

McGowan (Hon. J. H.)

A NATIONAL QUARANTINE.

SPEECH

OF

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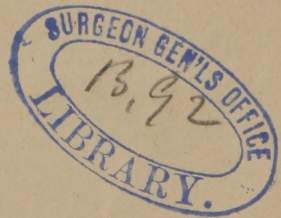
HON. J. H. McGOWAN,

OF MICHIGAN,

IN THE

HOUSE OF REPRESENTATIVES,

MAY 27, 1879.



WASHINGTON.

1879.



S P E E C H
OF
HON. J. H. MCGOWAN.

The House having under consideration the bill (H. R. No. 1604) to increase the efficiency of the National Board of Health and to prevent the introduction into or spread within the United States of contagious and infectious diseases—

Mr. MCGOWAN said:

Mr. SPEAKER: For the first time in the history of the country it is proposed to establish a national quarantine, both external and internal. The power to do this is sought under that provision of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

I am well aware that the question is not free from difficulties; but in the growth and development of the country such questions are constantly arising. A constitution made for a newly born nation could hardly anticipate and provide for all the emergencies and contingencies that might possibly arise. New constructions and new amendments are from time to time needed. Otherwise what was intended as a protection and a defense comes, like an inflexible garment on a growing child, to dwarf and deform and eventually destroy.

There is no better illustration of this than the subject-matter which we are about to discuss. The Constitution makes no direct provision for national sanitary and health laws. Yet year after year there come to us plagues and contagions which destroy the people and which the States can neither prohibit nor control, and which the General Government might both prohibit and control. Naturally, rightfully, the people ask either that the power be found in some of the clauses of the Constitution or that the Constitution be amended. Under the pressure of this demand your committee have sought the power assumed in this bill and believe we have found it in the simple words of section 8, article 1, of the Constitution.

The Congress shall have power to regulate commerce with foreign nations, and among the several States and with the Indian tribes.

The subject embraced in this short clause was the one above all others which brought together the convention which framed the Constitution. Under the confederation the States were at liberty to enact their own laws relating to commerce. Of course they were not uniform. This led to such confusion and placed such burdens upon trade, and was the prolific source of such jealousies and sectional feeling as to actually endanger the Union. After a protracted and somewhat heated discussion the convention adopted the clause as it now stands. Gentlemen are too familiar with that part of our political history which led to the convention of 1787 and the adoption of our Constitution for me to repeat any portion of it. But no one can read that history or the debates in convention without being impressed with the pre-eminent importance then attached to the subject of foreign and domestic commerce; neither can they come to any other conclusion than that the convention intended to give to Congress complete and exclusive jurisdiction over the same. The fathers had seen the danger and were too wise not to close the door, as they supposed, against it.

But in construing this portion of the Constitution we are not left

alone to the history of its adoption. The Supreme Court has had occasion to pass upon it under a variety of circumstances, and from these various decisions we are warranted in drawing the following conclusions: first, that the power of Congress over both foreign and interstate commerce is complete and absolute; second, that this power extends even to the embargo of ships and the stoppage of internal trade; and, third, it appertains to individuals engaged in carrying on such commerce and to persons being transported, as well as to cargoes and freights.

In the noted case of *Gibbons vs. Ogden*, 9 Wheat., 196, the court remarks upon the history and construction of this clause as follows:

As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed the Constitution and the people who adopted it must be understood to have employed words in their natural sense, and to have intended what they have said. If from the imperfection of human language there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction.

The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their Government. And then the court adds that commerce among the States cannot stop at the external boundary-line of each State, but may be introduced into the interior.

The power to "regulate" is the power "to prescribe the rule by which commerce is to be governed."

This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * Congress may control the State laws so far as it may be necessary to control them for the regulation of commerce. * * * A law of a State made in pursuance of its acknowledged powers must give way when in conflict with a law of Congress made within the powers of the Constitution. * * * The power to regulate commerce extends as well to vessels employed in carrying passengers as to those employed in transporting property.

In *Corfield vs. Coryell*, 4 N. C. C., 378, a case decided as early as 1803, Judge Bushrod Washington holds the following language regarding this section of the Constitution:

Commerce with foreign nations and among the several States can mean nothing more than intercourse with those nations and among those States for purposes of trade, be the object of the trade what it may; and this intercourse must include all the means by which it can be carried on, whether by the free navigation of the waters of the several States or by a passage overland through the States where such passage becomes necessary to the commercial intercourse between the States.

