

were confined to one object, namely, the French debt; but the inference is not, that no other instructions were given, and that the secretary acted without authority, but the very reverse, that the President either left the other object to the general discretion of the secretary, who was, *ex officio*, the proper agent, and his representative; or that he reserved it for subsequent and occasional instructions.

This inference must be the true one: first, because a contrary supposition would impute to the President an illegal intention, that of applying all the monies borrowed under both acts to the object of one only; secondly, because the commission extending to the borrowing 14 million and embracing both objects, and the instructions being confined to 12,000,000 and to only one object it followed that the other either was left to discretionary management, or to after regulation, for the law enjoined the execution of both.

If presumption then was to govern, the more natural presumption was, that the officer acted according to some general discretion reposed in him, or according to instructions from time to time given. These instructions may have been verbal, as well as written. The written instructions given in the first instance were evidently confined to the object of the first act; the necessary conclusion was, that the application of the monies borrowed under the second act was not meant to be included in the instructions, but was left to be regulated by a general discretion, or by occasional directions, verbal or otherwise.

To presume that the secretary acted without the sanction of the President, was to suppose that the President was totally ignorant of the application of any part of the loan to the purchase of the debt.

But there is in the possession of the house abundant testimony of the President's privity and co-operation.

1st. In his speech to both houses, in December 1790, in announcing the loan, he expressly refers to its being made by virtue of both acts, thereby implying clearly that it had reference to the objects of both. He therein likewise refers the house to a further communication from the secretary, on that subject.

2dly. The secretary, pursuant to that reference informed the house, in the name and by order of the President, that a part of the loan, to wit. 150,000 florins, was applied in payment to France; another part to wit 160,000 florins, to the Dutch debt; and that it was deemed highly advisable to apply the residue to the purchase of the debt, if Congress would remove a doubt as to the terms on which the loan had been negotiated.

Congress did remove that doubt by their act of March 1791.

It followed then of course, that the residue would be applied according to the intimation given; it was so understood on all hands, and the money being to be invested in this country, it likewise followed of course, that it must be drawn here; a contrary conduct would have been censurable. And yet, notwithstanding these facts, though the President had informed the house as far back as Dec. 1790, that the loan had been a conjunct loan under the authority of both acts, and consequently for both objects, though at the same time he had referred the house to the secretary for further information, in relation to that loan and its applicability, though the secretary had in the name and by order of the President informed the house by his report in February 1791 that only a part of the money borrowed had been applied to the French and Dutch debt, and that the residue would be applied to the purchase of stock, as soon as Congress removed the doubt, though Congress passed a law expressly to remove that doubt, yet it had been gravely and earnestly contended, that the secretary was not authorized to apply any part of that money to the purchase of stock, that it was done without the sanction of the President, & that Congress, until the late call for information, were totally ignorant of the application of any part of it to that object.

There was then the fullest and most satisfactory evidence of the privity and concurrence of the President, in confirmation of the evidence resulting from official relation.

Between the chief magistrate and his immediate agents, either a general discretion or instructions must be presumed, because it is presumable he will do his duty,

and punish where either a discretion has not been allowed, or instructions have not been given, or where his instructions have been contravened.

The argument on the other side implies in the chief magistrate either ignorance or neglect of duty; on the one hand that he was unacquainted with the transaction, or on the other, that being acquainted he acquiesced in a violation of law without removing the transgressor. Could it be seriously said, would it not be absurd to suppose that an operation of such extent, provided for by law, communicated to both houses, notorious to all the merchants of Philadelphia and New-York, as that of drawing and selling the bills on Europe, was unknown to the President? Must he not have been well acquainted with these transactions, and that without daily frequenting the coffee-house, as some of his friends lately advised him?

If the instructions or the intentions of the President had been contravened, would he not have vindicated his own authority by removing the officer?

But it had been objected that bills were drawn previous to the sanction of the legislature by the confirmatory act of March 1791.

Admit the fact, and there was nothing reprehensible in it. It appears from the first general instructions to Mr. Short, in August 1790, that the Secretary considered ordinary charges, and 5 per cent. interest as within the meaning of the law.

Pursuing this construction, and believing it to be very important to the general operations of the treasury, he drew for the money, reserving himself as to the final application for an act of the house removing the doubt.

The drawing for the money was a mere intermediate step, which amounted neither to a breach, nor to a fulfilment of the law, which was wholly silent on that point.

