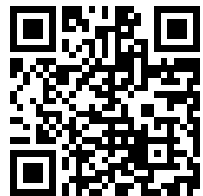

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SPEECH

MR. PAYNE, OF ALABAMA,

THE PROPOSITION TO REFUND THE FINE TO GENERAL JACKSON.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JANUARY 23, 1863.

Mr. PAYNE rose and said:

Mr. SPEAKER: In rising to address the House this morning, I feel somewhat as the gentleman from Virginia [Mr. Borrs] felt a few days ago. I had reflected on this question, and on some parts of it had wished to say a few words; but, by the postponement of its consideration from day to day, much of what I intended to have said has escaped my recollection, and I shall find it impossible to strike out the train of thought I had marked out for myself. I shall, therefore, content myself with offering such views only as present themselves to my mind as I progress in the discussion. Besides, there was another thought which operated upon my mind when I desired to address the House a few days ago. I did believe that, by making a calm appeal to the justice and magnanimity of this House, there could be no difficulty in agreeing to refund the fine which, in my soul, I believe was unjustly imposed by Judge Hall upon Gen. Jackson, for declaring martial law at New Orleans. But I have now totally despaired of any such result; the speech of the gentleman from Virginia [Mr. Borrs] has convinced me that the warm and generous feelings of magnanimous nature are chilled and destroyed by the malignity of party strife and the trammels of party discipline. I shall not, therefore, appeal to this Congress at all—I look above and beyond it. To the American people I appeal. They are the fountain of justice in the reward or punishment of political men, as they are of all political power in a Government like ours. With them, this question will stand upon its own merit; it will be disconnected from the party conflicts of the day. The elevation of no political favorite will depend upon the rejection of the bill; nor will the prospects of any ambitious aspirant to the Presidency brighten by its passage. The whole question will be gauged by the square of justice; and the only inquiry will be, "Was Gen. Jackson right or wrong in declaring martial law at New Orleans?" If right, the bill ought to pass, and the fine of \$1,000, with interest, ought to be refunded; if wrong, he merited his punishment, and the fine ought not to be remitted. That is the

question; and it is totally immaterial what your decision may be; the people will decide that question upon principles of strict justice, and command you to execute *their* will.

Sir, the gentleman from Virginia [Mr. Borrs] asks where Gen. Jackson derived his authority to declare martial law at New Orleans? That inquiry has been so often made, and so fully answered, that I did not expect a repetition of it from the gentleman from Virginia. But, as the interrogatory has again been repeated, I will answer it in accordance with my own views, and in my own way.

I shall not pretend that the Constitution or laws of the United States authorize the declaration of martial law by any authority whatever. On the contrary, it is unknown to the Constitution or laws; and so guarded have those persons been, upon whom the people have conferred the power to form constitutions, either State or national, that there is scarcely a constitution of a single State in the Union which does not declare that "the military shall at all times be subordinate to the civil power," and the Constitution of the United States inculcates the same doctrine.

That the military shall always be subordinate to the civil power, is a fundamental principle in our form of government; and the genius of our institutions requires that it should be so. But it does not follow that cases may not arise, in time of war, when a commander would not only be *excusable*, but *criminally culpable* if he did not assume the responsibility of declaring martial law. Sir, what are the exigencies of war which would justify this measure? I answer—the preservation of his army from destruction; the saving of an important and wealthy city, or the devastation and ruin of his country. To prevent any one of these results, would justify a general, before any just tribunal on earth, in declaring martial law. And to condemn a commanding officer for declaring martial law when *necessary* to prevent any one of these results, is virtually saying that he should stand calmly by, and witness the destruction of his army, the sacking of a city, or the devastation and ruin of his

country, when the means were in his power to prevent it.

Who would tolerate this idea? An Arnold might, but no patriotic American could. It may be asked, upon what principle a commander can declare martial law, where it is conceded that the Constitution or laws afford him no authority to do so? I answer, upon *that principle of self-defence which rises paramount to all written law; and the justification of the officer who assumes the responsibility of acting upon that principle must rest upon the necessity of the case.* If that necessity cannot be made apparent, when called to answer before the civil authority of the country, he will be condemned and punished. But if the necessity was apparent, and shown to be so, he will be honorably acquitted, and a grateful country will approve the act. These were the grounds upon which General Jackson acted when he declared martial law at New Orleans, as is shown by the opinion of Mr. Livingston, the aid to General Jackson; which opinion is in the following words, and was filed among the papers of General Jackson: "On the nature and effect of the proclamation of martial law by Major General Jackson, my opinion is, that such proclamation is unknown to the Constitution and laws of the United States.

