

The VICE PRESIDENT also laid before the Senate a communication from the Secretary of the Interior, transmitting a communication of the 14th instant from the Commissioner of Indian Affairs, and a copy of a letter to him from C. C. Hutchinson, of the 7th instant, recommending that Congress be requested to appropriate an additional amount for the Ottawa Indians of Blanchard's Fork and Roche de Boeuf, for the fiscal years 1863 and 1864; which was referred to the Committee on Finance.

#### PETITIONS AND MEMORIALS.

Mr. NESMITH presented the petition of Captain John Mullen, of the United States Army, praying to be relieved from all responsibility concerning a forged certificate on the Navy Department, which he took for property pertaining to the Fort Walla-Walla and Fort Benton military road expedition, sold at public auction at Walla-Walla, August 19, 1862; which was referred to the Committee on Military Affairs and the Militia.

He also presented the petition of Captain John Mullen, of the United States Army, praying to be relieved from all responsibility concerning a draft drawn by him on the Assistant Treasurer in New York, in favor of Lieutenant Robert Macfeely, United States Army, for \$396 96, which was stolen from the mail by John L. Carr, in February, 1860; which was referred to the Committee on Military Affairs and the Militia.

Mr. HARDING presented the memorial of Mary A. Baker, widow of Hon. E. D. Baker, late a Senator from the State of Oregon, praying for an appropriation to her of \$1,000 for expenses incurred by her husband in raising his command and the maintenance of his men, and entertainment at his headquarters becoming to his rank and station; which was referred to the Committee on Pensions.

Mr. COWAN. I present the memorial of William Cornell Jewett, praying for a reconsideration of the indefinite postponement of his late petition referring to mediation, &c. I ask that it be referred to the appropriate committee, the Committee on Foreign Relations.

Mr. SUMNER. Mr. President, Mr. Jewett certainly is an irrepressible petitioner. It is only the other day that a memorial similar in purpose was presented to the Senate, which was referred to the Committee on Foreign Relations. I was directed by the committee after consideration of it to report it back to the Senate with a recommendation that it be indefinitely postponed. The Senate acted promptly: the memorial was indefinitely postponed. Under the circumstances, therefore, I move that the present memorial lie upon the table.

The motion was agreed to; and the memorial was ordered to lie upon the table.

#### REPORTS FROM COMMITTEES.

Mr. POMEROY, from the Committee on Claims, to whom was referred the opinion of the Court of Claims in the case of James Preston Beck, administrator of Preston Beck, jr., deceased, submitted an adverse report thereon; which was ordered to be printed.

Mr. FOOT, from the Committee on Public Buildings and Grounds, to whom was referred a petition of citizens of Washington city, District of Columbia, praying for a grant to the Guardian Society of the District of Columbia, the use in perpetuity of ten acres of land on the north side of B street south, and extending from Twelfth to Fourteenth street west, for the purposes of a house of industry and a widows' and orphans' home, reported a bill (S. No. 466) granting certain privileges to the Guardian Society of the District of Columbia; which was read, and passed to a second reading.

Mr. WILSON, of Massachusetts, from the Committee on Military Affairs and the Militia, to whom was referred the bill (S. No. 458) to suspend the sale of lands in the islands on the coast of South Carolina and Georgia, in and about Port Royal, reported it with an amendment in the form of a substitute.

Mr. CLARK. The Committee on Claims, to whom was referred the petition of James Johnson, of Philadelphia, praying for the allowance of his claim under the treaty of Guadalupe Hidalgo, for property taken possession of and destroyed by the Mexicans, have had that matter

under consideration, and directed me to report that it be indefinitely postponed.

The report was agreed to.

Mr. HOWARD, from the Committee on the Judiciary, to whom was referred the bill (S. No. 437) to amend the act entitled "An act to amend the act of the 3d of March, 1837, entitled 'An act supplementary to the act entitled 'An act to amend the judicial system of the United States,'" reported it without amendment.

Mr. COWAN, from the Committee on Patents and the Patent Office, to whom was referred the petition of Thomas Blanchard, praying for an extension of his patent of a machine for bending wood for a further term of fourteen years, reported adversely thereon, and asked to be discharged from its further consideration; which was agreed to.