It is this intercourse which Congress is invested with the power of regulating, and with which no State has the right to interfere.

In *United States vs. Lawrence Coombs*, 12 Peters, 72, it is observed, "under the clause of the Constitution giving the power to Congress to regulate commerce with foreign nations," &c., the power to regulate does not stop at the mere boundary line of a State. It extends to such acts done on land which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States. Any offense which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers.

In *The City of New York vs. Miln*, 11 Peters, 102, and in some other cases there is dicta to the effect that where certain powers are by the Constitution conferred on Congress yet so long as Congress neglects to legislate to enforce these powers the States may properly and legitimately do so, but subject to the limitation that when Congress does act and there is a collision between the State and general law the State law must give way. This was apparent in the famous case of *Ogden vs. Saunders*, 12 Wheaton, 213, which involved the question of State and national bankrupt laws. But I am unable to find in any of

the cases even a dicta to the purport that where Congress assumes to act and legislates, subject to a constitutionally granted power, such legislation is not complete and supreme.

In *Cooley vs. Board of Wardens of the port of Philadelphia*, 12 How., 299, the court hold that it is not merely the existence of a constitutional power in Congress, but its exercise, which is incompatible with the exercise of the same power by the States; and that the States may legislate in the absence of congressional legislation. Also that where Congress has legislated and not covered the whole subject, the States may legislate to the extent that they do not interfere with United States law in existence. Two of the judges dissented from this opinion, and held that under the section of the Constitution granting the power to Congress to regulate commerce, &c., Congress held the power exclusively, whether it saw fit to exercise it or not.

In the late case of *The Railroad Company vs. Husen*, 5 Otto, 465, Justice Strong holds the complete jurisdiction of the General Government over the question of interstate and external commerce in the following language:

Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States to Congress in the same words in which it is given over the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce is undeniable. * * * Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it or burden laid upon it by legislative authority is regulation.

In *Henderson et al. vs. Mayor of the City of New York*, (92 U. S., 259,) as quoted in *Railroad Company vs. Husen*, the court declares it to be clear from the nature of our complex form of government that whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States it is void, no matter under what class of powers it may fall or how closely allied it may be to powers conceded to belong to the States. The police powers reserved to the States sometimes come very near to the field committed by the Constitution to Congress, and it is the duty of the courts to guard vigilantly against any needless intrusion.

As still more clearly expressing the doctrine of the final supremacy of all national law enacted in conformity to powers granted by the Constitution the court, in *Henderson et al. vs. The Mayor of New York*, (2 Otto, 272,) says:

Whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States.

Again in 9 Wheat., 210, the laws of the State, though enacted in the exercise of powers not controverted, must yield to the act of Congress made in pursuance of constitutional provision.

From these decisions, which I have not attempted to give in their logical or even chronological order, it will be readily apparent that, for all purposes of foreign and interstate commerce Congress alone has the full and complete power of legislation.

We have now reached the question of how far such legislation may be made to yield and be molded by considerations of public health. Certainly so far as sanitary and health questions come to effect commerce, to that extent they may be considered. Fundamentally all commerce and trade, all prosperity, civilization itself, depend upon the health of the people. But if this relation should be considered too remote for the purposes of this debate, it cannot be denied that such a plague as swept over a number of the Southern States last summer has a direct and immediate influence upon commerce. It paralyzes and destroys it. It dries up the very fountains of trade. And to say that the power of Congress over commerce could not be exercised to save commerce itself, would seem to be absurd.

It is true that the States have jurisdiction over matters of health.

They may pass sanitary and quarantine laws. But these have no force outside of State lines. At best they are only a partial protection. Each State must depend not alone upon the good faith but the good sense and efficiency of her neighbors. State laws, when intelligently drawn and faithfully executed, are probably sufficient protection in ordinary times and from ordinary disorders. But when a dangerous contagious disease prevails, and is likely to be carried along the lines of interstate travel and commerce—up the mighty rivers, across the great lakes, and along the immense lines of railroads—then State enactments do not avail, and the General Government must come to the rescue or the people be left to the cruel mercy of the destroyer.