1st. "That it is to be justified only by the necessity of the case; and that, therefore, the General proclaims it at his risk, and under his responsibility both to Government and individuals. When the necessity is apparent, he will meet reward instead of punishment from his Government; and individual claims for damage must be appreciated by the same rule, under the discretion of a jury. Should they, in the opinion of the Government, decide falsely against their officer; they have a right (which they have frequently exercised) of indemnifying him for the disinterested responsibility he has incurred."

2dly. "That the effect of a proclamation of martial law *de facto* is to bring all persons who may happen to be within the district comprised in the proclamation, under the purview of such law; and therefore all persons capable of defending the country within the district are subject to such law, by virtue of the proclamation, and may be tried during its continuance by virtue thereof."

These are the grounds upon which we place the power of General Jackson to proclaim martial law at New Orleans; and I trust the gentleman from Virginia [Mr. BORTS] will consider his interrogatory fully answered.

Sir, there is another event in the history of our country, in which General Jackson was compelled to assume responsibility, and act from the necessity of the case. I allude to his invasion of Florida, then belonging to the Spanish dominions, and a neutral territory. He reduced St. Mark's, Pensacola, and the fort of Barrancas. This was not authorized by the Constitution or laws; no one ever pretended that the Constitution or laws authorized any such invasion of neutral territory. It was an act of self-defence, forced upon the commander from the necessity of the case. Why this necessity? The Indians were in the daily habit of committing depredations upon our frontier settlements, and retreating with their plunder across the Florida line, a market for which they found among British emissaries stationed at St. Mark's and Pensacola. These emissaries also furnished the Indians with powder and the various implements of

war, and continued to stimulate them to increased exertion, and to the perpetration of renewed cruelties upon our defenceless women and children.

Now, sir, should General Jackson have remained quietly upon our side of the line, until our settlements were broken up, and our citizens slaughtered, because the Constitution and laws did not authorize him to march an army into neutral territory? No; all must admit that an imperious State necessity fully justified the step taken by him, and the result of the measure vindicates the policy of the act.

Sir, the King of Spain viewed the invasion of Florida as an insult to his sovereignty, and demanded the punishment of General Jackson, as we learn from a letter written by John Q. Adams, then Secretary of State, to George W. Erving, minister plenipotentiary to Spain. I read from that letter as follows: "In the fourth and last of those notes of Mr. Pizarro, he has given formal notices that the King, his master, has issued orders for the suspension of the negotiation between the United States and Spain, until satisfaction shall have been made by the American Government to him for these proceedings of General Jackson, which he considers as acts of unequivocal hostility against him, and as outrages upon his honor and dignity; the only acceptable atonement for which is stated to consist in a disavowal of the acts of the American general thus complained of; the infliction upon him of a suitable punishment for his supposed misconduct, and the restitution of the posts and territories taken by him from the Spanish authorities," &c.

How did Mr. Adams answer this demand of the King of Spain? He tells him, in this same letter, that "the occupation of these places in Spanish Florida by the American commander arose from incidents which occurred in the prosecution of the war against the Indians, from the imminent danger in which the fort of St. Mark's was of being seized by the Indians themselves, and from the manifestations of hostility to the United States by the commandant of St. Mark's, and the Governor of Pensacola; the proofs of which were made known to General Jackson, and impelled him, from the necessities of self-defence, to the steps of which the Spanish Government complains."

These are the grounds as alleged by the gentleman from Massachusetts, [Mr. ADAMS], upon which General Jackson took possession of Spanish Florida. Not because the Constitution or laws of the United States authorized him to enter and occupy a neutral territory, but because he was "impelled from the necessities of self-defence" to do so. Now, if General Jackson was authorized upon principles of necessary self-defence to seize upon the fort of St. Mark's, because of the danger of its falling into the hands of the enemy, how much more fully was he justified, by the same principle of imperious necessity, in declaring martial law to save the city of New Orleans from plunder and devastation by the enemy.

