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THE TABLET.

No. XCIV.

"A desire to support a party often obtains the character and answers the end of patriotism."

PUBLIC affairs proceed with most alacrity and success, when a considerable degree of party-spirit prevails. Though it may be carried to such excess as to overthrow a government, yet some portion of it is necessary to give vigour to public measures. There is in most men such a temper of selfishness as will induce them to counteract the welfare of the community. This is too stubborn to be controlled merely by a sense of duty. It can therefore only be managed by causes more energetic than itself. In this view I am induced to believe, that party spirit may operate as a remedy against those private prejudices, personal caprices, and local attachments, that combine to impede the national prosperity.

When the leading characters of a country are divided into two parties, each of which has some common views or feelings to cement them, it produces a concert of measures, which is often beneficial to the community. One party some times predominates, which, from a turn in affairs, yields afterwards to the predominancy of the other. But whichever of them has the ascendancy, the spirit of party still invigorates the actions of both. By this means, considerations, merely private, are absorbed by a regard to party-interests, which frequently assume the name of patriotism. In a public assembly, composed of individuals who felt no party attachments, the debates would take a desultory turn and seem to be directed to no fixed object. Personal vanity or whim would tempt the speakers to come forward with new and singular propositions, and there would be no common principle to check their irregularities. It would be like skirmishing at random, where every man discharges his fire at such a mark as his fancy suggests, or perhaps at no mark at all. But in a public assembly where there are two determined parties, the abilities of the speakers act in concert and are directed to a common center. This combination of talents affords an able discussion of subjects, while each side exposes the errors, that the other attempts to inculcate.

There are not now, in the United States, any established parties in the government, who uniformly take sides, in important questions. The distinction of whig and tory does not exist with so much force, as materially to affect political arrangements. The mercantile and landed interests have not such a decided opposition of views, as to produce an inveterate party spirit. Some people will pretend that federal and antifederal characters are at so great variance in opinions, that they may be considered as established parties in government. I do not however view them in this light. Their diversity of sentiments is not so wide; their feelings of dislike to each other are not so keen and inflexible, as to constitute a uniform division in public debate, corresponding to those characteristics. Our government has less to fear from the zeal and activity of its enemies than from the languor and inattention of its friends. If its enemies appeared more formidable, its friends would really be more vigilant.

CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, FEB. 19, 1790.

In Committee of the whole, on the Report of the Secretary of the Treasury, Mr. Madison's motion for a discrimination, still under consideration.

MR. SCOTT observed that, inasmuch as he had expressed his sentiments generally on the subject now under consideration, when it bore a shape somewhat different from the present, and considering that perhaps he might be induced to vote in a manner that would not be understood without an explanation, he requested the indulgence of the committee, whilst he attempted to offer his sentiments freely upon the business immediately under their notice.

The arguments of the gentlemen in opposition to the present motion, when taken altogether, seem to rest their whole force upon the idea of a contract said to be made, and of which contract the papers in question are said to be evidences. This is a doctrine which he absolutely denied. If those papers are evidences of any thing, it is of the pre-existing contract broken. At what period, asked Mr. Scott, did Congress contract with their soldiers? At what period did they contract with their citizens, who furnished the necessary supplies for our army? Was it at the time those papers were issued, or long before?—It was long before: consequently those papers cannot be esteemed as possible evidences of any contract, unless we refer to an implied contract made when they were issued, at the conclusion of the war; which, in fact, was the last conceivable period for the settlement of such engagements as had existed long before, and to fulfil which was totally out of the power of Congress. Surely then it must be allowed, since it was not in their power to fulfil the original engagements, and since it was not in the power of interested individuals to compel them to compliance—that the contract was completely annihilated, and Congress was reduced to the necessity of

offering some consideration in lieu thereof. What did they offer? Papers of the nominal value of 20s. but of no more real value than 2s. 6d.

The original creditor, in consideration of the distress of his country, and from dire necessity, accepted of this; and would, with equal generosity, have accepted of the 2s. 6d. in cash, and have signed an acquittance for his pay as freely as he assigned over that paper for 2s. 6d. to the speculator. Now if it be urged by gentlemen, that this transaction implies a contract, it may be confessed the papers in question are evidences of such implied contract; but of the real existence whereof there is no proof.

Mr. Scott said he would also aver, that if we are to be governed by this implied contract, the real value of the paper in question is at once fixed by the market price, then current at 2s. 6d. in the pound: the residue is the last grand sacrifice which the original creditors, as well citizens as soldiers, made to their beloved country. Thence it is evident there was no original consent of parties obtained; and hence no original contract existed. This, said he, is fair reasoning, against which no logic should prevail; it is arguing from the truth, and the eternal nature and fitness of things.

