured by the choice, or that they will attempt to execute the orders. One of these officers, the only major general appointed for this business, has already resigned his commission, although he had less cause of complaint as to the mode of transmitting the orders. I presume the officers selected would sooner follow the example of Gen. Brickett, than put themselves under the controul of the collector, or have any agency in enforcing this law.

But in order to ascertain whether the resolution offered by the committee can be supported, let us inquire what are the military powers vested in the commander in chief of this commonwealth in relation

to this subject—and how these powers are to be exercised. We find by the constitution of Massachusetts, chap. 2d, sect. 7th, that the governour of this commonwealth for the time being, is intrusted with a variety of powers "incident to the office of captain general and commander in chief, *to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.*" Those gentlemen who seem disposed to justify the measures under consideration, by this clause of the constitution, will, I think, relinquish that mode of justification, when they consider the last part of this clause—for, sir, this is not a military government, in which the powers incident to the office of commander in chief are undefined, or of doubtful construction.—No officer in this commonwealth, however elevated his station, is above the constitution and the laws. What then are "the laws of the land" relative to this subject? Here it might be said that there is a military as well as a civil common law, consisting of principles and precedents established by immemorial usage. I could state a great variety of cases, such for example as many principles which are universally adopted by courts martial, which are known in no statute, but depend on the military common law. I should say that common law, and common sense, would dictate, that when the commander in chief issues an order for making a detachment of the militia comprehending officers of various grades and in various parts of the commonwealth, men from a great number of divisions, brigades and regiments, these orders must pass in the regular course through the different grades of officers, till at last they reach the privates. If you adopt any other course, you throw the whole system into confusion, or rather you have no longer any system; and you had better have a levy "en masse" in some particular section of the country of as many men as are wanted for the purpose. But, sir, we are not compelled in this instance to rely on the common law—we have an express statute law,

exactly applicable to this case. I shall not here cite a number of passages in our laws which might be introduced, because the 32d section of the "act for regulating and governing the militia of the commonwealth of Massachusetts" &c. passed June 22d, 1793, is perfectly in point. This section enacts, that "whenever, in case of threatened or actual invasion, insurrection, or other publick danger or emergency, the militia, or any part thereof, shall be ordered out or detached, &c. the officers, non-commissioned officers and privates, being able of body, shall be detailed from the rosters or rolls which shall be kept for that purpose." And in the same section we find it enacted, that "any officer having a commission in the militia, who shall neglect or refuse to execute any orders he may receive from his superiour officer, to make a detachment of the corps under his command, it shall be the duty of the officer who issued euch orders immediately to arrest such delinquent officer, bring him to trial therefor, before a court martial, and forthwith give information thereof to the commander in chief; and the officer who issued the order which shall not have been executed as aforesaid, shall, immediately after arresting the delinquent officer, proceed, by himself or some other officer under his command, to make and complete the detachment ordered as aforesaid." Here, then, is a certain, definite mode, clearly pointed out for making a detachment of the militia, in case of invasion, "insurrection, or other publick danger or emergency." Gentlemen will not deny that these words embrace the present case, as the president, the lieutenant governour and they themselves have stated it. Here we have a law as clear and explicit as language can make it, pointing to the course which His Honour ought to have pursued. "The officers, non-commissioned officers and privates, being able of body," ought to have been "*detached from the rosters or rolls kept for that purpose.*" This is the only course consistent with order and equality. It follows that the orders

for making a detachment from a variety of divisions, brigades, &c. must pass through the regular grades of officers—for how can you make a detachment from the rolls and rosters, unless you consult those who have these rolls and rosters? How, for example, can you detach one hundred men from any regiment without consulting the colonel and the captains of that regiment? Suppose the adjutant general should attempt to do it—you will find that he has no returns of companies. If gentlemen say, He should take one or more companies—the answer is, this is not a detachment "from the rolls or rosters kept for that purpose," but a levy "en masse." But pursue this subject one step farther. I have quoted the law which enacts "that no officer, non-commissioned officer or private of the militia, shall be compelled to serve more than three months after his arrival at the place of rendezvous in any one year, nor more than in due rotation with every other able bodied man of the same rank in the battalion to which he belongs." How in the name of common sense will you make your second detachment, even if you could complete the first?

Sir, I need not enlarge—military men will see at a glance, and every gentleman must discover, that you would soon have "confusion worse confounded." It would have been enough for us to have shewn what the law is. But as the gentleman from Worcester (Mr. Bangs) has attempted to be witty on this subject, and to ridicule all this military system, which he is pleased to term parade, I thought proper to give him some new ideas upon the subject. I will just remark, sir, before I dismiss this law, that the latter part of this section which provides that in case any commissioned officer shall neglect, &c. to execute the detachment, &c. that the officer shall be arrested and tried, and information shall be given of such arrest to the commander in chief; and the remainder of the clause quoted, proves that officers in the intermediate grades between the commander in chief

and the officer of the lowest grade concerned in making the detachment are to be consulted. Sir, the gentleman from Boston has stated the endless confusion which would ensue among officers by any other course, and I shall not trouble the House with other illustrations which might be made of this point. I defy the gentleman to produce an instance, except the present, in which a detachment has been made or attempted to be made in any other mode than that contemplated by law. The United States have lately made two detachments of militia of 100,000 each. How were these made? In the established mode. The rank and the rights of officers and men were respected, and the detachments were made with despatch and regularity. But it was left for this last embargo law, in breaking down the barriers of the constitution and the laws, to prostrate the militia system in the general wreck. It was left for those who attempted to execute this law, to adopt the plan of *selecting and designating* officers of the militia who could best be confided in.

