

And you admit that the constitution has been vio-
lated by the laws we complain of, if Congress has by
those acts either assumed to itself other or greater
powers than are assigned to it by the constitution;
or has broken through that division of power
marked out by the constitution, by authorizing
any one branch of the government to exercise pow-
ers specially confided by the constitution, either
to the whole, or to any other part of the govern-
ment - by mutual consent fixed on the tests by
which the truth of our contradictory opinions, as
to the constitutionality of those laws, may be judg-
ed of by the public. But, if the result of that judg-
ment should be that you have still continued in
error, after the truth had been clearly demon-
strated to you instead of your gaining the credit
which has been accorded by the two famous
"astronomers and geometers" you mention,
you will hereafter possess the same degree of character
as a man of political knowledge, which they now
retain as astronomers and geometers, who

Notwithstanding your declarations to the contrary,
I think you must at least have doubted your being
able "to show incontrovertibly from my tests, that
I had mistaken the result." for if you had really
thought, that you could do this, there was no ground
for the fear you express of not being able to overthrow
"my opinions now widely disseminated" - be-
cause you know, that it is investigation which de-
termines error and that truth will always finally pre-
vail over it.

You admit, that the power "to raise and support
armies", is vested by the constitution in Congress;
and you admit also, that if Congress has trans-
ferred that power to the President, that this is a
violation of the constitution: I contend, that they
have made the transfer, you deny it; the pub-
lic must decide between us and on the evidence
arising from the act itself. This act so far as it
concerned the raising of troops, evidently consists
of two parts materially differing from each other
as to the powers they give. By the first part, the
President is empowered "in the event of a decla-
ration of war in the United States, or
of actual invasion of their territory by a foreign
power, or of imminent danger of such invasion dis-
covered in this opinion to exist before the next ses-
sion of Congress to cause to be enlisted and to call
into actual service, a number of troops not ex-
ceeding 30,000; to be enlisted for a term, not ex-
ceeding three years". By the second part of this
act, the President is empowered "in addition to
the aforesaid number of troops, at any time
within

Three years after the passing of this act of
in his opinion the public interest shall require
it to accept of any company or companies of
volunteers, who may associate and offer them-
selves for the service who shall be armed, clothed,
and equipped at their own expense, and whose
commissioned officers the President is hereby
authorized to appoint; who shall be liable to be
called to do military duty at any time the Pre-
sident shall adjudge proper within two years
after he shall accept the same. From an exami-
nation of these clauses, it is evident that altho' by
the first the President was only authorized on the
happening of one of the events enumerated in that
clause, to choose to be enlisted a number of
troops not exceeding 10000 who were to be en-
listed for a term not exceeding three years. Yet
by the second he was empowered, "at any time
within three years after the passing of that act, if in
his opinion the public interest should require
it to accept of any number of volunteers who
should be liable to be called to do military duty
at any time the President should adjudge proper
within two years after he should accept the same";
and it is also manifest that there is a different term
of service fixed by law, for these different kinds of
troops; the 10,000 being to serve for three years from
the time of their enlistment. The volunteers to serve
for two years, from the time the President should
accept of their services which he was at liberty to
do at any time within three years, after the passing
of that act. When speaking of this act, in my letter
to my friend, I say made use of the following ex-
-pressions, "By this act the power vested by the Constitu-
-tion in Congress 'to raise armies' has been by them
transferred to the President, and he is made the
sole judge of the necessity of raising this army, and of
the number that it shall consist of, so that the regu-
lars do not exceed 10000, but without any restric-
-tion as to the number of volunteers; and as the Pre-
-sident is at liberty, to accept of the volunteers at any
time within three years after the passing of the act,
and as they are liable to be called on to do military
duty, at any time the President shall adjudge
proper, within two years after he shall accept of
their services, it may be truly said, that he has
an absolute power for five years, to raise an army
to any amount he pleases to be commanded by offi-
cers of his own appointment, and to do such ser-
vices as he shall be pleased to direct". I now
assert that what is there stated as fact is true, and
that the conclusions which are there drawn from
those facts, are just; and I will prove this assertion
by a separate examination of each of them.
"By this act the power vested by the constitu-
tion in Congress 'to raise armies' has been by them
transferred to the President". No judge of the
truth