The application was the criterion whether the law had been fulfilled or not. If the legislature had not removed the doubt, the money would have been remitted back for the foreign object, and from the relative price of public and private bills without loss, probably with advantage. It was prudent in the mean time to place it where it was likely to be most useful; this was done.

It was indeed remarkable that all the points now raised as objections were made known in the report before alluded to of February 1791, as things done or intended; no objection was then made or dreamt of.

It had been asked, why have the instructions not been produced, if any existed?

The call had been only for copies of authorities; the instructions may have been verbal. The Secretary in his report on loans informed the house, "that besides the first general instructions, the trust reposed in him was to be regulated by subsequent and occasional directions." A motive very honorable to him might be assigned for his not bringing forward the President's instructions as a cover. Relying that the province of the house was to examine into the effects of measures, their conformity to law and the public good, and that the necessary executive instructions were to be presumed, the Secretary had evidently chosen to implicate the President as little as possible.

The order requested the President to lay before the house copies of the authorities directing the application of the monies borrowed; it was evident that the President construed this order into a call not for the instructions from him to the Secretary, but for the instructions from the Secretary to his agents, because in the report made in pursuance of that order, the Secretary presents, by order of the President, his own letters to Messrs. Short, Willink and Van Staphorst, as the authorities to apply the proceeds of the loans. It followed therefore, that the paper relied on was not intended to be given as the only instruction respecting the application of the loan; the interference from it was consequently erroneous. The President could never conceive that the house meant to call for his private instructions from time to time imparted to his immediate agent under the words of the resolution: that link must have been presumed; he therefore directed a transmission of the authorities from the Secretary to his agents.

But what has the want or breach of instructions to do with the breach of the law? Suppose no instructions given, or

the instructions not pursued, and yet suppose the law to have been completely pursued, could it be said there was any breach of law? or suppose instructions given and strictly pursued, and the law to have been departed from, would the adherence to instructions have justified that departure?

Either what was done was nugatory, or it would have been agreeable to law; to affirm the contrary, would be to confound two things perfectly distinct, instructions, and laws.

The resolution imports that the secretary has violated the law of the 4th of August 1790, by not pursuing the instructions of the President; that law is silent as to instructions; it does not require that the President shall give instructions to the secretary, nor does it require that the secretary shall be alone guided by the instructions of the President; it only directs the President to cause a certain sum to be borrowed, and leaves it to him to cause a proper application to be made of the proceeds.

The drawing money into this country, with or without authority, to apply it to the purchase of the debt cannot be deemed a violation of the law of the 4th August, for it was not loaned under the authority of that act alone, but under the joint authority of the two acts; if any thing is meant by the resolution, it ought to mention both the acts.

To go further, Mr. Smith insisted that the Secretary had, *virtute officii*, a legal authority to apply the monies, when borrowed, according to law, without instructions.

The loans might have been made in the United States as well as abroad; suppose them obtained of the bank of Boston, would it have been criminal for the Secretary, without instructions, to have drawn the money to the places where it would be most advantageously invested? Suppose the loan obtained of the bank of the United States, would it have been deemed irregular to have, without instructions, issued a warrant to place it in the treasury? Why was it more irregular or more criminal to draw it from abroad as a preliminary step?

The moment the foreign loans were negotiated, and the monies paid into the hands of the Secretary's agents abroad, from that moment they became as much under his controul and superintendance, subject to legal appropriation, as any monies in the treasury.

'Twas not necessary to establish this position, that the subject of foreign loans should have been specially mentioned in the constitution of the treasury department.

Many things resulted collaterally from the general structure of an institution which were not expressed in it.

He did not however intend, that the doctrine here advanced, should touch the question as to what official propriety might have required between the chief magistrate and the Secretary. 'Twas the point of legality only, which he meant to examine.

In all executive functions, relating to the finances, the Secretary must be considered as the agent of the President, and the legislature must take it for granted, where the contrary is not manifest, that the relation has been properly attended to; justice to both characters dictated the presumption.

It clearly resulted from these remarks; 1st, that there was no ground to infer either want of instruction or breach of instruction, but directly the reverse.

2dly. It as clearly resulted that if there was, it would not follow that there had been a violation of law.

