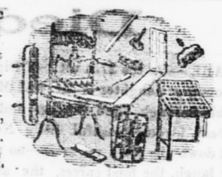
The North Branch Democrat.

HARVEY SICKLER, Proprietor.] "TO SPEAK HIS THOUGHTS IS EVERY FREEMAN'S RIGHT."—Thomas Jefferson. [TERMS: $1.50 PER ANNUM

NEW SERIES, TUNKHANNOCK, PA., WEDNESDAY, DEC. 2, 1863. VOL. 3, NO. 17.

North Branch Democrat.



A weekly Democratic paper, devoted to Politics, News, the Arts and Sciences &c. Published every Wednesday, at Tunkhannock, Wyoming County, Pa.

BY HARVEY SICKLER.

Terms—1 copy 1 year, (in advance) $1.50. If not pain within six months, $2.00 will be charged

ADVERTISING.

10 lines or less, make one square	three weeks	four weeks	two mo'th	three mo'th	six mo'th	one year
1 Square	1,00	1,25	2,25	2,87	3,00	5,00
2 do.	2,00	2,50	3,25	3,50	4,50	6,00
3 do.	3,00	3,75	4,75	5,50	7,00	9,00
¼ Column.	4,00	4,50	6,50	8,00	10,00	15,00
do.	6,00	7,00	10,00	12,00	17,00	25,00
do.	8,00	9,50	14,00	18,00	25,00	35,00
1 do.	10,00	12,00	17,00	22,00	28,00	40,00

Business Cards of one square, with paper, $5.

JOB WORK

of all kinds neatly executed, and at prices to suit the times.

Business Notices.

Unconstitutionality of the Conscription Act.

JUSTICE WOODWARD'S OPINION.

WOODWARD, J.—On the 3d day of March, 1863, the Congress of the United States passed an act for "enrolling and calling out the National forces, and for other purposes," which is commonly called the Conscription Law. The plaintiffs, who are citizens of Pennsylvania, have set forth the act fully in their bills, and they complain that they have been drafted into the military service of the Government in pursuance of said enactment, but that the same is unconstitutional and void, and that the defendants, who are engaged in executing the act, have violated the rights and are about to invade the personal liberty of the plaintiffs, and thereupon they invoke the equitable interposition of this Court to enjoin the defendants against a farther execution of the said act.

For the jurisdiction of this Court to set aside an act of Congress as unconstitutional, and to grant the relief prayed for, I refer myself to the views of the Chief Justice in the opinion he has just delivered in these cases, and I come at once to the constitutional question.

The act begins with a preamble which recites the existing insurrection and rebellion against the authority of the United States, the duty of the Government to suppress insurrection and rebellion to guarantee to each State a republican form of government, and to preserve the public tranquility, and declares that for these high purposes a military force is indispensable, 'to raise and support which all persons ought willingly to contribute,' and that no service is more praiseworthy and honorable than the maintenance of the Constitution and the Union; and then goes on to provide for the enrolling of all able-bodied male citizens of the United States, and citizens of foreign birth, who have declared their intention to become citizens, between the ages of twenty one and forty five years, and these able-bodied citizens and foreigners, with certain exceptions afterward enumerated, are declared 'THE NATIONAL FORCES,' and made liable to perform military duty when called out by the President. The act divides the country into military districts, corresponding with the congressional districts, provides for provost marshalls and enrolling boards, and regulates the details of such drafts as the President shall order to be made from the national forces so enrolled.—The payment of $300 exempts any drafted person, so that it is, in effect, a law providing for a compulsory draft or conscription of such citizens as are unwilling or unable to purchase exemption at the stipulated price.—It is the first instance, in history, of legislation forcing a great public burthen on the poor. Our State legislation, which exempts men who are not worth more than $300 from paying their own debts, is in striking contrast with this Conscription law, which devolves upon such men the burthen which belongs to the whole 'national forces,' and to which, all persons ought willingly to contribute.' This, however is an objection to the spirit of the enactment rather than to its constitutionality.