of this assertion we ought to inquire, what is the
power given by the constitution to Congress on this
subject, and then compare the power which is given
by it to Congress with the power given by that body
by this act to the President. The constitution
declares that "the Congress shall have power to
raise and support armies", but is silent as to
the times and the occasions, and the extent to which
this power shall be exercised; but as it is obvious,
that it was not the intention of the constitution,
that these armies should always exist and in
the same number it must be its obvious mean-
ing, that "the Congress shall have power to raise
armies to any amount and at any time when in
their opinion, the public interest shall require it".
If then this is the true construction (and it certainly
is so) of the constitution, let us compare it with that
given by this act to the President. The President is
hereby empowered at any time within three years
after the passing of this act, if in his opinion the public
interest shall require it to accept of any company
or companies of volunteers &c. &c. Here the most
critical observer can find no difference between the
power given by the constitution to Congress and that
given by this act to the President, except in its dura-
tion; and it certainly must be as unconstitutional to
give it for three years as it would be to give it for any
other length of time. I was therefore certainly justified
by this act in saying, that Congress had legit-
-imately transferred the power vested in them "to raise armies" to the Pre-
-sident. — "and he is made the sole judge of the neces-
-sity of raising this army". — "and he is made the
sole judge of the necessity of raising this army, and of
the number that it shall consist of, so that the regu-
lars do not exceed 10000, but without any restric-
-tion as to the number of volunteers; and as the Pre-
-sident is at liberty, to accept of the volunteers at any
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is equally true, that the power is of so constitutional a nature, that it is not to be done as any by any exercise of it, until the end of the three years from the passing of the act. Nor if the President was now to accept or has already accepted of the services of 90,000 volunteers, he could afterwards accept of the services of as many others, as he pleased at any time or times before the end of the three years, so as to keep up during the whole term of five years any number he might think proper, altho' the term of service of many may of the greater part of them, would expire within that period. and as these volunteers when called upon, are to military duty, they certainly would be bound to do "such service" as the President who is "the commander in chief of the army of the United States" shall be pleased to direct. I trust that I have now proved in a satisfactory manner that every part of my letter on this subject, was proper; but I will for the satisfaction of our readers, in particular, answer to all the objections which you have made to that part of my letter, and which have not been already answered in the general view which I then took of the subject. How does it happen when you read an answer, that part of my letter which mentioned the act of Congress, which consisted of two separate and distinct parts, when that letter stated that it did so, and quote both parts of the act literally; and when the reasoning which you take to be an answer, was drawn from both parts of this act. That you in your answer should quote only one of those parts; and conform your reasoning to show that there was no transfer of power from the Congress to the President in that clause which respected the 10000 regulars, and take no notice of that transfer of power which is contained in the clause respecting the volunteers. For on what you say as to the volunteers, altho' you argue in favor of employing them, you show the propriety of employing them, you say nothing of the objections made as to the transfer of power as far as it concerned them; and your justification of the power given to the President to raise the 10000 regulars, because it only enables him to raise those troops "in case they are not left" assigned it during their "recruits" with not justifying a power given to the President, which he has at full liberty to exercise at any time within three years. If this omission was made intentionally, it is a strong proof of your want of candor; if it took place from your supposing it to be immaterial, it is conclusive evidence, that you do not understand the subject, which you have attempted to instruct others. But if the question was referred to the single clause respecting the 10000 regulars, I have no doubt but that the following observations made by Mr. B. in Congress, show that subject was under discussion, and would provide the satisfaction of most men that this clause is unconstitutional, altho' those observations would probably have been better weight with you, as they proceeded from a Virginian and a Republican. That gentleman is said to have expressed himself thus:

Two questions naturally present themselves to the mind on this occasion, the one as it respects the constitutionality of the bill, and the other as to its expediency. And it had struck him, from the first moment the subject came before the house, that the power proposed to be placed

placed in the hands of the President by this bill, was perfectly unconstitutional; nor had he heard any thing in the discussion which could induce him to change his opinion. A variety of precedents have been ⁱⁿ produced to shew that singular powers have been given in former instances. But those precedents had no influence upon him. If the acts referred to were unconstitutional, they still remain to be so. Error will continue to be error, however frequently it is repeated.