It may be supposed that the gentleman from Massachusetts [Mr. ADAMS] has only stated the grounds upon which General Jackson entered Florida, without approving his action in that particular. Not so. He continues: "But the President will neither inflict punishment nor pass censure upon General Jackson for that conduct, the motives for which were founded in the purest patriotism; of the necessities for which he had the

most immediate and effectual means of forming a judgment; and the vindication of which is written in every page of the law of nations, as well as *the first law of nature—self-defence.*"

Sir, there is an additional recognition of that paramount law of nature—self-defence—and a powerful vindication, not only of the acts of General Jackson, in entering the Spanish territory, but of the motives upon which that action was founded. And I now respectfully submit, that every principle involved in the declaration of martial law at New Orleans, was involved in the case thus defended by the gentleman from Massachusetts. Why, then, should the gentleman from Massachusetts, who so ably defended General Jackson nearly thirty years since, now turn round and become his reviler? Sir, I will not say that this change was produced by the result of the political contest of 1828; but I tell the gentleman from Massachusetts that others, with less charity for his motives, will not only think, but declare that such is the fact.

Mr. Speaker, having stated the grounds upon which I place the power of a commanding officer to proclaim martial law, and having brought to my aid the learning and experience of the gentleman from Massachusetts [Mr. ADAMS] in his better days, I shall now proceed to examine into the necessity which actually existed, and induced General Jackson to declare martial law. Permit me to ask what state of things actually existing in a besieged city would justify a proclamation of martial law? The known existence of spies and traitors, or the disaffection of any considerable portion of the resident population of said city, whether citizens, denizens, or aliens, would fully justify the proclaiming of martial law by the commanding general.

Now, sir, upon the *actual existence of treason, and the disaffection of a considerable portion of the resident population of New Orleans*, I base the necessity of proclaiming martial law. If *no treason or disaffection* did exist, the act was unnecessary; if treason and disaffection actually existed, a controlling State necessity imperiously demanded the proclamation of martial law; and hence the justification of General Jackson.

Sir, in order to demonstrate the actual existence of treason and disaffection to the American cause, I must avail myself of such lights as history throws upon this subject; and, in every instance in which I refer to history, the enemies, and not the friends of General Jackson will be consulted, because I prefer that his vindication should rest upon historical facts, recorded by those who cannot be charged with leaning to the side of General Jackson.

We find in Martin's History of Louisiana, that many of the people of that territory were originally opposed to the transfer of said territory from France to the United States. He says: vol. 2, page 199, "that the tri-colored made room for the striped banner, under repeated peals of artillery and musketry; a group of citizens of the United States, who stood on the corner of the square, waved their hats in token of respect for their country's flag, and a few of them greeted it with their voices. No emotion was manifested by any other part of the crowd." Again, page 263, Martin says: "Cordero had sent a large reinforcement to Nacogdoches: Porter had not two hundred men under his command on Red river. In a letter to the Secretary of War of the 15th February, he stated the great disaffection of the people around

him—*nineteen of whom out of twenty preferred the Government of Spain to that of the United States.*"

Sir, here is historical evidence that a large proportion of the population of Louisiana were opposed to the authority of the United States; although this fact may not be conclusive as to the actual existence of treason during the investment of New Orleans by the British army, it must nevertheless be taken and considered as a connecting link in the chain of evidence which I shall hereafter adduce upon this point.

I now propose to show, from the same historical evidence, (vol. 2d, page 323,) that treason did actually exist during the investment of the city. It will be remembered that Nicholls, the British colonel, after his arrival at Pensacola, issued a proclamation to the people of Louisiana, in which "he announced that on them the first call was then made to assist in the liberation of their natal soil from a faithless and weak Government. To Spaniards, Frenchmen, Italians, and Englishmen, whether residents or sojourners in Louisiana, application was made for assistance. He gave assurances that the inhabitants had no need to be alarmed at his approach, as the good faith and disinterestedness which Britons had manifested in Europe, would distinguish them in America.

The Indians, he added, had pledged themselves in the most solemn manner to refrain from offering the slightest injury to any but the enemies of their Spanish and British fathers.

