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CONGRESS.

HOUSE OF REPRESENTATIVES.

TUESDAY, FEBRUARY 4.

In the course of the debate on the bill for imposing a duty of ten dollars on every slave imported into the United States,

MR. BIDWELL observed that it had been objected, by several gentlemen, particularly by one of his colleagues, against this bill, laying a duty of ten dollars a head on the importation of slaves, that it would virtually sanction and legalize the practice, by making it a source of revenue. The objection he thought was not well founded; because the legality or illegality of such importation was not within the control of the general government. Congress had no power to prevent the importation until the year 1808. All they were authorised, in the mean time, to do, towards its prevention, was to lay a ten dollar duty. If they had authority to prohibit, and instead of a prohibition, should levy a tax, it might be said, with some propriety, that by so doing they comparatively encouraged the trade. Or, if after the time, when a prohibition can by the constitution be laid, Congress shall suffer a tax only to be continued, the censure may be incurred. He was, therefore, of opinion, that the continuance of the tax ought to be limited to that time. Accordingly he moved to amend the bill, by inserting after the word "hereafter" in the 4th line, the words—"*and before the year of our Lord one thousand eight hundred and eight.*"

MR. SLOAN said, by way of objection, that it was not yet certain that such a prohibition would then be imposed.

MR. BIDWELL replied, that whether a prohibition should then be adopted or not, he thought it would be objectionable to continue a tax, as Congress will have power to prevent the practice entirely by a prohibition. Indeed he was convinced an act might now be passed, prohibiting such importation after the limited time; and, if this amendment should be adopted by the committee, he would move, as a further amendment, an additional section to that effect.

The amendment was adopted.

MR. BIDWELL. Mr. Chairman, the committee having adopted an amendment, limiting the continuance of the proposed tax to the period preceding the year 1808, I will now, in performance of my promise, move an additional section, to prohibit the importation altogether after that time. Before I submit the motion, I beg leave to state some of the reasons which induce me to make it, and on which its propriety must depend. In doing this, it is not necessary to trace the history of the slave trade. It is equally unnecessary to consider it, as it respects the principles of justice and morality. It is sufficient to view it in the light of policy alone, and that only on a national scale. For with the political interests of the particular states, any farther than they make a part of the national policy, we have no concern. It belongs, not to Congress, but to the constituted authorities of each state, to regulate its own internal affairs, in this as well as other respects. The states have adopted their own systems. A gentleman from Virginia has told us that that state complained of it, as one of the grievances to which they were subjected under the British crown, that the king in council negatived the acts of their legislature, prohibiting any further importation of slaves; and that, as soon as they were freed from British shackles by the revolution, they passed a prohibitory act. The policy was honorable and just. Other gentlemen have mentioned similar laws in their respective states. I may be permitted to add, that the state, which I have the honor in part to represent in this House, has gone further. Our constitution has declared that "*all men are born free.*" The construction given to this constitutional declaration, by our supreme judiciary, is, that no person, properly belonging to the state, can be a slave. Thus slavery was abolished at once; and, however dangerous such an experiment might be in some other states, it was there effected with perfect safety, as the number of slaves was small. Although I rejoice in this total abolition of slavery in Massachusetts, I would not, as an inhabitant or a representative of that state, wish to interfere with the internal regulations of other states, respecting the condition of their inhabitants; nor would I consider the question of prohibition, now before us, on any other than national grounds. No political truth, however, is plainer to my mind, than that a further importation of slaves is contrary to the true interest of the United States. It will weaken us, as a nation. It will render us more vulnerable in many points. It will increase the danger of insurrections within and invasions from abroad. The maxims of sound policy, therefore, urge us to prevent such further importation, as far as it may be practicable. We ought not to rest satisfied with state prohibitions, even if every state had prohibitory laws. It is a great national interest, and ought to be guarded by an act of the national legislature, if indeed it is within our constitutional limits. On this point I am sensible, a new doctrine has been broached, and is holden by some gentlemen, whose judgments I value very highly in other cases, although I differ from them in this, that the importation of slaves cannot be prohibited by Congress, even after the year 1808. The sum of the reasoning, in which this novel doctrine is attempted to be supported, is, that the clause in the constitution, providing that the importation of such persons, as any of the existing states might think proper to admit, shall not be prohibited, prior to 1808, is a mere negative provision, without any positive words of grant, and does not consequently give Congress a power to lay such prohibition after that time; and all powers not delegated are reserved. I agree, sir, that this clause grants Congress no authority on the subject; although it evidently implies that such authority is granted in some other part of the constitution: for it would be useless and nugatory to restrain, until a certain time, the exercise of a power, which does not exist, and cannot, therefore, be exercised at all. The framers of the constitution must have understood that, without such a restriction, Congress might proceed to an immediate prohibition; and that, notwithstanding the restriction, a prohibition may be laid after the limited time. The authority in question is undoubtedly vested in Congress. It is fairly included in the general power to regulate commerce with foreign nations. As a part of the regulation of commerce, Congress may directly prohibit the importation of any article of commerce; or may do it indirectly, by prohibitory duties. The prohibition may be applied to any article which is a subject of merchandize, as every thing is, which is liable to be bought and sold. Such is a slave. The very principle of slavery is that the slave is the property of his master, subject to transfer by bargain and sale. This is indeed to be lamented, as the gentleman from Virginia has justly observed, but it is nevertheless true. Slaves, are therefore, articles of merchandise; and, as such, their importation may be prohibited. The constitutional restriction applies only to the importation, not the exportation of slaves; and it extends only to the states existing at the date of the constitution, and not to the territories of the United States. Accordingly Congress have already by law prohibited the importation of slaves into the territories. There are also two acts prohibiting the exportation of slaves from the United States to any foreign port or place, and the transportation of slaves by citizens of the United States, or in vessels of the U. S. from one foreign port or place to another. Under what authority were these prohibitory laws created? Under the general power to regulate commerce. The same authority will equally warrant a prohibition of the importation of slaves into the U. S. after the time specified in the constitution. But, can we now pass an act for that purpose? I think we may, consistently with both the spirit & the letter of the constitution. The object of the restrictive clause was to secure to every state, which might wish to exercise it, a right to admit slaves until the time limited. The limitation has reference to the termination of this right, by the commencement of a prohibition, and not to the date of the act, by by virtue of which such prohibition might be introduced. The words are, the importation "shall not be prohibited' by Congress prior to the year 1808.' If we now pass an act, prohibiting, after that time, such importation, it is clear that, until that time, the law will not take effect; the prohibition will not commence; in other words, there will be no prohibition. In the language of the constitution, the importation will not be prohibited, prior to the year 1808. The act will in this respect be like many others, which go into operation, not immediately after their passage, but at a specified future day. This is not an unusual mode of legislation.