He also, from the same committee, to whom was referred the petition of George Page, praying for a renewal of his patent for a portable circular saw-mill, reported adversely thereon, and asked to be discharged from its further consideration; which was agreed to.

Mr. TRUMBULL, from the Committee on the Judiciary, to whom was referred a message of the President of the United States as to the expediency of extending to other Departments of the Government the authority conferred on the President by the eighth section of the act of the 8th of May, 1792, to appoint persons to temporarily discharge the duties of certain offices, reported a bill (S. No. 468) temporarily to supply vacancies in the Executive Departments in certain cases; which was read and passed to a second reading.

#### JOHN B. MOTLEY.

Mr. CLARK. The Committee on Claims, to whom was referred House bill No. 359, appropriating \$298 to pay John B. Motley as acting secretary of the Territory of Nebraska for a certain time, have directed me to report the bill back with a recommendation that it pass, and I ask for its present consideration, as the sum is small and there seems to be no doubt about it.

By unanimous consent, the bill (H. R. No. 359) for the relief of John B. Motley was considered as in Committee of the Whole. It proposes to appropriate \$298 87 to pay John B. Motley, of Omaha City, Nebraska Territory, as compensation in full for his services as acting secretary of that Territory from March 23 to July 12, 1858.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

#### JOHN CRADLEBAUGH.

Mr. LATHAM. The Committee on Claims, to whom was referred the bill (S. No. 313) for the relief of John Cradlebaugh, have directed me to report it back and recommend its passage; and as it is a subject to which the committee have given a very thorough investigation, I ask for the present consideration of the bill. It is but for a small amount.

By unanimous consent, the bill was considered as in Committee of the Whole. It proposes to direct the Secretary of the Treasury to pay to John Cradlebaugh, one of the justices of the supreme court of the Territory of Utah, the sum of \$1,105, in full for the expenses of removing the records, seal, papers, library, and other appurtenances of the supreme court of the second judicial district of that Territory from Provo City to Geneva or Carson City, in the year 1859.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

#### BILLS INTRODUCED.

Mr. WILSON, of Massachusetts, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 467) to prevent and punish frauds upon the Government of the United States; which was read twice by its title, referred to the Committee on Military Affairs and the Militia, and ordered to be printed.

Mr. LANE, of Indiana, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 469) to provide for the organization of the signal department of the United States Army; which was read twice by its title, and referred to the Committee on Military Affairs and the Militia.

#### PROTECTION OF OVERLAND EMIGRANTS.

Mr. NESMITH. I move that the Senate proceed to the consideration of the bill (S. No. 430)

to provide for the protection of overland emigrants to the States and Territories of the Pacific. The bill was up a few days since, and laid over at the suggestion of the chairman of the Committee on Finance.

Mr. FOSTER. I hope we shall be allowed to get through the morning business. It will take but a few moments longer.

The motion to take up the bill was not agreed to.

#### ENCOURAGEMENT OF EMIGRATION.

Mr. FOSTER. I beg leave to offer the following resolution, and if there be no objection I will ask for its present consideration:

*Resolved*, That the Committee on Finance be instructed to inquire into the expediency of making an appropriation for the purpose of encouraging emigration from Europe to the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FOSTER. There are, as we know, Mr. President, at the present time nearly a million men in the United States now withdrawn from their usual peaceful and industrial pursuits and engaged in the military service of the United States, in the defense of our national existence. This creates of course a very great deficiency in the various walks of labor—agricultural, manufacturing, and mechanical. Indeed, in every branch of those pursuits there is a great want of operatives. Fortunately for us, there are in Europe a very large number of persons, industrious and frugal, who, if they could come to the United States, would be a very great acquisition to us, and would go far to supply the wants of labor which must soon press upon us. It seems to me that the importance of encouraging emigration from Europe under these circumstances is a matter of national concern, and that we ought to take some action upon it. The resolution is simply one of inquiry, and the Committee on Finance will undoubtedly have the wisdom to devise some plan, if any plan be necessary, to encourage the introduction of emigrants from Europe, where they are without food and without employment, into this country, where food is abundant and work waiting to be done.

The resolution was adopted.