"Addressing himself to the people of Kentucky, he observed, they had too long borne with grievous impositions; the whole brunt of the war had fallen on their brave sons. He advised them to be imposed on no longer, but either to revenge themselves under the standard of their forefathers, or observe the strictest neutrality.

"He asked whether the Kentuckians, after the experience of twenty-one years, could longer support those brawlers for liberty, who called it freedom, when themselves were free. He advised them not to be duped any longer, and to accept his offers; assuring them what he had promised he guaranteed to them, on *the sound honor of a British officer.*"

Sir, such were the means resorted to, to seduce our people from the allegiance due to their own Government; and I lament, for the honor of man, and the dignity of his nature, that any individual could have been found so base, as to aid in the accomplishment of this wicked attempt upon the patriotism of our people. Upon the brave Kentuckians (to their honor be it said) this appeal had no influence; they would neither observe "neutrality," nor "revenge themselves" upon their brothers, under "the standard of their forefathers." Not so with others; for we find (page 337 of Martin's History) that "emissaries were sent with copies of this proclamation over the country, between Mobile river and the Mississippi."

This was the work of treason; and I note the fact, as conclusive evidence of its actual existence at the time. I proceed with my evidence from the same work. On page 340 we find Claiborne, the Governor of Louisiana, saying to General Jackson: "I think, with you, that our country is full of spies and traitors." On page 364 of the same volume, we find that during the engagement between the British and American lines on the 28th December, General Jackson was informed that "the

assembly were about to give up the country to the enemy."

All these are important facts, which show the existence of treason in Louisiana, at the time General Jackson proclaimed martial law. It is not my intention, in the charge of treason, to involve the Legislature of Louisiana; but I regret that I have not been able to procure a copy of the journals of that body, since questions may have been started, and propositions entertained, which would go far to relieve the character of General Jackson from the aspersions which Federalism and British influence have at all times cast upon it.

The gentleman from Virginia, [Mr. Borrs,] in commenting upon the order given to Governor Claiborne by General Jackson, to blow up the Legislature of Louisiana, if, in truth, it did contemplate a surrender of the city to the enemy, has said that General Jackson acted upon vague surmise. Sir, the gentleman from Virginia informed us but the other day, that he had never read more than one law book in his life—and that one, twenty years since. Judging from the remark of the gentleman just referred to, we might suppose that he had been equally negligent in omitting to read the history of his country. I make no such charge; we know the gentleman has read the history of his country, and the reasons for this declaration must be sought in other causes.

Mr. Borrs (Mr. PAYNE yielding for explanation) said that the gentleman from Alabama had misunderstood him on that subject. He had only said that General Jackson had never given his authority, so far as he had been able to ascertain, and he never yet had ascertained; perhaps the gentleman might furnish it.

Mr. PAYNE. Sir, I am proceeding on the supposition that the gentleman had omitted to read the history of the times. I regard this as an important charge against General Jackson; it does him manifest injustice. His vindication may be found in a letter dated 31st December, 1814, in camp, 4 miles below New Orleans, and directed to the Legislature of Louisiana, in which he says:

"The Major General commanding has the honor to acknowledge the receipt of the joint resolution of both Houses of the honorable the Legislature of the State of Louisiana, now in session, dated the 30th instant, and communicated to both Houses; to which the General gives the following answer: That, just after the engagement between the British and American armies had commenced, on the 28th instant, when the enemy was advancing, and it was every instant expected they would storm our lines, as the General was riding rapidly from right to left of his line, he was accosted by Mr. Duncan, one of his volunteer aids, who had just returned from New Orleans. Observing him to be apparently agitated, the General stopped, supposing him to be the bearer of some information of the enemy's movements, and asked what was the matter? He replied, that he was the bearer of a message from Governor Claiborne, that the Assembly were about to give up the country to the enemy.

"The General was in the act of pushing forward along the line, when Mr. Duncan called after him, and said: 'the Governor expects orders what to do.' The General replied, that he did not believe the intelligence; but to desire the Governor to make strict inquiry into the subject; and, if true, to blow them up."

Colonel DeClouet is stated to be the officer who

delivered the message to Mr. Duncan. This is a thorough vindication of General Jackson from the charge of never having given the world his author, as made by the gentleman from Virginia; and, I trust he will now consider me as having furnished the information he desired.

Mr. Borrs then inquired what history the gentleman read from?