Having gone through this resolution, Mr. Smith observed, that if there was a little of criminality in the subsequent charges as in that which he had just discussed, and from an attentive examination he sincerely believed it, he was satisfied that notwithstanding all the severe animadversions within, and all the virulent calumny without the walls of Congress, the conduct of the Secretary would come forth chaste and unblemished, instead of any thing being detected which would disgrace Pandemonium, nothing could be chargeable to him, which would fully the purest angel in heaven. Whatever difference of opinion might exist as to the wisdom and benefit of his measures, he was confident in saying that in every thing the Secretary had done, he had been guided by principles honorable and patriotic, and he

trusted that a very great majority of the committee would by their votes evince the same sentiment.

The sword of justice, it was said, ought at times to be taken from the scabbard to keep great public functionaries within the pale of the law, but it should be remembered that if justice had its sword to punish the guilty, it had likewise its shield to protect the innocent. If the Secretary had committed a wanton violation of law let the sword be drawn forth for his punishment; but if he had pursued the dictates of an enlightened patriotism, the committee were called upon to raise the shield for the defence of a faithful officer.

Mr. Hillhouse argued, that the interest paid was not paid out of the 2,000,000 loan; and that the drafts were made agreeably to the directions of the President.— He shewed this by the documents which had been already referred to.

He put in a clear point of view the propriety of avoiding the expence and risk of drafts and correspondent remittances; and concluded by giving his approbation to the conduct of the Secretary in the transactions complained of, and by expressing it as his firm belief—that a majority of the committee, from the evidence before them, would undoubtedly be of opinion—that the charges brought forward are unfounded.

Mr. Sedgwick rose to correct a mistake of Mr. Mercer's. That gentleman had asserted, that the Secretary had drawn on Europe, before the loan obtained by the commissioners under the old government was ratified. This was not the case, he said; the loan had been ratified in pursuance of the provisions of the act authorizing it. The President, in his speech on the 8th of Dec. 1790, says, "that agreeably to the powers vested in him at the last session, the loans in Holland had been completed."

By existing acts of the legislature, and from express communications from the Secretary of the Treasury, it appears, that all the monies borrowed were deemed as borrowed under the joint authority of both acts, and not to be solely appropriated for the payment of the foreign debt.

Mr. Mercer explained, that he had said that the Secretary had drawn from the loan obtained under the authority of the old government, before said loan was legalized by law. If the legislature had a right to legalize it, they had the right to reject it.

[To be continued.]

LONDON, December 20.

In times like the present, when the principles of the French Revolution are so much recommended by some, for our imitation, every thing is interesting which tends to confirm or contradict the degree of general happiness which those nations received who have adopted the opinions of this new philosophy. There is so much good sense in the following, and it is so applicable to the present times in this country, that we have thought proper to give the article a very conspicuous place.

"WE have already remarked, that the leveling principles of the French Revolution were not so successful in Germany, as in some other countries.

"The first instance of this appears in the address from the inhabitants of Mayence, in which they declare a desire of adhering to their ancient constitution, modified however with some trifling alteration, which they had formerly petitioned from their former sovereign. Frankfurt has manifested a similar disposition, in a mode emphatically pointed, and not very palatable to the French General.

"When General Custine laid this town under contribution, it is well known that he ordered the sum of two millions of florins to be levied upon the wealthy inhabitants possessed of more than thirty thousand florins* in personal estate. The inferior class of people, persuaded that industry, which forms the great resource of the poor, is entirely annihilated from the moment that the rich are deprived of the means of supporting them, have frankly expressed their sentiments to General Custine in the following address, in which the good sense of the Germans is peculiarly predominant, and expressed in a little extremely pointed.

"You have declared, General, that you are actuated by the best intentions towards the lower class of people. Permit us in our turn, with equal freedom to express our sentiments.

"You pretend to protect us against oppressions of which, God be praised, we have no knowledge, and still less experience. You would give us Liberty which we already enjoy. The expences of the government are equally divided between the magistrates and ourselves. Never have the wealthy formed a distinct class from the poor; their prosperity extends to all, and their flourishing commerce renders every one happy. Every person able and willing to labour, is certain of finding subsistence; in consequence of which we find so many persons of property. Poor indeed will be found in all countries; but so numerous are the establishments provided, by the munificence of our wealthy ancestors, from which our poor derive such relief, that our small state exceeds, in these respects, countries much larger and more flourishing.

* Between two and three thousand pounds sterling.