Without examining whether the precedents which had been adduced were in point, he would leave them, and examine the question on its own merits as a constitutional question.

The constitution says, Congress shall have power to raise and support armies. The power is as explicit, as defined as it could be. — But what is the purpose of this bill? It is to give to the president of the United States the uncontrollable right, for six years, to determine whether or not an army shall be raised. Congress, then, in whom alone the constitution has placed the power of raising armies, will be deprived during that time, of that power. And if Congress have the ^{power} right of divesting themselves of this right, and transferring it for six years, they may do it for ten years, or for a term equal to the existence of ~~the~~ Constitution. But he did not believe they had the power of making this transfer.

The words ⁱⁿ of the Constitution, giving the power to Congress of declaring war, are the same with those giving them the power of raising an army; yet if a proposition was made to transfer to the president, the right of declaring war in certain contingencies, the measure would at once appear so outrageous, that it would meet with immediate opposition; but the transfer of one power would not be more unconstitutional than the other; both were vested with them, and without almost shameful dereliction of duty, they could not divert themselves of them.

But the gentleman from Massachusetts has supposed that this objection is removed, by the exercise of the power being made to depend on certain contingencies. The thing amounts to the same, the President is to raise the army, whenever, in his opinion, imminent danger of an invasion exists; therefore, the raising of it will depend upon his will, as he alone is to determine when this danger exists. And the question returns, Has Congress a right to deprive themselves of this power, in order to give it to the President? To his mind, there could be no proposition more evident, than that they must themselves exercise the power."

Altho you appear to be much pleased with your simile drawn from the mill forebay, and to believe that the reasoning which you have used to it illustrates that simile I shall take the liberty of examining both of them. You say "suppose that it is now raining very hard, and the forebay of the mill is not well secured. He calls his overseer and tells him, should it continue to rain the water will be up, and both the forebay and the mill will be in danger, so you must keep a good look out and set all hands to work, should it be needful, to prevent them from being carried away, until I come home again. Would any body in their senses say, that M^r Nicholas would any body in their senses say, that M^r Nicholas had transferred his power over his mill or over his hands to his overseer. M^r Nicholas then represents the Congress; his overseer the President, and his hands the army." Again you say "they (the Congress) are exactly in the situation in which I have placed M^r Nicholas." It was M^r Nicholas who determined his overseer should take care of his mill in his absence; it was Congress who determined an army should be raised in case the emergency required it during their recess. It was proper in M^r Nicholas to direct his overseer to employ his hands in that way about his mill; and it was to the President only that the Congress could commit the execution of their will, in the raising of an army." By this mode of reasoning you have candidly disclosed the principle upon which Congress has acted altho they have been afraid to avow it — that they are the masters not the servants of the people; and they as masters have the same absolute power over the people of America and over their property, that an owner has over his mill and his servants. If this is really so then there may be some similitude between the case of you and the one under consideration; for as the owner of the mill might legally empower any person he pleased to take charge of and secure his property, he acted properly when he gave that power to his overseer; and Congress has the same degree of unqualified power over the people of America and their property, when they give the President power "to raise armies at any time without their assent, if in his opinion the public interest should require it." But if instead of Congress the people of America are the real owners, and if they have declared by the constitution that in case of an emergency Congress alone should have power to determine whether Congress alone should have power to determine whether and what number of hands should be raised, and for what time to secure their forebay and their mill, and if they have also declared that the President should have no power in the business except that of employing the hands which should be raised by Congress: then it must be evident that Congress has by their act transferred to the President that power which was exclusively in them by the people and the constitution. and as the constitution certainly does contain their declarations the case you have put is not an applicable one because of the difference, between the authority of the owner over