Mr. PAYNE replied, from Martin's History of Louisiana.

Mr. Borrs said he had never read that book.

Mr. PAYNE. So I had supposed, or the charge would never have been made. If General Jackson had ordered the Legislature of Louisiana to be blown up, upon indefinite rumor, it would have been highly censurable; but the order given in the heat of battle, upon information derived from the Governor, and then with the qualification to "examine strictly" into the subject, and, if true, blow them up, is a very different question. Sir, the order was one that I would not have given, had it been true that the Legislature was about to give up the country to the enemy. Not that they would not have deserved to be blown up, but because I believe gunpowder, under such circumstances, is an improper agent with which to punish traitors. Gunpowder was intended to be used in the adjustment of difficulties between honorable men, or between nations engaged in honorable warfare. The traitor should be punished with the halberd, whenever found in either the person of a judge, legislator, private citizen, or common soldier.

Sir, I now turn from this digression to the continued proof of the actual existence of treason when General Jackson proclaimed martial law at New Orleans. I next call the attention of the House to a statement contained in Latour's Memoirs and History of the War in West Florida and Louisiana, who has recorded the names of ten fishermen, of whom he says:

"These were well known to have aided the British in disembarking their troops, serving as pilots on board their vessels and boats, and acting as spies for them, from the period of their arrival on our coast."

"It was their practice, when they came to town to sell their fish, to get all the information they could, for the purpose of carrying it to the English when they went out to fish in Lake Borgne. On the 20th of December—the day preceding the arrival of the detachment of American militia at the village—the British captain (Peadre) had come disguised, accompanied by the three first-named fishermen, as far as the bank of the Mississippi; and had even tasted its waters. It was from his report, after having thus examined the country, that the enemy determined to penetrate by Viller's canal, whose banks at the time afforded firm footing, from the landing-place in the prairie to the river."

Mr. Speaker, here is conclusive evidence of the actual existence of treason during the investment by the British of the city of New Orleans. In the language of the Governor and General Jackson, the country was "filled with spies and traitors."

Mr. MOORE of Louisiana rose to explain.

Mr. PAYNE said he could not yield the floor. Under the rule, he was allowed but one hour to investigate this subject; and for every minute of that time he should have important use. Besides, the gentleman from Louisiana could reply when he had finished his remarks.

Sir, I have now fully made out my case. The

actual existence of treason is proved beyond all question. Hence the absolute necessity of proclaiming martial law; and upon that necessity I place the justification of General Jackson. How could the city have been saved? how could the spies and traitors have been prevented from conveying to the enemy daily information of the strength, condition, and operations of the American army? Sir, in but one way. It could only be done by proclaiming martial law. General Jackson saw and knew this. He felt the responsibility resting upon him, and adopted the only possible means by which the city could be saved. He proclaimed martial law, and subjected the city of New Orleans to military government. He garrisoned every avenue leading to and from the city, and thereby cut off all communication between the traitors within and the enemy without. Now, sir, what effect has martial law upon persons within the district comprised in the proclamation? I agree with Mr. Livingston in the opinion already quoted: "That the effect of martial law, *de facto*, is to bring all persons who may happen to be within the district comprised in the proclamation, under the purview of such law; and, therefore, all persons capable of defending the country within the district, are subject to such law by virtue of the proclamation, and may be tried, during its continuance, by virtue thereof."

Louallier, a naturalized Frenchman, and member of the Senate of Louisiana, presuming upon the dignity of his station, wrote and published a seditious paper, which was calculated not only to embolden the treasonable portion of the population of Louisiana, but informed the enemy of the divisions and dissatisfaction actually existing in regard to the measures adopted by the commanding general. For writing and publishing this paper, he was arrested, by the order of General Jackson. Dominic A. Hall then issued a writ of *habeas corpus* for the release of Louallier, and thereby became his accomplice. Hall was also arrested. Louallier was tried and acquitted by a court-martial; and Hall, after a few days' confinement, was sent beyond the limits of the city, and released. If there was necessity for proclaiming martial law at all, the same necessity required that it should be preserved. Hence the necessity for the immediate arrest of Louallier. Nor could he be released under a writ of *habeas corpus*; for that would have been a virtual repeal of the proclamation, before the necessity ended which required its existence. Moreover, I do not believe that it would be consistent with the public safety to admit the doctrine, that a man writing and publishing a mutinous and seditious paper, in the midst of a military camp, can be taken from the military by the civil authority, by writ of *habeas corpus*, and discharged. If that doctrine be once established, the spy or the traitor may at any time find exemption from the punishment due to his crimes, under the soiled ermine of some foreign stipendiary, exercising judicial functions under the authority of the United States.