But those papers, it has been said, are not only evidences of a contract, but since they are payable to A. B. or bearer, the bearer is an original contractor! Where will this argument lead us? A robber on the highway, a private thief, a fraudulent purchaser without consideration—if this argument be admitted—may all or severally become bearers. Are they severally original contractors? Surely, no gentleman will pretend to say that they are. Neither is it possible to detect those frauds, if what has been said is true, that many of those certificates were taken out originally in fictitious names. Suppose one of them has got into the hands of the robber, the burglar, or thief; how will that man who never existed, appear in court and convict him of the fraud? From these premises, Mr. Scott inferred, that as this was a case without remedy, the bare possession of a certificate is not a sufficient evidence to prove the holder was an original contractor.

At an early stage of this business the gentlemen in opposition to the amendment appeared to lay great stress on the want of authority in Congress to intermeddle in such cases: But as we get forward the gentlemen appear to give up; they have been beaten off that ground; and the impolicy and impracticability of the measure is principally urged. Yesterday, however, these same gentlemen abandoned the latter, and resumed the former station with great avidity.

We are likewise told, that altho in the parliament of Great-Britain, which is omnipotent, they can do any thing: Yet we, being a legislative body whose authority is constitutionally confined to certain objects, cannot make the proposed discrimination.

Let us make some enquiry into this. Is not the whole business before us of such a nature, that without our legislative interference it must remain eternally as it is? This, it may be presumed, will be granted on all hands. What follows? That as it is a proper subject of legislative discussion, the legislature must, of necessity, and from the nature of the thing, possess all powers necessary to doing what is right and just in the premises; and consequently we have the power of discriminating, if justice and right demand it. The arguments, therefore, which the gentlemen have adopted on this subject, as well as many others to which they have occasionally resorted, must appear to the committee as perfectly inconsistent and futile.

It may be necessary, however, to advert to one or two other examples of the same complexion.

We are told, "that the advocates of the proposed amendment are acting officiously; no complaints having been laid before the House; no petitions; no parties contending before us; therefore, say they, we have nothing to do with it; (here Mr. Scott adverted to Mr. Benson) the question is not legally before the court, &c." This is, in similar phrase, "there is no writ sued out; no bill filed; no issue joined between parties."

In answer to this argument, said Mr. Scott, it is necessary only to observe, that every complaint of the people, by virtue of the representative capacity of their members, is properly, and to all intents and purposes, before the House.

But we are further told, "that no facts have been proved; we have no evidence, therefore we cannot proceed." He granted that no witnesses had appeared to make oath, no swearing in court; but will it follow from thence that we are not possessed of the facts? He presumed not. If the facts are within our knowledge, we are in as full possession of them as if they had been sworn to; and for many other facts, necessary to the investigation of this business, we can resort to our public records. Moreover, there is little use of evidence, other than to inform and convince the minds of the judges. As to the truth and fallacy of the objection, how that information and conviction happens, it is very indifferent; especially in a legislative body. In a word, the arguments to be contended with appear to move in so small and contracted a sphere, as never to extend beyond the pleadings at the bar of a county court; and consequently were very unworthy the attention of the great American court of equity.

Mr. Scott remarked that, from these observations, it might be supposed he would vote for the proposed amendment; but he said, he believed he should not: Not on account of the demerit of the proposition, or the merit of the arguments which had been used against it. There were other considerations which existed, which were not only unprovided for in the amendment, but it seemed to him as if they were barred therefrom.

One of these which came immediately within his own knowledge, and which must be likewise within the knowledge of many gentlemen in the House, one of whom had already mentioned it, is this: Our quarter-masters, purchasers, contractors, &c. or some of them, have been sent out amongst some of our citizens to procure supplies, without a shilling in their pockets: They have bought, on trust, from individuals; afterwards, those individuals have been prevailed upon (without payment being made) to give receipts, as if they had been actually paid, on a pretext that the accounts of the purchaser could not be settled, nor money obtained to pay them, without those previous acquittances. Where this business originated he knew not, but he vouched for the facts in a great number of instances to have come within his knowledge. The consequence appears to be, that those purchasers, on producing the receipts, have obtained certificates for the aggregate sum in their own names, as if for supplies by them furnished and have made no satisfaction to the individuals.

Now, with respect to this species of paper, thus procured by fraud and issued without consideration given by the persons to whom issued, he said he could not consent to fund. Nay, he would sooner part with his right hand than consent to fund certificates thus circumvented, and thereby subject those very individuals thus robbed of their property, to contribute towards paying the price of that very property into the pockets of their robbers.

Shall it here be said, "the courts are open, and the individuals may there be redressed?" Poor alternative indeed! Where I, said Mr. Scott, to stand upon this floor and hold forth such doctrine as this, "that the courts are open—that the constitution contemplates the United States as a body that may sue and be sued, and

points out certain proceedings which shall be had when the United States become a party—and that therefore every holder of a certificate has the recovery of the money in his power, on application to the courts—and should I conclude that Congress has nothing to do with the present business!"—Pray, what should I merit by such pleadings? I doubt whether I should merit pity—contempt I might be certain of receiving.