Mr. Speaker, I have yet to notice one mode of getting rid of any responsibility for these measures, which indicates a fertility of imagination and a boldness of design for which I give gentlemen all due credit. Sir, they boldly cut the knot which they cannot untie, and they tell you that the lieutenant governour did not, in this instance, act as commander in chief of this commonwealth. If gentlemen had examined the order of the lieutenant governour, of the first of February, they would not have hazarded this assertion. If they will look at the third paragraph of the order they will find these words—"Thus authorized and called on to execute the laws of the Union, and to cause its authority to be respected, the president has directed the secretary of war to request me, *as commanding officer of the militia of this commonwealth*, to appoint some officer of the militia of known respect for the laws," &c. This order is dated *Head Quarters*, Boston, Feb. 1, 1809, signed

by His Honour, and countersigned by William Donnison, adjutant general. After reading these passages from the order, I can only say that His Honour has fallen into the hands of *most unmerciful friends*. It would have been more kind as well as more prudent to have attempted no justification at all, than one which involves such palpable absurdity. As to the principle, upon which this ingenious kind of defence is founded, that the president may direct his orders to *any body*, and that *any body* is obliged to order out the conscripts, I have already, perhaps, said enough. I will only add, that it is the French system of police. The president has only to address his mandate to the minister of the interiour, and if you have not a complete system of espionage, you may thank the spirit of your people—or the timidity and forbearance of the government.—But the danger is past with the exposure of these measures, and we ought to thank an overruling Providence, which has prevented the horrours of bloodshed and a civil war.

Sir, I must add a few remarks upon the facts furnished by the schedule of the adjutant general—because it has been said that the mode of designating these officers has been very proper and unexceptionable. It appears that this has been "the unkindest stab of all." You will perceive that in selecting these officers, other considerations than the apportionment of troops to the size and importance of the places to be guarded, seem to have governed the commander in chief. For example, we find the comparatively inconsiderable port of Barnstable guarded by a brigadier general with two thousand four hundred and seventy-four infantry, rank and file; while the populous and important port of Salem is left to the command of a captain. In the town of Wiscasset, we find a brigadier general, a colonel and two majors in commission; a captain is selected to command at this port.

Thus, sir, having gone through what belongs to the argument, and having, as I conceive, established

the premises, the conclusions, as expressed in the resolutions, follow of course—I need not repeat them. The responsibility must rest with the commander in chief. He is amenable to the people, and to this their legislature, for an abuse of power.

But, sir, we have not proposed an impeachment; although it was his duty to have been better informed upon this subject, even as a lawyer. Though his deviation from all law and all military usage has been "gross, open, palpable," yet candour would dictate that His Honour, having never been a military officer, may not have seen the extent and tendency of these measures. Although we were bound by oath to support the constitution; although we were compelled by duty to vindicate the honour of our violated laws, and to assert the rights of our insulted sovereignty, we are not obliged to pursue crimination after the danger of deviation, by being developed, has ceased to exist.

Mr. speaker, I ought to apologize for the tedious course of investigation into which I have been almost necessarily led, and to thank the house for their patient attention. I shall close with a few words, which are extorted by the remarks of the gentleman from Dorchester. He considers the spirit which animates the federalists of this day as totally different from that of the whigs of '76. It is hardly necessary to repeat what was said within these walls, within a few days, and I regret that the gentleman introduced the subject. But, sir, we must be permitted to say, that if the spirit of '76 was that of opposition to tyranny, so is that of the present moment. If that was a spirit of defiance to foreign tyranny, this is a spirit of opposition to domestick usurpation. If there be any difference, it is not in kind, but in degree. If our fathers rose at little more than the theory of unjust taxation, we have borne the accumulated evils of a long suspended, I had almost said annihilated, commerce. They disdained to pay an inconsiderable tax on stamps and tea, because they detested the principle of the demands. We have borne the incalculable losses of a fourteen months embargo, because we have fondly hoped for relief—because the oppression has come from among ourselves, and we shudder at the horrours of civil war. The wound has been inflicted by men who obtained the confidence of the people and then betrayed it. No, sir, the spirit of our fathers disdained to submit to oppression. But they did not rush madly to the conflict. They petitioned—they remonstrated—they implored. Let us then invoke their spirit to inspire our councils. Let us fan the pure flame of patriotism till it inspire us as a people. Let the freemen of the north, "in conscious virtue bold," regardless of insidious whispers of division and empty threats of exasperated power, pursue the cool, decided and dignified course which they have commenced—the government shall be regenerated—the country is saved.

MEMORIAL.

To the Honourable the Senate and House of Representatives of the United States.

THE MEMORIAL AND REMONSTRANCE OF THE LEGISLATURE OF MASSACHUSETTS.

WHEN the government of a free people is felt to be oppressive on the community; when its measures appear to originate in imperfect conceptions of the interests of the whole, or inattention to the important concerns of any considerable portion; a decent respect for the opinion of their fellow citizens, and a