Sir, I have said that New Orleans was placed under garrison, and subjected to all the laws which govern a military camp, by virtue of the proclamation of martial law. I now ask, did Gen. Jackson commit any act, after the proclamation, which every commander has not a right to do, at any time, within the limits of his encampment? Upon this point, I read an argument, the other day, in the

January number of the Democratic Review, which was so conclusive, and the impressions of which are now so vivid upon my recollection, that it would be impossible for me to make an argument upon this branch of the subject, without plagiarizing the one to which I have adverted. I therefore ask leave to read to the House this argument, and to substitute it for the remarks I intended to make.

"Many Frenchmen born, for the purpose of securing exemption from military duty, procured certificates from the French consul, declaring them to be subjects of the King of France. These certificates were given in the midst of the General's camp, and tended to weaken his means of defence, by taking effective soldiers from his ranks, and producing dissatisfaction and a spirit of mutiny among those who remained. Might not the General, in strict conformity of law, have placed both the consul and his protégés in confinement? He adopted the milder expedient of ordering them out of his camp.

"Then came the publication of Louallier, harshly censuring this order as an act of tyranny, and openly advising disobedience. This publication, be it remembered, was made in the midst of the camp. Its direct and manifest object was to bring the military authority into contempt.

"The arrest of the author was, in our view of the General's lawful authority over his camp, not only a matter of right, but of indispensable duty. Instead of violating the Constitution and laws of his country, he but performed the solemn obligation of executing them, by preserving the just authority of its military commander over its armies and their encampments.

"Yet it was for this act that Judge Hall (himself, at the moment, the subject of martial law, and abiding in the midst of the camp) issued his writ of *habeas corpus*. This was making himself the accomplice of Louallier, in stirring up discontent and mutiny in the camp. The same principles which required the arrest of the one, demanded, with a louder voice, the restraint of the other. The Judge was kept under guard a few days, and then sent out of the camp, and set at liberty.

"The power of the General, under martial law, seems to be altogether preventive, except in cases where the law itself provides for punishment. In this case, it seems to us that the preventive power can only be exercised by keeping the mischief-maker in confinement, or sending him beyond the limits of the camp. In effect, this was the result in the case of Louallier, and nothing beyond it was attempted in the case of Judge Hall.

"These facts and reasons lead us to the conclusion, that, in ordering French aliens and the French consul beyond the limits of his camp; in arresting and confining Louallier for an open attempt, within his camp, to produce discontent and disobedience; and in confining and sending out of his camp Judge Hall, for attempting to sustain Louallier—General Jackson trampled on no constitution, and violated no law; but, on the contrary, faithfully executed the powers vested in him by the Constitution and laws, as a military commander, for the preservation of order in his camp, the safety of his army, and the defence of his country."

Sir, if the views taken be correct, the blame, if any, which attaches to General Jackson, was for proclaiming martial law, and not for acts committ-

ted by him subsequent to that proclamation. When upon that branch of the subject, I demonstrated beyond doubt that an overruling State necessity, resulting from the conduct of the spies and traitors known to be in the country, required the existence of martial law to save the city from the enemy; and upon that *necessity* I rest the justification of General Jackson, and demand, as an act of justice, that the fine imposed upon him by Judge Hall be refunded by the passage of the bill now under consideration.

Sir, it may be asked, could this city have been saved by any other means? This interrogatory requires that I should examine, for a few moments, the means of defence, as compared with the means of attack. I have already said that we were called upon to defend a restless and divided people. Our army numbered about 3,000 men, undisciplined; many of them had never before faced an enemy, and withal badly armed. What were the means of attack? An army of 14,000 strong, well ordered, provided with all the appliances of war, and from a country whose troops had been disciplined by a war of twenty years' duration, and commanded by the most experienced generals of the age.