#### MISSOURI VOLUNTEERS.

Mr. WILSON, of Massachusetts. I ask leave to submit the following resolution, and ask its consideration now, if there be no objection:

*Resolved*, That the Secretary of War be, and he hereby is, directed to inform the Senate if the limitation in the third section of the act to authorize the State of Missouri to raise ten thousand troops for local defense, approved February 13, 1862, has been exceeded, and, if so, by whose authority such excess has been allowed.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WILSON, of Massachusetts. At the last session of Congress we passed an act authorizing the State of Missouri to raise ten thousand volunteers for local purposes. It is reported that it has been exceeded by many thousands, and at an enormous expense. I introduce this resolution for the purpose of ascertaining the fact as to whether the limitation has been exceeded, and, if so, by what authority.

The resolution was agreed to.

#### WISCONSIN AND FOX RIVERS.

Mr. RICE submitted the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved*, That the Committee on Military Affairs be requested to inquire into and report upon the practicability and probable cost and length of time required for improving the navigation of the Wisconsin and Fox rivers, in the State of Wisconsin, so as to give an uninterrupted navigation between the Mississippi river and Lake Michigan, for vessels two hundred feet in length and thirty-four feet beam, and drawing six feet of water, and how far such improvement would aid in the defense, and upon the proper location and probable cost of naval stations on or near the upper and lower lakes, and to report such other facts as they may deem advisable for the information of the Senate touching the defense of the lakes.

#### CONSTRUCTION OF IRON-CLAD VESSELS.

Mr. McDUGALL. I offer the following resolution, and ask for its present consideration:

*Resolved*, That the Committee on Naval Affairs be directed to inquire into the expediency of the construction of the iron-clad vessels constructed and being constructed by the Government, both as to hull and machinery, and if they be defective, the cause thereof; and that said committee be authorized to send for persons and papers.

certain but also within the laws and statutes of the United States.

Upon the whole, sir, I think that where this bill should be lenient it is severe; and where it should be severe, where it should impose upon a man criminal penalties, it divides the matter, it subjects him to a quasi criminal prosecution for the purpose of multiplying informers, and to some extent, it is true, punishing him, but not punishing him as he should be punished, because out of his guilty gains it is more than likely that he could pay the amount that any jury would assess upon him. I hope that these sections will be made more stringent and severe, and that they will be made to operate upon all those not actually in the land and naval service, while this monstrous proposition of putting everybody under martial law shall be thrown aside, as it ought to be.

Mr. POMEROY. I would not do or say anything to defeat the object of such a bill as this, if the bill was carefully drawn and matured so as to secure that object. It does occur to me that in the second and third sections the bill proposes to deem and consider as in the military service of the United States a class of persons as numerous as the whole Army itself—all who are contractors and hangers on, directly and indirectly.

Mr. WILSON, of Massachusetts. I take it that a very few hundred names will include all the contractors. The idea that this provision reaches to a tailor or a shoemaker or anybody else who is at work for a man that has a contract is ridiculous and absurd; it was never intended to cover them, and does not.

Mr. POMEROY. The suggestion I was going to make was, whether if these persons are to be considered in the military and naval service of the United States, we do not commit the Government to repairing damages they may sustain, to granting pensions to persons who die and suffer. If we are to repair all the damages that may accrue to contractors and persons who are considered by this bill in the naval and military service of the United States—

Mr. CLARK. I beg to suggest to the Senator from Kansas that he makes a mistake in the word used in the Constitution, which may lead to error. It is not the "service;" it is the "forces"—"the land or naval forces."

Mr. POMEROY. I know very well that the language of the bill is "considered to be in the land or naval forces of the United States."

Mr. CLARK. That is the language of the Constitution.

Mr. POMEROY. It is the language of the bill, except in the third section, and there the word "service" is used.

Mr. CLARK. The Senator does not quite understand me. I meant to call his attention to the fact that the language of the Constitution was, "the land or naval forces;" not the language of the bill. We are to be guided by the Constitution.

Mr. POMEROY. I do not know that considering this large class of persons as in the military or naval force of the United States, puts them into that force. They may be there in the eye of this bill for purposes of punishment, and not for purposes of reward, or for the purpose of repairing the damages they suffer, or committing the Government to make good the losses they may sustain.