Being satisfied that we are now authorised to legislate on the subject, I think it is expedient to adopt a permanent prohibition, and to make it a part of the present bill. This is a delicate and irritating subject. Judging of the sentiments of others by my own, I believe most of us are reluctantly called to act on it at all. But we cannot avoid giving our votes upon the bill; and while we are about it, let us go through and finish the business. An intermediate tax alone will not complete it. To render the system entire, it is necessary to add a final prohibition. To do it, on the present occasion, will effect a saving not merely of time, but also of the unpleasant feelings, which may otherwise be excited by another agitation of the subject. Some gentlemen have considered the tax objectionable, as they think it has the appearance of being pointed at one state, which alone continues to permit the importation of slaves, and consequently will have all the duty to pay. I submit to those gentlemen, whether the addition of a total and permanent prohibition, operating alike upon all the states, without regard to their existing laws, will not remove that objection and reconcile them to the measure. In another point of view, it appears to me reasonable and proper, that our system on this subject should be now established, in order that all persons concerned may have seasonable notice of it, that there may be no room for disappointment or surprize, and that the world may know the policy we mean to pursue. For these reasons and others, with which it is not necessary to detain the committee, I move the following section in addition to the bill under consideration.

Be it further enacted, That, after the last day of December, in the year of our Lord, one thousand eight hundred and seven, no person shall directly or indirectly import, or cause to be imported, or aid and abet in importing, any person as a slave, into any port or place within the United States, from a port or place without the same; and no person shall sell or buy any person imported as aforesaid into the United States after the said last day of December, one thousand eight hundred and seven, knowing him or her to have been so imported in violation of this act: and every person so offending, and being thereof convicted, before a district or circuit court of the United States (which courts shall have cognizance thereof within their respective districts) shall, for every such offence, forfeit and pay a sum not exceeding dollars, and suffer imprisonment, for a term not exceeding years; and any ship or vessel, which, after the said last day of December, one thousand eight hundred and seven, shall, with the knowledge and consent of the owner or owners thereof, be employed in importing any person, or have on board any person for the purpose of being imported, as a slave, contrary to this act, shall be forfeited, together with her tackle, furniture and apparel, and may be libelled and condemned in the district or circuit court of the United States for any district, in which such ship or vessel shall be found.

MR. J. CLAY was sorry this additional section was brought forward. He had strong doubts whether Congress possessed the constitutional right to legislate on the subject of prohibition prior to the year 1808. If this doctrine prevailed, where will it end? The Senate and President have a negative upon all our laws. If we legislate upon a subject before any occasion calls for it, what assurance have we, if it be the wish of the people to repeal our laws, that the President and Senate will concur in their repeal? Have we a right, by an adventitious majority, to bind the union hereafter? If so, it may be contended that we have a right to bind posterity a hundred years hence. No man was more anxious than himself to prohibit this trade, but he could not consent to violate what he conceived a constitutional impediment, to carry a favorite point. He conceived the power at present to pass a prohibitory law beyond their power.