The gentleman from Massachusetts [Mr. Cushman] eloquently said, the other day, that, if we would look at the history of England during the period of the French revolution, and mark the course of that great power in Asia, in Africa, and in Europe, we would find it one undeviating course of unchecked victory and glory; or, if we turn to the ocean, we are met by the victories of St. Vincent, of Trafalgar, of Copenhagen, and the Nile; and, wherever a British ship met an opposing vessel, it added a new halo of glory to the conquering cross of St. George.

Sir, what was the condition of that gigantic nation at that time? She could concentrate her whole power upon us; she feared no invasion from France; the power of Napoleon had been wrenched from its basis; his star of glory had set; its sickly and ominous glare had been extinguished upon the plains of Belgium. Nor did she fear an insurrection in Ireland; the altars reared to liberty by that gallant people had been cloven down, and the fires which burnt upon those altars had been extinguished by the blood of Emmett. Thus we were contending with a nation which had torn the diadem from the brow of the hero of Austerlitz, and shook asunder the confederation of the Rhine. Sir, we met them upon the plains of New Orleans, and the Anglo Irish blood—the Andrew-Jackson blood—snatched the American eagle from the fangs of the British lion, and enabled her to unfurl her wings in proud triumph over American arms and American soil. Could this have been done without the proclamation of martial law? No, sir; never. Three thousand Americans could never have resisted successfully a British army of fourteen thousand men, with all the points of attack designated by the spies and traitors known to be in New Orleans. Assuming this to be the fact, I ask, was it just, was it patriotic, to impose a fine upon its *defender, its preserver?* The whole American people will answer no; and, in their name, I demand that the fine be refunded—not as a pecuniary remuneration; no, sir, as such, we would not receive it; but as a vindication—a legislative vindication by an American Congress of the reputation of Gen. Jackson from the aspersions with which British in-

fluence *then*, and Federalism, its twin sister, *now* seeks to assail it.

Sir, the gentleman from Virginia [Mr. Borrs] tells us that the fine imposed by Judge Hall upon General Jackson has been refunded. By whom, sir? The ladies of New Orleans. Suppose this were true, and that General Jackson had actually pocketed the money subscribed by the patriotic ladies of that city: would that justify this Government in retaining in its treasury money which had been improperly wrenched from the hands of a public servant? No, sir, if the facts, as already stated, were true, and it were improper to refund the money to General Jackson, it should have been handed over to the ladies of New Orleans, whose patriotic zeal outstripped the Government in the desire of protecting a public officer in the discharge of his military duty. I say this fine of \$1,000 got into the public treasury wrongfully; and having done so, as a mere question of honesty, it should not remain there.

But, sir, what are the facts of this case? When Judge Hall imposed this fine upon General Jackson, it was immediately paid by him. The ladies of New Orleans, feeling deeply the injustice of Hall's conduct, by subscription of \$1 each, raised the amount of the fine imposed, and tendered it to General Jackson; who immediately saw the impossibility of returning the money to those by whom it had been subscribed, and for this reason expressed a wish to those who had the money that it should be distributed among the families of the brave men who lost their lives in the defence of these very ladies. What other disposition, respectful to these ladies and just to himself, could General Jackson have suggested? To have refused it indignantly, would have been unjust to the motives of those by whom it was tendered; and yet, to receive it as a pecuniary indemnity was impossible, so long as he continued to be Andrew Jackson. Sir, the opponents of this measure must be hard pressed for argument to plead these facts in bar of even a pecuniary claim upon the treasury.

Will it be contended that we have not the constitutional power to refund this money? By those, at least, who voted to the widow of General Harrison an appropriation of \$25,000, such an objection cannot be urged. I did not vote for that appropriation; it was a gratuity, and I believe this Government has no right, under the Constitution, to bestow gratuities from the public treasury. But here is a different case. You have in your treasury the money of a private individual, unjustly obtained; and there can be no want of power to restore it to the proper owner. Suppose you refuse to do justice, by failing to refund this fine to General Jackson, what will the people say?

Sir, they know that you have already passed a bill for the relief of the heirs of Hull, who surrendered an army under circumstances which excited the strongest suspicions that he was guilty of treason. The people also know that the Senate passed a bill at the late session, (and many of the members of this House were anxious for the passage of the same bill,) to pay the Massachusetts militia, not for fighting the battles of the country, but for *refusing to march* over the Canada line with the view of attacking the enemy.