Suffer me to ask, if the evil I have mentioned, be not too general in its nature to admit of any remedy, but by a legislative interposition? May not many of those contractors be in a state of bankruptcy? May not some of them have travelled to the Spanish main to govern colonies? May not some of them have returned to their usual places of abode, at many hundred miles distance from the defrauded individuals, as aforesaid? And can it be supposed that the widow and the fatherless, the poor and the needy, by them thus defrauded, perhaps of a bullock, or some bushels of wheat, individually, but in the whole, amounting to an enormous sum, can follow them to obtain justice? How are these plunderers to be pursued? And how can any thing be recovered from them in a common court of law? Especially when we consider that to all the difficulties already mentioned, must be added, that the very receipts under their own hands would be exhibited as evidence against the injured, honest, original creditor!

Is not this case, as often to be met with as it is, beyond remedy unless by the interposition of Congress? Now as this case is not only unprovided for, in the amendments proposed by the worthy gentleman from Virginia, but the door seems to be shut against a future provision; and considering that the same gentleman, or some other, may bring forward something that may reach to the root of the evil, and produce more effectual justice: Under these considerations, said Mr. Scott, I shall at present vote against the proposition; but if I am disappointed in my expectations, and that gentleman shall bring his propositions again forward in the house, I shall not suppose myself debarred from voting with him.

Mr. SENY rose and observed, that it was with reluctance he attempted to express to the committee his ideas upon a question which had been so fully and ably discussed. However, as it had been expected that gentlemen would not, in a case of such magnitude, be content with merely a silent vote, he rose to declare the reasons upon which his decision was founded. In doing this, he hoped that he should not use epithets which might be deemed harsh, or language which would be offensive; that although the sentiments of other members should differ from his, he wished so far to respect those sentiments as to treat them with decency.

He considered the proposition of the gentleman from Virginia (Mr. Madison) was designed to effect two purposes.

The one, a compensation to the original creditors who, during the late war, in times of distress, had loaned money, furnished supplies and rendered military services; and who had only received satisfaction therefor in paper of inconsiderable value, forced on them by the public, and depreciated by their acts. This class of creditors, he conceived, had a just and equitable claim for the full difference in value between that paper, when paid, and specie.

The other object of the proposition alluded to, was, he said, to compensate those creditors who now hold alienated certificates.

Each description of those creditors had, in his opinion, claims on the public. The first was founded on an original contract between them and the government, part of which only had been complied with, and the residue still remained undischarged: the other was grounded on having possession of the paper which contained the promise to pay.

It hath been contended, said he, that the United States have not ability to pay both. In this case a question arises, What is, upon the whole, most just and expedient? Some gentlemen contend, that it is incumbent on us to make full provision for those who hold the alienated certificates, without any for the original creditors who have alienated them. Others think, that the misfortune of government, in this respect, should not be felt by either class solely, but be born by both: that it is more just to adopt a mode of composition, by which those creditors should mutually share in this misfortune, and be mutually benefited by a provision within our power to make. With those his sentiments accorded. He could not be impressed with the justice or reason of a measure, calculated to make a total sacrifice of one class of creditors, and full payment to the other class. Such a step could not, in his opinion, be justified by any distinction or precedence which existed in their claims. When it was considered that the original creditors furnished money and supplies, and rendered services essential to the preservation of their country, at a time when its liberties were invaded, and every thing which can be dear to freemen was in jeopardy and at stake, he could not apprehend that their claims would be deemed inferior to those of their rivals. In his opinion these circumstances entitled them to superior notice. Believing, however, that the amendment under consideration would, upon the whole, effect more substantial justice than any other practicable scheme which had been proposed to the committee, or which he had heard of, his assent would therefore be given to it.

He then noticed a variety of objections which had, in the course of debate, been urged against the amendment he supported. Gentlemen, he said, had insisted, that although the principle of it might be right and proper, yet the execution of the scheme was altogether impracticable. They had also contended, that the adoption of such a proposition would be a violation of those rules which, as to contracts, ought to be held sacred, and also of the constitution under which the government was then acting; that it would be disapproved of, even by the persons for whose benefit the provision was intended.

He observed, that those who admitted the propriety of the measure as to the principle, could not be justified in their opposition upon the ground of impracticability; that the honorable mover of the amendment had, in the course of yesterday's debates, suggested expedients which would, in his opinion, remove the greater part of the objections which ingenuity had urged in that respect: that some particular cases, perhaps, might exist, for which special provision would be requisite: however, as that gentleman had declared his belief in the practicability of the system, such was Mr. Seny's confidence in the sincerity and abilities of the person who made the declaration, that he was not disposed to believe the reverse without giving an opportunity of proof, or until some trial was made. It had been also objected, said he, that the proposed project is violative of the rules which in contracts should ever be preferred: but how, he asked, could gentlemen reconcile this objection to the plan which they advocated? would it not operate with equal force to condemn that, as well as every other, which had been contemplated? The argument, by proving too much, ought therefore to have no influence upon the question. It had also, he said, been mentioned, that the plan in controversy was a violation of the constitution, which every member had taken an oath to support. This observation, he remarked, might be made in *terrorem*, but could have little weight if the words of the constitution, in this respect, were attended to; these are, "all debts contracted, and engagements entered into, before the adoption of the constitution, shall be as valid against the United States under this constitution, as under the confederation."