The committee, believing with Justice Story that "Congress may make that a regulation of commerce which a State may employ as a guard for its internal policy, or to preserve the public health or peace, or to promote its own peculiar interests," have reported this bill.

It is not a yellow-fever bill. It is not intended for the special protection of any one section of the country. Yellow fever came to us last summer and was confined to the South. The committee reporting the bill undoubtedly owes its existence to that fact. Should the measure become a law it is likely that the machinery which it sets up may first be called into play to stay the spread of that disease. Yet this does not necessarily follow. Certain climatic changes may have already taken place which will effectually save the country from a repetition of last year's disaster. The next enemy of health to be met and thrust back by national quarantine may be Asiatic cholera. It now prevails abroad.

This is a general measure intended to protect the country, so far as Congress may do so, from the introduction and spread of those dangerous, contagious diseases that so frequently come to desolate our homes and destroy our prosperity. The charge is made against it that it is an experiment. That is true. All new laws are experiments, and are usually only perfected after they have been tried. We can scarcely hope that this one is perfect. But if Congress has the power to act at all in this matter, as we sincerely believe it has, then the time is ripe for action now. Danger threatens us on all sides. Less than one-half of the States have any laws concerning the subject of health, and not more than half a dozen of these have legislated efficiently or appropriated any money for enforcing such laws as they have. That season of the year which nourishes and encourages contagion is at hand. Two formidable and dangerous contagions are threatening us. To prevent is wisdom. To lie still until the trouble is upon us and the means and the charity of the people are taxed for succor, is not only folly, but something worse.

The last weekly report of the Surgeon-General of the United States Marine Hospital Service, being for the week ending May 17, shows that yellow fever prevails in Cuba and Hayti. There have also been some cases in Brazil. At Havana there were eight deaths from the fever during the week and twenty from small-pox. At Port au Prince the fever prevailed for the first time in fifteen years, and was increasing in violence. Within a very few days impending danger will lurk in every craft coming to us from the West Indies. It is also reported that at Port au Prince a new contagion, said to be distinct from yellow fever, and known as La Mauvaise fever, is prevalent. Many people have died from it, and it is even more feared than yellow fever. In regard to the sanitary condition of the city, Minister Langston reports that "the streets are constantly foul, and that not even police regulations of any sort are enforced. There is no regulation to oblige even the filthiest persons to remove deposits from the streets nor from the gutters or sidewalks in front of their doors, and the harbor is also full of foul matter of every sort."

Here, almost within sight of our own shores, the enemy is preparing to attack us; massing his forces and storing endless quantities of

ammunition. Shall we wait until his preparations are complete and then furnish him a fleet for the transportation of his troops, or shall we take measures for our own safety?

But our immediate danger is not confined to the South nor to yellow fever. The cholera in Asia and European Russia is epidemic. It is true that late reports from the affected regions are more favorable. But such reports, coming through such sources, should not be implicitly relied upon. It is a disease that goes rapidly along the lines of travel, and has never prevailed any great length of time in an epidemic form in Europe without reaching the United States.

Dr. Peters, in his *History of the Asiatic Cholera*, claims that ever since 1756 (one hundred and twenty-three years ago) it has recurred as an epidemic in periods of twelve years each, corresponding with the twelve yearly festivals of the Hindoos. The disease is native to India, and constantly exists there in some form. During these festivals, which are pilgrimages to the various shrines, thousands, and even millions, leave their homes and journey and mingle together. In this way the disease is spread and becomes epidemic. It follows the great routes of travel to the west and northwest until it passes through Asia into Europe and eventually to America. In 1826 it became epidemic in Hindostan, its native home, and gradually spread until, in 1829, it was distributed throughout Russia, reaching England in 1830-'31.

In the spring of 1832 it was brought to Quebec, from whence it was carried up the Saint Lawrence and across the lakes to Detroit, where it met the United States troops going to the Black Hawk war. It was distributed to all the national posts and forts in the then extreme West, being specially severe at Fort Dearborn, Chicago, Fort Crawford, near Prairie Du Chien, and Fort Armstrong, at Rock Island. From the latter place it was carried down the Mississippi River, striking New Orleans in October of the same year.

