THE MEMPHIS DAILY APPEAL.

BY MCLANAHAN, TROUSDALE & DILL. MEMPHIS, SATURDAY, FEBRUARY 4, 1860. VOLUME XI.—NUMBER 28.

Daily Appeal

SPEECH OF HON. STEPHEN A. DOUGLAS.

Of Illinois, on vacating the Fine assessed upon Gen. Jackson by Judge Hall, in 1815, delivered in the House of Representatives January 4, 1844.

The question being on the amendment offered by Mr. Douglas, of Illinois, to the bill introduced by Mr. C. J. Ingersoll, of Pennsylvania, to refund the fine of $1000, assessed upon General Jackson by Judge Hall in 1815—

Mr. Douglas rose and said:

When this bill was introduced by the learned gentleman from Pennsylvania, (Mr. C. J. Ingersoll,) I entertained the hopefulness that it would be permitted to pass without discussion and without opposition. But the character of the amendment submitted by the gentleman from Georgia, (Mr. Stephens,) and the debate which has taken place upon it and the original bill, have been of such a nature as to justify and require of this friends of the bill to go into a discussion of the whole subject. For one, I am not disposed to shrink from the investigation of any question connected with this subject; yet am I prepared to acquiesce silently in the correctness of the imputations cast upon the friends of this measure by gentlemen in the opposition. They have been pleased to stigmatize this act of justice to the hero and patriot as a hobbing—a party trick—a political movement intended to operate upon the next presidential election. These imputations are so unfounded—they are uncourteous, and I hurl them back, in the spirit which they deserve, upon any man who is capable of harboring—much less expressing—such a sentiment. It ill becomes gentlemen to profess to be the real friends of Gen. Jackson, and the exclusive guardians of his fame, and to characterize our effort as sinister and insincere—within the same breath, they charge him with violating the Constitution and laws, and trampling with reckless violence upon the liberties of the country. They seem to act upon the principle that the most successful mode of blackening the character of a great and good man is to profess to be his friends while making unfounded admissions against him, which, if true, would blast his reputation forever. If these are to be taken as the kind offices of friendship, well may the old hero pray God to deliver him from the hands of his friends, and leave him to take care of his enemies.

I hope that the friends of the bill will boldly forward and supported in good faith as an act of justice—strict, rigid, immortal justice to the American people, as well as their honored leader. The character of the country in the estimation of the public men; their unwillful fame gives brilliancy to her glory. The history of the nation is made up of temporarily connected with the history of his country, that the slightest blot upon the one would be an indelible stain upon the other. Hence the duty, the high and patriotic duty, of the Representatives of the people, to efface every sinister stigma from the political character of that truly great man, and transmit his name to posterity adorned with all the charms which the light of truth will impart to it.

The charge of exerting military power and lawless violence over the civil rights, liberties, and civil institutions, in derogation of the Constitution and laws, and without the sanction of rightful authority, have been so often made and reiterated for political effect, that doubtless many candid men have been disposed to repose faith in the truth of the charges, without taking the pains to examine into the grounds upon which they rest. A question involving the right of the country to use the means necessary for the defense from foreign invasion, in time of imminent danger, is too vitally important to be prejudged without an inquiry into the nature and source of that fatal error which has led the public opinion of the power of self-preservation. The proposition contended for by the opposition is, that the general in command, to whose protection are committed the lives, the liberties, property, and liberties of the citizens within his district, may not declare martial law, even in the case of a threat to invade, and if alone, can save all from total destruction. It generally contended that, in such an awful contingency of circumstances the general must shoulder all the responsibility of the day, because he is not authorized to elevate the military above the civil authorities; and that, too, when it is certain that nothing but the power of the military can save the life of civil laws and the Constitution of the country from complete annihilation. If these are not the positions—if, in other or gentlemen in so many words, they are not contended for—if the conclusions to which their positions necessarily and inevitably conduct us, for as sure as premises lead to conclusions, they do lead to the assertion that the New Orleans could, by any human power or effort, have been saved in any other manner than the decisive and independent exercise of martial law. For one, I am satisfied that the exercise of this power, General Jackson did not violate the Constitution, nor assume to himself any authority which was not duly authorized and legalized by his position and the duty. Is the unavoidable necessity of the case. Sir, I admit that the declaration of martial law is the exercise of a tremendous power, a despotic power, like that of a judge pronouncing for contempt, without evidence, or trial, or jury, and which may, perhaps, offer less than his own will, or any limit to the duration of the term of his own discretion. The power in the two cases is analogous, it is upon the same principle, and is assertable from the same source—extreme necessity.

The gentleman from New York (Mr. Barnard), in his legal argument to establish the right of Judge Hall to fine General Jackson one thousand dollars for contempt of court, without the forms of trial, has inferred on that this power is not conferred by the constitution, but is a power inherent in express provision of the Constitution; but is inherent judicial tribunal, and every legislative only. He has cited the decision of the Supreme Court of the United States in support of this doctrine; and I do not deem it necessary, for the purpose of this argument to question its correctness. The ground upon which it is laid that this authority is inherent is original and inherent in all courts and deliberative bodies, is, that it is necessary to enable them to discharge the duties imposed upon them by the Constitution and laws. It is said that the duties and inalienable right of self-defense applies to courts and legislatures, in communities, and bodies, as well as in man as individuals. The power, it is said, is coextensive with the duty; and, by virtue of this principle, each of these bodies is authorized not only to use the means essential to the performance of the duty, but also to exercise the powers necessary to remove all obstructions to the discharge of the duty. The whole law of these principles is the proceedings at New Orleans, and see to what results they will bring us.