MR. DANA thought it extremely questionable whether when the subject matter was not within their power, they had a right to legislate on it. He should suppose the fair construction of the constitution was this. The constitution established a system for the good of all; in delegating powers it says, that some shall not be exercised within a given time, that the states may in the mean time act upon subjects on which they would be most likely to harmonize. If within this time you act upon subjects calculated to excite state jealousies, one great object of the inhibition will be lost. Under this view of the subject, he thought the observations of the gentleman from Pennsylvania, most consonant to the true spirit of the constitution.

The question was then taken on *Mr. Bidwell's* amendment, which was disagreed to—Ayes 17.

Documents accompanying a Message of the President of the U. S. respecting the application of Hamet Caramalla, ex-bashaw of Tripoli.

(CONCLUDED.)

Extract of a letter from James L. Cathcart, esq. to the Secretary of State, dated Leghorn, July 2d, 1801.

Should we break with the whole of the Barbary states at once, we must have considerably greater force in the Mediterranean. I propose chastising them, one at a time, and pursuing such measures at the Ottoman court as will effectually prevent any coalition taking place injurious to our interest. I not only contemplate the obtaining a permanent and honorable peace, but likewise the dethroning the present, and effecting a revolution in favor of his brother Hamet, who is at Tunis, and thereby insure the United States the gratitude of him and his successors; for so long as Joseph, the bashaw lives, our commerce will not be secure. For even allowing that we conclude a peace upon our own terms, the first time our frigates are off their guard, or employed upon other service, his cruisers will capture Americans, in retaliation for having imposed upon him terms which he may consider humiliating, not reverting to the cause, and that the concessions which we will certainly force him to make, are merely inflicted as a just punishment for his temerity and breach of faith, and to oblige him to observe his engagements inviolably sacred in future.

I have requested Mr. Eaton to endeavor to ascertain how far said Hamet would be willing to engage in an expedition of that nature; and even should we not succeed in dethroning Joseph, it would, nevertheless, strike his brother and adherents, with such a panic as could not fail to promote our interests.

Extract of a letter from William Eaton, esq. to the Secretary of State, dated Road of Tunis, September 5th, 1801.

The inclosures which I have the honor herewith to forward, will inform government, as accurately as I have the means, of our actual position and future prospects in regard to Tripoli, one circumstance only omitted, which is a project in concert between the rightful bashaw of Tripoli, now in exile in Tunis, and myself, to attack the usurper by land, while our operations are going on by sea. These two men are brothers; the younger is on the throne, having expelled the elder about eight or nine years ago. The subjects in general of the reigning bashaw are very discontented and ripe for revolt; they want nothing but confidence in the prospect of success: this confidence may be inspired by assurances of our determination to chastise this bashaw, for his outrages against the United States. The bey of Tunis, though prudence will keep him behind the curtain, I have strong reasons to believe, will cheerfully prompt the same. He is in favor of the elder brother. The idea of dethroning our enemy, and placing a rightful sovereign in his seat, makes a deeper impression on account of the lasting peace it will produce with that regency, and the lesson of caution it will teach the other Barbary states. These are objects which, to me, seem so clearly within our power, that they ought to command exertions. Having begun to coerce Tripoli, it would operate an injury of perpetual duration to relax in these measures.

Extract of a Letter from Wm. Eaton, esq. dated

TUNIS, *Dec. the 15th* 1801.

On the 18th Oct. arrived the Danish commodore Koefoed, and a consul Holch, 5 days from Leghorn. The evening of the 2d ultimo they passed at the American House. As the commodore had lately been at Tripoli on a negociation, it was very natural to inquire of him what seemed to be the general sentiment of the Tripolines respecting the American war. He said it was very unpopular, and that the subjects of the bashaw, chiefly on this account, were ripe for a revolt: they waited for nothing but succour. They clamor against the madness and oppression of their chief; say he makes war on his friends, to the destruction of their little commerce; takes all the plunder to himself, and in the issue reduces them to starvation, and the loss of friends, without allowing them the wretched consolation to mourn for those friends when slain. They almost unanimously desire the restoration of their rightful sovereign, who is a mild man, of peaceable disposition, and if he were offered them with the appearance of determination, they would rise *en masse* to receive him. The commodore gave it as his opinion, that the most effectual way of reducing Tripoli would be to land troops south of the town, on a commanding untenanted position, and raising a cross fire with the bomb ketches stationed on the north of it; gun boats or floating batteries to be stationed at the same time within the mole to keep up a direct fire on the town in rear of the castle. He thinks 3000 men an ample force to effect the object contemplated, by land: but two heavy pieces of ordnance for battering, and some light artillery to repel the assault of cavalry would be requisite. Thus it appears that the opinion of the Danish and American commodores correspond very exactly on the subject of necessary operations for reducing Tripoli.