The practice of the Government has been when a person in the service of the United States doing his duty faithfully and honestly is subjected to losses, to imprisonment, to damages, over which he had no control, to indemnify him. We have passed bills to make good such losses. Now, it occurs to me that if all who are contractors, directly or indirectly embraced in this bill, are to be considered in the service, are to be punished by court-martial, and are to be under the rules and articles of war, it may be that we commit ourselves to indemnifying those who suffer innocently, as a great many of them do. I wish to guard against committing ourselves to make good their losses. All who are guilty of crime should be punished, but I do not wish to open the door wider for persons to come in and have damages repaired, pensions allowed, and claims granted, by taking into the service of the United States a large class who are not now in the service, who cannot regularly be considered there, and who are only put into the service by this act. These are objections to my mind.

Mr. HOWARD. Mr. President, the Senator from Pennsylvania takes the ground that it is incompetent for Congress under the Constitution to include a contractor for army supplies within the penal provisions of this bill. He holds that a contractor cannot be regarded as being in the military or naval forces of the United States, in the sense of the Constitution. I differ from him in that regard. I think a contractor is fairly to be included in the category, and, as I said before, the necessity of such an inclusion is just as strong in the case of a contractor as in the case of a private soldier or an officer.

The Senator advances the idea, and repeats it, that in order to bring a person within the power of a court-martial, in other words, to bring him within the scope of the constitutional clause which speaks of "the military or naval forces of the United States," he must have consented to the rules and articles of war. The Senator complains that the bill assumes to punish persons who have not thus consented to be governed by the rules and articles of war. That is not the question; it is a mere side issue, which has nothing to do with the question of law before us. The Constitution nowhere requires that either soldiers or officers or other persons in the service of the United States shall consent to the Articles of War. It says nothing about consent. The Constitution declares that Congress shall have power "to raise and support armies," and "to make rules for the government and regulation of the land and naval forces" of the United States; it says nothing about the consent of the persons to be governed. Indeed, the very language of the Constitution excludes the idea that any such consent on the part of the governed is necessary. It is as manifestly competent for Congress to raise an army without the consent of that army, as to do any other act which it is authorized to do under the Constitution. The practice heretofore has been to raise armies by enlistment or by volunteering; but it does not follow, because such has been our practice heretofore, that the Constitution requires it. The Constitution requires no such thing as consent. If the exigencies of the country shall demand it, it is within the power of Congress, under the Constitution, not only to raise an army by a forced conscription, but to go even so far as to make a levy of the whole people en masse for the purpose of defending the country or prosecuting a war domestic or foreign. The consent of the person to be employed in the service has nothing to do with the constitutional power of Congress to force him into the service.

It is evident, as I remarked before, that contractors for furnishing supplies to the Army and Navy are just as indispensable as soldiers and sailors in the prosecution of a war. Without supplies the Army and the Navy could not exist. The Government is a corporation, and must act by its agents. It has a right to declare positively that such and such persons shall be required to furnish certain supplies for the support of the Army or Navy; or, if it pleases, it may enter into a contract with such persons by which they shall agree to do it. Now, sir, in cases of enlistment, what is it that brings the soldier or officer into the service of the United States? Under our former and present practice, simply a contract of enlistment. The obligation of the soldier to serve in the Army exists by contract, solely by contract; and the same is true, and true to the same extent, in the case of a contractor to furnish military supplies. The one thing is just as necessary as the other, and no more so.

As to the expediency of resorting to this more summary mode of punishment, I will call the attention of Senators to some cases which have arisen during the present rebellion. Persons have been employed to furnish shells for the use of the Army; and in several cases it has turned out that these shells have been filled not with the proper explosive materials for use, but with saw-dust; thus making the instrument of no utility whatever, and, by thus practicing a fraud upon the Government, endangering our military operations. A contractor who enters into an agreement to furnish arms for the use of the United States in prosecuting a war may practice the same description of fraud upon us; and I believe that some frauds of a very gross character have already been practiced in the purchase and furnishing of small arms for the use of the Army. Arms have been supplied which, on examination

and use, have turned out to be useless and valueless; and I ask Senators whether, on the question of expediency and justice, it is not as correct—as correct in morals—to subject that class of wretches who thus attempt to impose upon the Government to punishment by court-martial, as it is to subject a soldier who has been guilty of a trivial or even an enormous breach of his duty? Where is the difference, I ask Senators, in point of principle and in point of morals? There is, sir, none whatever. According to my reading, this system of employing contractors and treating them as civilians existed for a time in the French army during the wars of Napoleon; but experience taught him at length that it was necessary to subject the contractors to martial law to prevent their committing frauds, and to make them expeditious and prompt in the performance of their engagements.