The description of persons to be enrolled, able bodied citizens between twenty-one and forty five years of age, is substantially the description of the militia as defined in our Pennsylvania statutes and probably in the statutes of all States. The national forces, then, meaning the militia of the States, certainly include the militia of Pennsylvania. This expression, 'national forces' is modern language when so applied. It is not found in our Constitution, either State or Federal, and if used in commentaries on the Constitution, and in history, it will generally be found applied to our land and naval forces, in actual service—to what may be called our standing army. It is a total misnomer when applied to the militia, for the militia is a State institution. The General Government has no militia. The State militia, always highly esteemed as one of the bulwarks of our liberties, are recognized in the Federal Constitution, and it is not in the power of Congress to obliterate them or to merge them in 'national forces.'

Unless there is more magic in a name than has ever been supposed, this conscript law was intended to act upon the State militia, and our question is, therefore, whether Congress has power to impress or draft the militia of the State. I cannot perceive what objection can be taken to this statement of the question, for surely it will not be argued that calling the militia national forces, makes them something else than the militia. If Congress did not mean to draft the militia under this law, where did they expect to find the national forces! 'All able bodied white male citizens between the ages of twenty one and forty-five years, residing in this State, and not exempted by the laws of the United States,' with certain specified exceptions, constitute our State militia. Will it be said that the conscript law was not intended to operate on these? I think it will not. Then if it does touch, and was framed and designed to draft this very class of citizens, no possible objection can be taken to the above statement of the question we have to decide.

I therefore repeat the question with great confidence in its accuracy, has Congress the constitutional power to impress or draft into the military service of the United States, the militia men of Pennsylvania?

This question has to be answered by the Constitution of the United States, because that instrument, framed by deputies of the people of the States and ratified and put into effect by the States themselves in their respective corporate capacities, delegates to Congress all the power that body can exercise. These delegations are either express or such implications as are essential to the execution of the expressly delegated powers.

There are but three provisions in the Constitution of the United States that can be appealed to in support of this legislation. In our ordinary editions they stand numbered as clauses 13, 16 and 17 of the viii section of Ar I. of the Constitution.

"13. Congress shall have power to raise and support armies, but no appropriations of money to that use shall be for a longer term than two years.

"15 Congress shall have power to provide for calling forth the militia to execute the laws of the Union, to suppress insurrections, to repel invasion.

"17. Congress shall have power to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of officers and the authority of training the militia according to the discipline prescribed by Congress."

"To raise armies"—these are large words; what do they mean? There could be no limitation upon the number or size of armies to be raised, for all possible contingencies could not be foreseen, but our question has not reference to number or size, but to the MODE of raising armies. The framers of the Constitution, and the States who adopted it derived their ideas of government principally from the example of Great Britian—certainly not from any of the more imperial and despotic governments of the earth. What they meant to make was a more free Constitution than that of Great Britain—taking that as a model in some things—but enlarging the basis of popular rights in all respects that would be consistant with order and stability. They knew that the British army had generally been recruited by voluntary enlistments, stimulated by wages and bounties, and that the few instances of impressment and forced conscriptions of land forces, had met with the disfavor of the English nation and had led to preventive statutes. In 1704 and 1707 conscription bills were attempted in parliament but abandoned as unconstitutional. During the American revolutionary struggle, 19 Geo. III, C 10, permitted the impressment of idle and disorderly persons not following any lawful trade, or having some subsistance sufficient for their subsistance," and this was as far as English legislation had gone when our Federal Constitution was planned. Assuredly the framers of our Constitution did not intend to subject the people of the States to a system of conscription, which was applied in the mother country only to paupers and vagabonds. On the contrary, I infer that the power conferred on Congress, was the power to raise armies by the ordinary English mode of voluntary enlistments.

The people were justly jealous of standing armies. Hence they took away most of the war power from the executive, where, under monarchical forms, it generally resides, and vested it in the legislative department, in one branch of which the States have equal representation, and in the other branch of which the people of the States are directly represented according to their numbers. To these representatives of the States and the people, this power of originating war was committed, but even in their hands it was restrained by the limitation of biennal appropriations for the support of the armies they might raise. Of course, no army could be raised or supported which did not command popular appropriation, and it was rightly considered that voluntary enlistments would never be wanting to recruit the ranks of such an army. The war power, existing only for the protection of the people, and left as far as it was possible to leave it in their own hands, was incapable of being used without their consent, and, therefore, could never languish for enlistments. They would be ready enough to recruit the ranks of any army they deemed necessary to their safety. Thus the theory of the Constitution placed this great power, like all other governmental powers, directly upon the consent of the governed.