Twelve years thereafter, or in 1841, this contagion started in another tour around the world. It was found at Hurdwar in 1843; at Afghanistan, in Persia, in 1845; at Teheran in 1846, and Astrakhan in 1847. In 1848 it reached Havre, and was carried to New Orleans in some German emigrant ships the same year. From New Orleans it followed the travel up the Mississippi and along the Ohio. From Saint Louis it was carried over the emigrant route to San Francisco, and eventually was distributed over nearly the whole country. Thus it will be seen that within the space of fourteen years the country suffered two visitations from the terrible plague. The first time, being introduced at Quebec and following the rivers and lakes, it reaches New Orleans by going down the Mississippi; the second time, it starts at New Orleans and goes up the river, and is thus distributed. Each time it follows the great national highways, and each time it is largely distributed by the United States Army, which it at the same time decimates.

The last great twelve-yearly cholera epidemic commenced in India in April, 1865. By means of railroads and steamboats it traveled more rapidly than it had in previous years, reaching Mecca, on the Red Sea, by May 2, Alexandria by June 2, and England by the 10th of July. Emigrant ships soon brought it to New York City, where it readily passed the local quarantine, made a center of distribution of the great city, and from thence spread along the railroads and highways of travel all over the country. This author, Dr. Peters, who I believe is a resident of New York and a member of her board of health, writing previous to 1874, says:

In 1877 and 1879 we may expect an outbreak of the disease such as there was in 1781-'83, 1817-'19, 1829-'31, 1841-'43, 1853-'55, and 1865-'67.

And he adds:

In our next contest with the disease our whole safety lies in quarantine and thorough disinfection.

Mr. Speaker, it seems to me that I have thus shown the power of

Congress over this subject and the necessity for prompt action. I shall not attempt a particular statement of the provisions of this bill. I shall leave that entirely to other gentlemen of the committee.

I only desire now for a moment to briefly allude to some objections, made in a general way, to the measure. It is said that if the power of the General Government to act in the premises is granted, yet it is a matter that should be left wholly to the States. This assertion is worth nothing in face of the fact that most of the States fail to take care of themselves and actually endanger their neighbors. The power which the States have in the matter is to be used wholly at their discretion. If New Orleans allows yellow fever to come into her port and pass up the river, then Arkansas, Mississippi, Tennessee, and other States are endangered by the negligence or failure of Louisiana and are without remedy. If Detroit fails to keep out the cholera which comes over the lake from Canada, the whole country, including the Army, suffers. If New York receives emigrant ships with cholera aboard and makes of the city a great plague spot, what remedy has New Jersey, Pennsylvania, and Massachusetts?

My friend, the honorable and learned chairman of the committee reporting this bill, is a citizen of the State of Tennessee, and is entitled to all the protection and safeguards which his State may throw around her citizens, but he is at the same time a citizen of the United States, and when the more limited authority for any reason fails to protect his property and his life he has a right to appeal to all the legal power vested in the United States to aid him.

Memphis has a right to ask us to protect her against New Orleans. In the lives of the people is found the life of the nation. State quarantine and State health laws can never be effective in preventing and staying contagions. Two admitted facts make it impossible: they have no jurisdiction outside their own territorial limits, and no control over interstate commerce. These limitations on their powers are alone sufficient to warrant the General Government in enacting a national quarantine law.

But there are other and inherent difficulties in the enforcement of local laws. Sad as it may be, it is still the truth, that with very many people cupidity is stronger than the love of humanity. Traders and merchants will frequently run great risks of life rather than endanger their profits. Local laws and local officers are likely to yield to local pressure. So far as I can ascertain I am convinced that local quarantine as a rule is a failure. New York City and a few other northern ports are the exception. They serve to emphasize the rule, and are exceptions to it more from the fact that most excellent officers have been secured than from any intrinsic worth in the system.

A national quarantine, under a well-digested law, manned by national officers, backed by the national resources and power, and responsible alone to national authority, is the only efficient and safe one for the whole country. It is useless in this vast country to point us to a few localities that have good health laws and efficient health officers. When we consider our thousands of miles of sea-coast on either side of the continent, our almost endless stretch of navigable rivers and great inland lakes, and further consider the eighty thousand miles of railroad binding State to State and State to Territory in one linked brotherhood from ocean to ocean, and then remember that but seventeen of all the States have any health laws whatever, that but four or five sea-ports are properly quarantined, and further remember how death and destruction last summer walked in at our open doors and is likely to do so again, can any member hesitate to give to the country at this late hour a uniform national system of sanitary laws?