his mill, and that of Congress over the people of America. but you might have made a case in point by a statement like the following. An owner having a mill which he was particularly anxious to secure, but which could not on the happening of certain winds be as well secured in any other way, as by employing certain means, which tho' efficient for that purpose might bring into danger other property of his which was still more valuable than the mill, and which he could not employ himself for the securing of his mill; and which was of such a nature that if they were made use of by others, to whom the power over them should be entrusted, at an improper time or in an improper manner, would instead of securing the mill, destroy that other property: found himself in great difficulties in dividing a mode by which he might entrust to others the power over these means, so as to give him a sufficient security that they would be used only for the preservation of the mill and never be made use of for the destruction of that other property. At last after great deliberation and consultation upon the subject he concluded, that he might effectually secure his object and at the same time avoid the apprehended danger by dividing the power over these means between two persons in such a manner that one of them should be entrusted to say when to a certain extent and for what length of time they should be made use of, and that the other should be authorized to employ them for the securing of the mill, but upon the express condition that the second person should only have a right to employ these means after the first had declared that they ought at that time to be used for the security of the mill; and that the second person should not then have any authority to use them, to a greater extent or for a longer time than the first should direct. He accordingly appointed two persons for this purpose the first he called his steward, the second his overseer; and when the owner returned home leaving these servants of his to provide for the security of his mill, under written instructions, positively and precisely defining and limiting the powers of each of them in the manner already stated. Now the steward altho he had some respectable parts in his character was upon the whole a well meaning, good sort of a man, but not remarkable for the strength of his understanding; the overseer was an artful ambitious man and far from being satisfied with the share of power which was given to him by the owner, he felt in his mind that he was entitled to a greater and declared publicly his intention of abiding by their instructions. After some time the weather growing tempestuous and there being a great appearance of a storm, which it was thought would come from such a quarter as might endanger the mill; and the steward being anxious to refer to his own house, and to continue there for a short time, the overseer immediately set about magnifying the danger the mill would be in if a storm should actually arise from that quarter; and employed a number of his friends to represent that danger to the steward in the strongest manner, and most alarming terms. What was to be done, the danger was now so uncertain, it was evidently therefore, improper for the steward to do much, but that

means

should then be resorted to such by his instructions he was only to have recourse to when the danger was certain and pressing. The overseer's friends admitted, that it was not proper in the then situation of affairs, for the steward to direct those means which had been entrusted to his discretion to be made use; but proposed to him to empower the overseer to make use of them, if it should become necessary during his absence. The steward was startled at this proposition, and at first declared in the most pompous manner, that he would not do it, because it would be betraying the trust reposed in him which obliged him to judge for himself, as well of the proper occasion and time of using these means, as of the extent to which they should be used; and he declared also that if he was willing to give up the power to the overseer, the latter could not legally use it, because he was expressly prohibited from doing so, by the letter of their instructions. The friends of the overseer found, that the steward would not agree to their proposition in the shape which they had proposed it to him; so they changed it from one form to another until they finally prevailed upon him to agree, that he would give the overseer power if either of certain enumerated contingencies should take place before his return to the mill to employ these means to a certain degree, and for a limited time; the overseer's friends appeared to be satisfied with this resolution, and undertook to draw up the power, which was to be given him for that purpose; but in doing this to remove any doubt as to the overseer's power by the insertion of the contingencies on the happening of one of which he was to exercise that power, they inserted in the power act drawn for that purpose, that he might also exercise that power in case of imminent danger discovered in his opinion to exist. But still the overseer was not satisfied and he and his friends worked upon the steward's fears until he finally empowered the overseer to make use of the means mentioned in the owner's written instructions, to any extent he might think proper, and at any time within three years from the steward's leaving the mill, "if in the opinion of the overseer the owner's interest should require it." and then the steward went to his own house leaving the care of the mill and the power of using these means altogether to the discretion of the overseer. And the steward in this case, transmits the power given to him by the owner's written instructions, to the overseer? If he did, how is the difference between this case and the conduct of Congress in giving to the President by their act the power yielded in 1794 by the constitution, to raise an army? And if there is no difference between the two cases is it not manifest, that Congress has in this instance transferred to the President, this power which was, as vested in them and entrusted to them to be exercised, by the constitution?