Mr. President, it is desirable to enact some law which shall remove the stigma which rests upon the country and the Government in reference to the frauds, corruptions, and peculations which have disgraced our service during the whole of this war. It is one of the crying evils of the period, if report is in any degree to be credited, that our Treasury is plundered from day to day by bands of conspirators, who are knotted together in this city and other large cities for the purpose of defrauding and plundering the Government. And we all know, who are lawyers, and the most of us on this floor are such, that if we refer all these cases to the ordinary courts, and require a proceeding to be taken by a grand jury, and then a trial by a traverse jury, very little good can result. There are always persons lurking the room in which a grand jury sits with a view to influence their opinions or their findings; and I am informed by those who in the Department are particularly charged with the duty of ferreting out these frauds, that it is entirely hopeless to expect that any sufficient punitive or preventive system can be adopted which depends upon the action of a grand jury, and I believe it impossible. I believe that in matters of this kind a grand jury is little better than useless; that instead of being a protection to the Government, who is the real sufferer in all cases, they are but a protection to the knave and the rogue. I desire to see some provision adopted which shall bring these gentry to speedy and exemplary justice; and I think this bill will do it.

The Senator from Pennsylvania objects, however, to a part of the second section, upon the ground that it contains no scienter. That part of it is as follows:

Any person who shall procure, or aid in procuring, payment from the Government of the United States, or any Department or officer thereof, of any money or claim whatsoever for such ships, vessels, steamers, boats, or other water craft, ordnance, arms, ammunition, munitions of war, clothing, subsistence, or military supplies of any kind, shall be deemed and considered as in the military or naval forces of the United States.

There is, it is true, nothing said about "guilty knowledge" in this clause; but the whole section relates to contractors and the agents of contractors. The object of it is to bring that class of persons within the category of the first section, in which all these crimes are all defined; and if a contractor, or the agent of a contractor, has been guilty of any of the acts which are previously defined in the first section, he is to be deemed within the military service of the United States, and punishable by court-martial. I confess, however, I do not see any very great importance in either the second or the third section; because if, upon adjudication, it shall turn out that a contractor is, in law, in the military service of the United States, he will be punished, although this clause should be stricken out. I have put it in, however, rather in deference to the opinion of some officers of the Government, who have deemed it extremely essential.

The other clauses which follow, and which prescribe the mode of proceeding to punish persons who are not in the military service of the United States, I take it, are open to no serious objection. The effect of them is simply to hold out to a confederate a strong temptation to betray his co-conspirator, and bring him to justice. The bill offers, in short, a reward to the informer who comes into court and betrays his co-conspirator, if he be such; but it is not confined to that class. Even the district attorney, who is required to be vigilant in the prosecution of such cases, may be also the informer, and entitle himself to one half the for-

feiture under the *qui tam* clause, and to one half of the double damages which may be recovered against the person committing the act. In short, sir, I have based the fourth, fifth, sixth, and seventh sections upon the old-fashioned idea of holding out a temptation, and "setting a rogue to catch a rogue," which is the safest and most expeditious way I have ever discovered of bringing rogues to justice.

Mr. MORRILL. I sympathize with the motive of the honorable Senator from Michigan in his efforts to detect a class of persons who, I fear, are quite too numerous in the country, who are disposed to make some pecuniary advantage out of this war. But I do not quite see the necessity for these provisions of the bill, and I think they are justly open to the criticism made by the honorable Senator from Pennsylvania. I think his objections are well taken, and the distinction is so important that I hope the honorable Senator from Michigan will consent that the bill shall be changed. It now undertakes to try persons who were never yet, I believe, in any country considered as in any way amenable to the rules and articles of war, as if they were actually in the service of the military or naval forces of the United States. According to the provisions of this bill, it will turn out that any ship-owner who shall charter his ship, and in that transaction be suspected of obtaining any advantage for himself as against the Government of the United States, will be actually subjected to the rules and articles of war, and dealt with as if he were in the service of the United States, either the naval or military service, be deprived of the right of trial by jury, be tried by a court-martial, and sentenced accordingly.