On the position proper for landing, stands a considerable forest of date trees, the fruit of which forms a great article of subsistence to the Moors of the vicinity; apprehension of the destruction of which would bring these people to almost any terms; their peaceable behavior may be made a condition of its preservation, at the same time it may serve for cover against cavalry in case of being hard pushed.

On the morning of the 3d Nov. I received a message from Sidi Mahomet bashaw, the exile from Tripoli, informing me that his brother, the usurper, had addressed the dey of Algiers, and begging his mediation to bring about a reconciliation with the American government; and expressed great solicitude to know whether, in my opinion, the Americans would admit such an intervention? I did not hesitate to give it as my opinion, that my government, having once been deceived by that dey, would now seek to establish their peace on a surer base. He then desired to be advised whether he might place any reliance on the operations of the Americans in his behalf. I recommended to him patience and silence: at the same time gave him leave to entertain the hope (may it not prove illusive) that the next summer's operations would favor his views.

Extract of a Letter from A. Murray, esq. on board the frigate CONSTELLATION, *at Malta, to Wm. Eaton, esq. dated August* 18, 1802.

I have this day had a communication with the legal bashaw of Tripoli, and offered to take him to Derne, and to aid him in any measures he chose to pursue; but he thinks it will be more to our advantage, as well as to his, to go there in an English brig that he hath chartered, and to try what force he can raise there, in as private a manner as possible, after which, in conjunction with the Swedish force, we can further co-operate with him by private signals, agreed upon. I am pleased with his candor, and am persuaded, if he get reinstated in his dominions, he will be friendly to us.

Extract of a Letter from James L. Cathcart, esq. to the Secretary of State, dated

LEGHORN, *August 25th*, 1802.

During my residence at Tripoli, I had the honor to transmit to the Department of State, the history of the reign of Aly Pacha, father of the reigning sovereign of Tripoli, including the different revolutions in that state, an account of the murder of Mohammed Bey, and the dethroning of the rightful sovereign of Tripoli, Hamet Pacha, who at that period was under the protection of the bey of Tunis, but is now at Malta; and in a supplement, I forwarded some account of the accession to the throne and reign of the present usurper, Joseph Pacha Caramanli.

From the day of my arrival I conceived it my duty to be particular in forwarding details of the most prominent transactions of that government, for the information of the President; and spared no pains or expence to procure the best intelligence obtainable; whether eventually I succeeded or not, I must leave to your candor to determine, which may be ascertained, by comparing my communications with the transactions which have since transpired. As the abovementioned papers, as well as my own observation, convinced me that the inhabitants of Tripoli held the present Pacha in the greatest degree of horror imaginable, and of their great desire that Hamet, who was then at Tunis, should again assume the reigns of government, I was left no reason to doubt that should he ever be able to appear before Tripoli, with any considerable force to espouse his cause, that the chief inhabitants of that regency would declare in his favor. Indeed, so sensible is Joseph that his conduct neither merits, nor will ever receive their support, when any force is opposed to him, that whenever he goes out of the city, he carries all his treasure and jewels with him in chests, mounted on mules, which are confided to the care of his favorite slaves, who have orders to keep as close to him as possible; nor is he ever accompanied by less than from three to five hundred of his partizans, who are composed of negroes & men of desperate fortunes, who would espouse his cause no longer than until his treasure was exhausted, and would then file into the ranks of the best paymaster: for this reason he carries his cash with him, as likewise to enable him to raise a party among the Arabs, should ever his brother's party assume courage sufficient to shut the gates of the city against him, as he did against Hamet, when he treacherously usurped the Pachalic.

In my details of the relative situation of Tripoli with other nations, you will observe the many causes the grand seignior has had to complain of the arrogance of Joseph Pacha, and no doubt will join with me in opinion, that the war in which he was engaged was the only reason which prevented him from chastising him as he deserved, and that he only waits for a proper opportunity, I believe is evident. No act could be more just than the reinstating Hamet Pacha on the throne of his forefathers, and no act could insure the grand seignior a revenge, so prompt and efficacious, and attended with so little expence both of blood and treasure; nor so effectually insure the gratitude and future obedience of Hamet and his family, as well as set a precedent to the other states of Barbary, whose incorrigible insolence has become insupportable at the Sublime Porte, and render an example not only expedient but absolutely necessary.

Joseph Pacha, perfectly acquainted with these circumstances, spared no pains to intice his brother Hamet to come to Tripoli under the specious pretext of giving him the government of the provinces of Dern and Bengazi; but without effect. Hamet would not listen to his proposal, and demanded of his brother to give him up his wife and children, whom he holds as hostages, and to settle a small annuity on him sufficient to