The theory itself was founded on free and fair elections—which are the fundamental postulate of the Constitution. If the patronage and power of the government shall ever be employed to control popular elections, the nominal representatives of the people may cease to be their real representatives, and then the armies which may be raised may not so command public confidence as to attract the necessary recruits, and then conscript laws and other extra-constitutional expedients may become necessary to fill the ranks. But governmental interference with popular elections will be subversion of the Constitution, and no constitutional argument can assume such a possibility.

Supposing then that the people are always to be fairly represented in the halls of Congress, I maintain that it is grievous injustice to them to legislate on the assumption that any war honestly waged for constitutional objects will not always have such sympathy and support from the people as will secure all necessary enlistments. Equally unjust to their intelligence it is to suppose that they meant to confer on their servants the power to impress them into a war which they could not approve.

When to these considerations we add the ability of a great country, like ours, to stimulate and reward enlistments, both at home and abroad, by bounties, pensions and homesteads, as well as by political patronage in countless forms, we see how little necessity or warrant there is for implying a grant of the imperial power of conscription.

There is nothing in the history of the Constitution nor in those excellent contemporaneous papers, called the Federalist, to justify the opinion that this vast power lies wrapped up in the few plain words of the 13th clause, whilst the subsequent clauses, concerning the militia, absolutely forbid it.

If the very improbable case be supposable, that enlistments into the Federal armies might become so numerous in a particular State as sensibly to impair its own proper military power, is it not much more improbable that the States meant to confer upon the General Government the power to deprive them, at its own pleasure, altogether of the militia, by forced levies? Yet this might easily happen if the power of conscription be conceded to Congress. There are no limitations expressed—nothing to compel Congress to observe quotas and proportions as among the several States—nothing to prevent their raising armies wholly from one State, taking every able bodied citizen out of it to the endangering, if not utter undoing, of all its domestic interests.

And besides, if we conclude this dangerous power to the language of the 13th clause, we destroy the force and effect of the words of the 16th and 17th clauses. We make the instrument self destructive, which is violative of all canons of construction. Congress shall have power to provide for calling forth the militia in the manner and subject to the limitations prescribed in clauses 16 and 17, and therefore I argue Congress has not the power to draft them. Is an express rule of the Constitution to give way to an implied one? If the 13th clause confers power to draft the militia, the words of the 16th and 17th clauses are the idlest that were ever written. But if the 13th conferred only the power to enlist volunteers, then the subsequent clauses become very intelligible—stand well with the 13th, and add essentially to the martial faculties of the Federal Government. Look at those clauses. The militia are to be called forth to execute the laws of the Union, suppress insurrection and repel invasions, to be organized, armed and disciplined by the State, but according to the laws of Congress, such part of them as may be employed in the service of the United States are to be governed by the President, but officered by the respective States. Now this conscription law recites an "existing insurrection and rebellion" as the ground and reason, not for calling forth the militia under the above provisions, but for "drafting" them into the military service of the United States. The very case has occurred in which the Constitution says the militia shall be called out under State officers, but Congress says they shall be drafted in contempt of State authority. Gen. Washington, and the men of his day, did not so read the Constitution, when in suppressing the whiskey insurrection in this State, they paid the most scrupulous regard to the rights and powers of the State. Under the pressure of a foreign war, a conscript bill was reported in Congress in 1814, but it did not pass, and if it had, it would have been no precedent for this law, because we are dealing with an insurrection, and insurrections are especially provided for in the Constitution.—If to support a foreign war, Congress may draft the militia, which I do not admit, the power of draft to suppress insurrections is not to be implied since another mode of suppressing insurrections is expressly provided. When a State is called on for its quota of militia, it may determine, by lot, who of the whole number of its enrolled militia shall answer the call, and thus State drafts are quite regular; but a Congressional draft "to suppress insurrection" is an innovation that has no warrant in the history or text of the Constitution. Either such a law or the Constitution must be set aside. They cannot stand together.