Now, sir, after all this, if you refuse to refund the fine unjustly imposed upon General Jackson, who preserved his army, prevented a city from be-

ing sacked, and was himself the victor of many battles, the people will denounce this Congress as the most unjust and factious body of men ever assembled under the Federal Constitution.

Sir, the gentleman from Massachusetts [Mr. Adams] insidiously introduced in the debate upon this question, the name of Arnold, the traitor—for his own amusement, I suppose, but to the evident mortification of the House. He said that Arnold asked an American in Europe, what the people of the United States would do with him if in their possession? The American replied, that they would bury the leg wounded in defence of his country, with the "honors of war," and hang the rest of his body for his treason.

Sir, the application of this anecdote to General Jackson, and the connexion of his name with the name of a traitor, is extremely unjust. That distinguished patriot holds no communion either with the "overt" traitor, or with *him who only meditates the act*; he is reviled by the one, as he would be feared and shunned by the other. And I tell the gentleman from Massachusetts, that the point of this anecdote, if it has any, is applicable to himself and his friends, who have already shown *their friendship for Hull* and the Massachusetts militia, and their increasing and deadly hostility to Andrew Jackson. Judging from these facts, and the indications already given by the votes of this House, if Arnold were now before this Congress, his body would be pensioned for military services to Federalism in the attempted betrayal of his country, and the leg mutilated in the service of that country would be hung for its treason. I am now done with the question of the fine.

Sir, the remaining moments of my hour I must devote to the notice of a remark which fell from the gentleman from Virginia, [Mr. Borrs,] who tells us that he has been enabled to discover but one green spot in the life of General Jackson, and *that* was his submission to the decision of Judge Hall in the imposition of this fine. Sir, but one green spot in the life of Andrew Jackson! I go back to his boyhood: when he was a British prisoner during the revolutionary war, he was insolently ordered by a British officer "to black his boots." Did Andrew Jackson obey this order with the servile

acquiescence common to his years and situation? No, sir; he positively refused to obey, claimed the treatment due to a prisoner of war, and, although an only brother was sacrificed and fell by his side from the cruelty of his oppressor, Andrew Jackson could not be driven from his position, or forced to submit to the arrogance of his tyrant. Was this no green spot in the life of Andrew Jackson? I come down to the history of the last war. What was the condition of your country then? The cities upon your coast had been sacked; your country overrun; and a hostile flag waved in proud triumph from the walls of this Capitol. Go to the West: the tide of victory had spread over the upper valley of the Mississippi; your "stripes and stars" trailed in the dust; your national glory lost; the massacre of the river Raisin and the defeat of Dudley hung heavily upon every mind; Kentucky mourned the loss of her bravest sons, whose bones, denied the right of sepulture, were then bleached and whitening upon the battlefield of disaster. At this, the darkest period of our national history, Andrew Jackson was appointed to the command of the American army. The effect was like magic: hope revived; patriotism rekindled; confidence was restored. Our stars and stripes again floated in the breeze; the current of disaster was checked; the wave of victory rolled back; and battle after battle won in quick succession, until the war was ended in the blaze of glory at New Orleans, to which I have already adverted.

Was there *no green spot* in the life of Andrew Jackson resulting from all this? Do the battles of Emuckfau, Taladega, Enotochopco, and the Horse-shoe, form no green spots in the life of Andrew Jackson? Sir, it will require no storied urn to commemorate the deeds of that illustrious man. They are recorded upon every page of his country's history. Nor will it require monumental columns to mark the spot in which his ashes shall be deposited. The laurel will continue to bloom upon his grave, bedewed by the tears of a grateful nation, when the deeds and the graves of those who revile him will be forgotten and buried beneath the rubbish of oblivion.

Mr. PAYNE was here interrupted by the expiration of his hour.

TO THE EDITOR OF THE GLOBE.

SIR: In the speech delivered by me in the House of Representatives on the 28th of January, 1843, and published in the daily Globe of the 6th instant, I stated that a bill had passed this House for the relief of the heirs of Hull. In that statement I was mistaken. I had confounded the bill for the relief of Isaac Hull with the bill in question.

Your obedient servant,

W. W. PAYNE.