Now, sir, I do not see any necessity for a measure of that kind. Certainly the courts for all such cases are open, and if the law is not adequate, it may be so amended as to subject the person to such penalties and such punishment as may be deemed necessary, leaving him to be prosecuted in the courts of the country. There is nothing in the situation or condition of a contractor that I can see that should subject him to the rules and articles of war. He is not within the lines of the Army. He is accessible at all times, and may be turned over to the courts, and may at any time be proceeded against in the courts of the country, and in that respect his case is entirely different from the case of a person who is in the military service. The distinction which authorizes the articles of war to be applicable to persons in the military service seems to be a principle which necessarily excludes all other classes of persons. Certainly to try persons in civil life by the rules and articles of war would be a very severe and a very rigorous administration of justice, either civil or criminal. I hope, therefore, that the honorable Senator from Michigan will consent to amend or strike out that section.

Mr. HOWARD. Allow me to ask the Senator from Maine one question.

Mr. MORRILL. Certainly.

Mr. HOWARD. The Senator speaks of contractors being in civil life. I should like to know from the Senator what he understands by being in "the military or naval forces of the United States;" whether that clause of the Constitution may not and does not include those persons who are contractors, and under obligation to furnish to the Army army supplies; whether that is not, irrespective of all existing statutes, as much being in the military service of the United States as to be a soldier carrying a gun? Where is the difference? Where is the distinction? That is the point that I want to get at.

Mr. MORRILL. I do not know what in the contemplation of the Constitution it might have been, but as a matter of fact I do not suppose it was ever so regarded. Persons in the service actually enrolled and organized and subjected to military command, are very differently situated from persons who are not subjected to that service and not subjected to that military authority.

Mr. HOWARD. The Constitution requires no enrollment.

Mr. WILSON, of Massachusetts. Mr. President, these Halls have rung with denunciations of the frauds of contractors upon the Government of the United States. Investigating committees in both Houses of Congress have reported the gross frauds upon the Government. The Government is doing what it can to stop these frauds

and punish the persons who commit them. The Government finds, however, that it has no law adequate to punish them. Senators who object to this bill would do well to show that we have laws which can reach such a case. The law officer of the War Department says there is now no law adequate to meet these cases of fraud upon the Government. This bill is reported for the purpose of ferreting out and punishing these enormous frauds upon our Government; and, for one, my sympathies are with the Government, and not with the men who are committing these frauds. We have all of us seen enough, since this rebellion broke out, of frauds perpetrated upon the Government, and above all, and more than all, perpetrated upon our soldiers in the field; and I trust that the Senate will pass this bill, or some bill that will put fraudulent contractors in a position where they may be punished for their frauds. I move to amend the second section by striking out all after the word "that" in the first line to the word "and" in the twenty-first line, and inserting these words:

All contracts to furnish ships, vessels, steamers, boats, or other water craft, ordnance, arms, ammunition, munitions of war, clothing, subsistence, or military or naval supplies of any kind whatsoever, shall contain a provision that any person who shall hereafter contract to furnish any of said articles shall be deemed and considered as in the military or naval forces of the United States, or in the militia in the actual service of the United States, as the case may be, and subject to the rules and articles of war.

The PRESIDING OFFICER. (Mr. FOSTER.) The question is, "Shall the second section be thus amended?" the motion to perfect the section being in order before the question on striking out shall be taken.

Mr. WILSON, of Massachusetts. The object of my amendment is to confine the provision to contractors alone, and not to include all persons who have to do with bills and contracts. I propose that in the contracts there shall be this provision inserted, which they will understand, which they will sign, that they shall be deemed in the military service, and subject to the rules and articles of war. I think it is just, proper, and right; and I hope the provision will be adopted.

Mr. DAVIS. I do not think that there is any class of culprits who deserve more certain and speedy punishment than many of the classes of persons who are provided for, or attempted to be provided for, in this bill, and who have failed to perform their duties in the execution of contracts made with the Government. There is no law that would inflict punishment so severe as that it could probably be executed which I would not vote for; but I deem that the bill which the honorable Senator from Michigan has reported is incompetent entirely to bring them to justice; and in a few words I will express my reasons for this opinion.

If the honorable Senator will make his classes of offenses civil, and bring them under the jurisdiction of civil courts, I will vote for every feature of his bill; but to make them military offenses, and to subject the persons that will be embraced by the provisions he proposes to martial law and to trial before military courts, I think it is wholly incompetent for Congress to pass such a law. The honorable Senator made one or two inquiries of the Senator from Maine which I will endeavor to answer, as well as I can. Article five of the amendments to the Constitution provides that—

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment 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."