And, happily, no ill consequences can flow from adhering to the Constitution; for the standing army of the Federal Government, recruited by enlistments in the ordinary way, with the State militia called forth according to the Constitution, are a force quite sufficient to subdue any rebellion that is capable of being subdued by force of arms. Such a formidable force wisely weilded, in connection with a paternal and patriotic administration of all other constitutional powers, will never fail to put down refractory malcontents, and preserve peace and good order among the American people. This conscript law, therefore sanctioned by the Constitution, is not adapted to the exigencies of the Times, nor likely to have success as a war measure.

In its political bearings even, more than in its military aspects, it is subversive of the Constitution and of the rights of citizens that depend upon State authority. A few thoughts will make this plain. It is impossible to study our State and Federal Constitutions without seeing how manifestly the one was designed to guard and maintain the personal and social rights of the citizens—the other to take care of his external relations.

Nature, education, property, home, wife and children, servants, administration of goods and chattels after death, and a grave-yard in which to sleep the sleep of death, these are among the objects of State solicitude, for the protection of which the State provides civil authorities and back of them the "posse comitatus" and the military, to make the civil administration effectual.—Now, if the principle be admitted that Congress may take away the State militia, who does not see that the ultimate and final security of every man's domestic and personal rights ace endangered. To the extent delegated in the constitution nobody questions the right of Congress to control the State militia, but if to the extent to which this enactment goes, the States will be reduced to the condition of mere counties of a great Commonwealth, and the citizen of the State must look to the Federal Government for the enforcement of all his domestic rights, as well as for the regulation of his external relations.

The citizens of the state need protection from foreign foes and Indian tribes—peaceful intercourse and commerce with all the world—a standard of values and of weights and measures that shall be common to all the States and a postal system that shall be coextensive with interstate trade and commerce. To adjust and maintain these external relations of the citizen, are high duties which the Constitution has committed to the Federal Government, and has furnished it with all necessary civil functionaries and with power to levy and collect taxes from the people of the States, to raise and support armies, to provide a navy, and to call forth the militia to execute the laws.

This is the American citizen amply provided by means of constitutions that are written with protection for all his rights, natural and artificial, domestic and foreign, but as the war power of the General Government is his ultimate security for his external, so is the militia his ultimate security for his internal or domestic rights.

Could the State Government strike at the war power of the Federal Government without endangering every man's rights? In view of the existing rebellion, no man would hesitate how to answer this question, and yet is it not equally apparent that when the Federal Government usurps a power over the State militia which was never delegated, every man's domestic rights (and there are those which touch him most closely) are equally endangered?

The great vice of the conscript law is, that it is founded on an assumption that congress may take away, not the State rights of the citizen, but the security and foundation of his State rights. And how long is civil liberty expected to last, after the securities of civil liberty are destroyed. The Constitution of the United States committed the liberties of the citizen in part to the Federal Government, but expressly reserved to the States, and the people of the States, all it did not delegate. It gave the General Government a standing army, but left to the States their militia. Its purposes in all this balancing of powers were wise and good, but this legislation disregards these distinctions, and upturns the whole system of government when it converts the State militia into national forces, and claims to use and govern them as such.

Times of rebellion above all others, are the times when we should stick to our fundamental law, lest we drift into anarchy on one hand, or into despotism on the other. The great sin of the present rebellion consists in violating the Constitution, whereby every man's civil rights are exposed to sacrifice Unless the Government be kept on the foundation of the Constitution, we imitate the sin of the rebels, and thereby encourage them whilst we weaken and dishearten the friends of constitutional order and government. The plaintiffs in these bills have good right, I think, as citizens of Pennsylvania, to complain of the act in question, not only on the grounds I have indicated, but on another to which I will briefly allude.

The 12th section provides that the drafted persons shall receive ten day's notice of the rendezvous at which he is to report for duty and the 13th section enacts "that if he fails to report himself in pursuance of such notice, without furnishing a substitute or paying the required sum therefor, he shall be deemed a deserter, and shall be arrested by the provost marshal, and sent to the nearest military post for trial by court-martial," The only qualification to which this provision is subject, is that upon proper showing that he is not able to do military duty, the board of enrollment may relieve him from the draft.