General Jackson was the legally and constitutionally authorized agent of the Government and the country to defend that city and its adjacent territory. His duty, as prescribed by the Constitution and the laws, and by the instructions of the War Department, was to defend the city and country at every hazard. It was the duty conferred, and is now conceded on all sides, that nothing but martial law would enable them to perform that duty. If, then, his power was commensurate with his duty, and he believed (as he was, as the courts) he was authorized to use the means essential to its accomplishment—he had a right to declare martial law, when it was ascertained and acknowledged that nothing but martial law would enable him to defend the city and the country. This principle has been recognized and sanctioned in all civilized nations, and is familiar to those who are conversant with military history. It does not imply even a right to suspend the laws and civil tribunals, and yet, if the exigency demanded it, it would be the duty of the general to do so. The general, in the exercise of the power, is the judge of the necessity, and when the necessity exists, the right follows. It may be abused, and in many instances has been perverted to the enormous of the case. The principle is that the general may go so far and no farther, that is absolutely necessary to the defense of the city or district entrusted to his protection. To this extent General Jackson was justifiable; if he went beyond it, the law was martial law. But in point of fact, he did not supersede the laws, nor suspend the operation of the civil tribunals, any further than they were calculated to obstruct the execution of his plans for the defense of the city. In all other respects, the laws prevailed and were administered as in times of peace, until the legislature of the State of Louisiana passed an act suspending them till the danger was past, in consequence of the impending danger that threatened the city. There are exigencies in the history of nations, as well as individuals, when necessity knows no law, no paramount law, which all other considerations must yield. It is that great first law of nature, which authorizes a man to defend his life, his property, his wife and children, at all hazards and by every means in his power. It is that law which authorizes his body to repel aggression and insult, and to protect his rights against all legislative functions; it is that law which enables courts to defend themselves and punish for contempt. It was this same law which authorized General Jackson to defend New Orleans by resorting to the only means in his power which could secure this end.

I wish a critical examination of this principle, and define its limits. If it becomes necessary to blow up a fort, it is right to do it; if it is necessary to sink a vessel, it is right to sink it; and if it is necessary to burn a city, it is right to burn it. I will not fatigue the committee with a detailed account of the occurrence of that period, and the circumstances surrounding the general, which rendered the danger immediate and impending, the necessity unavoidable, the duty imperative, and temporizing ruinous. That task has been performed with such fidelity and fidelity by the gentleman from Louisiana, (Mr. Slidell), as to make a recital of the facts entirely unnecessary. The sacrificial of the city, and the country, exceeding our force four-fold in numbers, were in the immediate vicinity of the city, ready for the attack at any moment. Our own little force was concentrated, the city filled with traitors, anxious to surrender, spies transmitting information daily and nightly between those traitors and the enemy, causing the population to anticipate from the different European countries, spoken various languages unknown to the general in command, which prevented the necessary information of the extent of the danger, the dread of a servile insurrection, stimulated by the proclamations and the promises of the enemy, of which the first of the kind that was to be the signal; these were some of the reasons which produced the consultation in the minds of all who were the friends of their country, and desirous to see it defended, that the only salvation depended upon the existence of martial law. The governor, the judges, the public authorities generally, and all the citizens who exposed the American cause, came forward, and earnestly entreated General Jackson, for their sakes, to declare martial law, as the only means of maintaining the supremacy of the American laws and institutions over British authority within the limits of our own territory. Gen. Jackson, concurring with them in opinion, promptly issued the order and enforced it by the weight of his authority. The city was saved. The country was defended by a succession of the most brilliant military achievements that ever adorned the annals of this or any other country, in this or any other age. Martial law was continued no longer than the danger (and consequently, the necessity) existed. At the time when Louallier was imprisoned, and Judge Hall was sent out of the city, official news of the signing of the treaty at Ghent had not been received; hostilities had not ceased, nor had the enemy retired. On the very day the writ of habeas corpus for Louallier was returned, General Jackson received official instructions from the War Department to raise additional troops, and prepare for a vigorous prosecution of the war. Hearing a rumor, on the same day, that a treaty of peace had been signed, he sent a proposition to the British general for a cessation of hostilities until official intelligence should be received; which proposition was rejected by the English commander. It cannot be said, therefore, that the war had closed, or the necessity for martial law had ceased. All the considerations which induced its declaration, required its continuance. If it was right to declare it, it was right to enforce and continue it.

At all events, Judge Hall and his eulogists are estopped from denying the power or the propriety of the declaration or the enforcement of martial law. He advised, urged, and solicited General Jackson to declare it; and subsequently expressed his approbation of the correctness of the imputations cast upon the friends of this measure by gentlemen in the opposition. They have been pleased to stigmatize this act of justice to the hero and patriot as a hobbing—a party trick—a political movement intended to operate upon the next presidential election. These imputations are so unfounded—they are uncourteous, and I hurl them back, in the spirit which they deserve, upon any man who is capable of harboring—much less expressing—such a sentiment. It ill becomes gentlemen to profess to be the real friends of Gen. Jackson, and the exclusive guardians of his fame, and to characterize our effort as sinister and insincere—within the same breath, they charge him with violating the Constitution and laws, and trampling with reckless violence upon the liberties of the country. They seem to act upon the principle that the most successful mode of blackening the character of a great and good man is to profess to be his friends while making unfounded admissions against him, which, if true, would blast his reputation forever. If these are to be taken as the kind offices of friendship, well may the old hero pray God to deliver him from the hands of his friends, and leave him to take care of his enemies.

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