This provision establishes two principles: 1. All criminals against the laws of the United States, except persons in the land or naval forces of the United States, or in the militia, when in actual service in time of war or public danger, are to be tried by the civil law and by civil courts, as contradistinguished from the military, for any capital or otherwise infamous crime. 2. All persons in the land or naval forces, or in the militia when in actual service in time of war or public danger, in every case of crime or offense may be made subject to military law by military tribunals. To determine what particular persons can be tried by military law and military courts, it is only necessary to ascertain who are *land and naval forces* and *militia*; all others are amenable to another code and other forums. The Supreme Court has repeatedly, and upon plain principle of law, de-

ecided that terms and phrases incorporated in the Constitution must be taken according to the import and meaning which they bore at the time it was made. I do not know that the terms under consideration have now any different sense than what they then had.

But this proposition cannot be successfully controverted. It was the intention of those who made the Constitution, and is its operation, to exclude from amenability to military law and courts, to the extent of capital and all other infamous punishments, every person who is not in the *land or naval forces*, or *militia* in the service of the United States, according to the meaning of those terms when the Constitution was adopted. Each and all of them mean *troops, soldiers, men armed for war*. Whenever the *strength or force* of an army is spoken of, not sutlers, teamsters, cooks, or waiters are meant and included, but only men who are armed in some mode, and who go into battle to fight or conduct it. Mere hangers-on, who are not soldiers or armed men, form no part of the *land or naval forces*, or *militia* in the service of the United States. This clause declares three general classes of soldiers, land and naval, those in the ordinary service, and militia in the United States service, and authorizes all of them to be excluded from trial by the civil law and courts in all cases arising in *their service* respectively.

These phrases, in a certain sense, are synonymous; they all mean and comprehend soldiers only; and militia describes the *soldiers of a State*, not the followers of their camp, nor the men who do not bear arms. Whenever any State or States are called upon by the General Government for a quota of militia or conscripts, it has to furnish the full number of *troops, soldiers, men to carry arms and to engage in battle*; its teamsters, sutlers, and other camp followers are never computed. It seems to me clear that only troops, soldiers, armed men, can be "*land or naval forces or militia in the service of the United States*," and can be made subject to military law and trial.

This is a restriction as to persons; but there is another as to the offenses or character of the cases of which military law and courts may be authorized to take cognizance. All such offenses must form "*cases arising in the land or naval service, or in the militia, when in actual service in time of war or public danger*." Such a case cannot occur with a person who is not in either of those services, but may between one who is and another who is not, when there would be two cases, one of the citizen and the other of the soldier. If the latter were to leave his camp and go to the residence of the former, and assault him, and in his proper self-defense he were to beat and injure the other, he would not be amenable to military law and courts, even if he slew his assailant. He would be entitled to trial by jury. A soldier who strikes an officer, or kills another soldier, or commits any other offense which makes a case in the line of his service, may be made subject to a soldier's trial and punishment; but if he were to murder a citizen, he would be subject to indictment, trial, and punishment, even though he had been acquitted by a court-martial.

Mr. HOWARD. Could he not be tried by a court-martial? That is the question.

Mr. DAVIS. I do not think he could properly—not conclusively, if that court were to discharge him. If the gentleman will examine the history of such trials in England, he will find that jurisdiction of military offenses, as a general rule, has been restricted to purely military offenses; and the violations of the civil laws by soldiers are cognizable by the civil courts.

I then come to the conclusion that forces, soldiers, troops, armed men, and not the followers of an army, are subject to military law and military courts; that it is only men of war who are to be tried by that stern code, and by men whose rule is arbitrary power and implicit obedience rather than the just principles of law. But that men away from the camp and the army, and constituting no part of it, in reality or by connection or semblance, civilians, the myriads and variety and wide-spread contractors for army supplies, arms, munitions, clothes, boots, shoes, tents, corn, flour, bread, potatoes, peas, oats, hay, and an infinity of articles, could by an act of Congress be transformed into *land or naval forces*, or *militia* in the service of the United States, and their frauds, or unwitting delinquencies in the ex-