One of the complaints, Kneeder, has set forth the notice that was served on him in pursuance of this section and by which he was informed that unless he appeared on a certain day he would be "deemed a deserter, and be subject to the penalty prescribed, therefor, by the rules and articles of war." I believe the penalty of desertion by the military code is any corporeal punisment a court-martial may choose to inflict, even to that of being put to death.

Can a citizen be made a deserter before he has become a soldier? Has Congress the constitutional power to authorize provost marshals, after drawing the name of a freeman from a wheel and serving him with ten days' notice, to seize and drag him before a court martial for trial under military law? This question touches the foundations of personal liberty.

In June, 1215, the Barons of England and their retainers, "a numerous host, encamped upon the grassy plain of Runnymede," wrung from King John that great charter which declared, among other securities of the rights and liberties of Englishmen, that "no freeman shall be arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or be outlawed or exiled, or in any manner harmed, nor will we (the King) proceed against him, nor *send any one against him by force of arms*, unless according to the sentence of his peers (which includes trial by jury) or the common law of England."—Here was laid the strong foundation of the liberties of the race to which we belong. And yet not here, for Magna Charta *created* no rights, but only reasserted those which existed long before at common law. It was for the most part says Lord Coke, merely declaratory of the principal grounds of the fundamental laws of England. Far back of Magna Jay Charta in the customs and maxims of our in Saxon ancestry, those principles of liberty scattered which were gathered together that immortal document which, four hundred years afterwards were again reasserted in two other great declaratory statutes, "The Petition of Right" and "The Bill of Rights," and which were transplanted into our Declaration of Independence, the Bill of rights to our State Constitution and the Amendments to our Federal Constitution, and which have thus become the heritage of these plaintiffs. Says the 5th Article of the Amendments:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentiment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger."

What is the scope of this exception? The land or naval forces mean the regular military organization of the Government—the standing army and navy—into which citizens are introduced by military education, from boyhood, or by enlistments, and become, by their own consent, subject to the military code and liable to be tried and punished without any forms or safeguards of the common law. In like manner the militia, when duly called out and placed in "actual service," are subject to the rules and articles of war, all their common law rights of personal freedom being for the time suspended. But when are militia men in actual service? When they have been notified of a draft? Judge Story in speaking of the authority of congress over the militia says:

"The question when the authority of Congress over the militia becomes exclusive, must essentially depend upon the fact when they are to be deemed in the actual service of the United States. There is a clear distinction between calling forth the militia and their being in actual service. These are not contemporaneous acts nor necessarily indentical in their constitutional leanings. The President is not commander-in-chief of the militia except when in actual service; and not merely when they are ordered into service. *They are subjected to martial law only when in actual service, and not merely when called forth, before they have obeyed the call.* The acts of 1795 and other acts on the subject manifestly contemplate and recognize this distinction. *To bring the militia within the meaning of being in the actual service there must be an obedience to the call and some acts of organization, mustering rendezvous, or marching done in obedience to the call in the public service*"—Story's Con. Law. Vol. 3, Sec. 1208.

If it be suggested that this plain rule of common sense and constitutional law is not violated by the conscription act, because it applies to the "national forces," I reply as before, that this is only a new name for the militia, and that the constitutional rights of a citizen are not to be sacrificed to an unconstitutional name. When Judge Story was endeavoring to mark with so much distinctness the time at which the common law rights of the citizen ceased and his liability to military rule began—the time, in a word, when he became a soldier—why did it not occur to his fertile mind that Congress could render this distinction valueless and unmeaning by a new nomenclature—by calling the militia "national forces?" It is not difficult to conceive how such a suggestion would have fared had it occurred or been made to him. But it is difficult, in the presence of the grave issues of the present day, to treat so frivolous a suggestion with a dignity and forbearance the occasion demands. I have shown what rights of personal liberty these plaintiffs inherited from a remote ancestry, and how they are guaranteed to them by our Constitutions, and at what time they are to give place to martial law, and surely if a wheel set in motion by Congress can crush and grind those rights out of existence, without regard to the limitations of the Constitution, some weightier reason should be found for it than the mino