

CONGRESS.  
HOUSE OF REPRESENTATIVES.  
FRIDAY, FEB. 19.

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. GERRY rose after Mr. Livermore, and observed that it was with great concern he should express his sentiments on a subject so important in its consequences: that after mature deliberation he had formed an opinion; and that should arguments hereafter preponderate against it, he should think it consistent not only with honesty, but with honor, to alter that opinion, and freely declare it.

The amendment, he said, proposed by the gentleman from Virginia, differed from the proposition before the committee in other points, besides that of discrimination; and he proposed, as an amendment to the amendment, to strike out all that related to this question, that the sense of the committee may be fairly ascertained, "Whether there shall be a discrimination between the original and assigned holders of public securities."

Mr. Gerry stated, that the foundation of the motion for a discrimination was the heavy losses sustained by our brave and veteran soldiers, in the sale of their public securities. Little or nothing, he said, had been urged in favor of meritorious officers, and of citizens who, by the loan of their property, had contributed to the support of the war, and much less of assignees; although he could see no reason why equal justice should not be done to these two classes of original creditors. To form a judgment, then said he, of the foundation of the motion for a discrimination, let us advert to the history of the army, and we shall find that their first enlistments expired at the end of 1775; that the commander in chief, not being able to re-enlist the soldiers, was reduced almost to the necessity of abandoning the extensive lines in the vicinity of Boston; that notwithstanding this, such were the prejudices in favor of short enlistments, and such the dread of a standing army, that Congress were obliged to enlist the second army for one year, and their times of service expired at or about the end of 1776. During that campaign Congress were so fully convinced of the fatal consequences of such policy, as, at all events, to determine that the next enlistment should be for the war; but they were afterwards constrained to provide the alternative, or for three years, and those who enlisted for this term left the army in 1780. We shall also find that, in 1780, the army was greatly reduced, and the states earnestly called on to recruit their respective regiments; but such were the prospects of gain, from privateering and other measures—such had been the sufferings of the army, and so little was the confidence in public faith—as to require enormous bounties in specie, and the mode of classing, for obtaining recruits: the average of bounty in many states was 250 dollars, in specie, and in Massachusetts upwards of 280. Thus, then, if we divide the army into four classes, it will appear that the soldiers of the first and second classes were discharged and fully paid, in 1775 and 1776; that the soldiers of the third class, who enlisted for the war between 1777 and 1780, served six, five, or four years, without any other prospect of reward than the stipulations of Congress; and that the fourth class, some of whom served two and an half years, others two years, and others one, were amply paid by bounties, the least of which amounted to 100 dollars a year, or 8½ dollars a month, in specie, exclusive of the allowance made by Congress. The third and fourth classes were, however entitled, by their contract, to 6½ dollars in specie, per month, or to an equivalent, exclusive of bounties, rations, and clothing; and how has the contract been fulfilled?

He then referred to a memorial of the officers and soldiers of the army, stating their grievances to Congress, in April, 1783; and likewise a resolve of Congress of July in the same year, for liquidating the accounts of the army, and for issuing certificates which would then produce but as 6d. in the pound, for the balance due to each officer and soldier.

Mr. Gerry then asked, Is this a fulfilment of the contract? Was ever such a brave army, was ever any army, so paid before? If then the contract has not been fulfilled, ought not the party, failing to do this, to indemnify the party who have sustained damages? Justice may be in favor of the fourth class; but justice, generosity, and humanity, plead loudly for the third class, the amount of whose demands will not exceed 2000000 dollars.

The question then is, Who ought, in justice, to make good these losses of the soldiery? Some gentlemen say, those who purchased their certificates: On what principle? From their having received them without an equivalent. Let us attend to the nature of the contract of the soldiers with the assignees; for it differs widely from that with Congress. Some gentlemen consider it in the nature of a specialty or bond, and have carried us to courts of law, to prove that whatever has been paid short of the nominal value of the certificates, is now due from the assignees. This mode of reasoning is inadmissible, because particular decisions of law courts cannot apply to great national questions; and the legislature is authorized to regulate such courts, and is not to be regulated by them. But if admissible, is the transfer of a soldier's certificate in the nature of an assigned specialty? For, if not, arguments on this principle will fall to the ground, and we shall be again freed from courts of law.

Mr. Gerry then shewed what a bond was, according to the law-definition of it, and that a certificate differed from it; as in the latter there was no condition of performance, or seal, and in the transfer no indorsement is necessary. The title, he said, of an assignee to a certificate was by a sale, which is "a transmutation of property from one man to another, in consideration of some value or recompense."

He further observed, that the public securities of the United States are a species of stock or property, similar to merchandise; they are sold in open market, and at the market price, which is always an equivalent: for the market price of stock, he said, was regulated by the public opinion, and depended in a great measure on the circumstances of the nation, and on events: It had always been subject to great variations, and ever would be whilst communities are subject to calamities; and this is a quality inseparable from that species of property. To illustrate his argument he stated two cases, the latter of which is as follows:—Suppose that the public debt was funded, and the stock at par; that a combination of European powers had been secretly formed to subdue us; that a fleet, with a formidable army, had suddenly appeared on our coast, and that the enemy had landed before arrangements could be made to resist them, and had over-run half the country: Would not stock, under such circumstances be reduced in value? If a stockholder should insure his property in the funds, would not the policy be as valid against such an enemy, as any other policy in time of war?

Let us suppose that this calamity had raised the premium to 80 per cent. and the stockholder had agreed to allow it, would not the insurer be justly entitled to it for taking the risk? But if the stockholder, instead of giving the premium, had made sale of his property at 80 per cent. discount, being one fifth of its former value, would not that fifth be an equivalent and the sale valid? Where is the difference, except merely the mode of negotiating, between insuring his property at 80 per cent. premium, and selling it at 80 per cent. discount? Or, where is the injustice of the measure in either case? But should the enemy be expelled, and stock again at par, can the original stockholder, in justice, demand any part of the 80 per cent. premium, or of the 80 per cent. discount, on a pretence that he has not received an equivalent? If the whole had been lost, would he have returned the 20 per cent. which he received of the insurer or purchaser?—Surely not; and it must be evident that although the nominal was the real value of stock before the appearance and after the repulse of the enemy, yet that the value was reduced by the danger of conquest, and that the market price at that period was an equivalent.

Several cases have been cited as precedents for discriminating: that which relates to the reduction of the Canada bills, mentioned by the gentleman from Virginia (Mr. Madison) was by his own acknowledgment not applicable. The case referred to in the act of Queen Ann, cited by the gentleman, was not analogous; for, independent of other considerations, the debt contracted by the Queen for the support of her household was unliquidated, and by a vote of the House of Commons had been disallowed: Had the debt been liquidated, and certificates of it issued, as in the case of our soldiers, there would have been no interference of parliament in the subsequent transfer of such certificates, as their whole conduct evinces.

Gentlemen, in favor of discrimination, have also mentioned the South-Sea and Mississippi schemes: The gentleman from New-Jersey (Mr. Boudinot) had clearly shewn that the conduct of parliament in the South-Sea scheme was directly against discrimination; for although they imprisoned the directors and others, and confiscated their property, yet they never interposed in the transfers of stock by other proprietors, although it was bought and sold from par to 13 or 1400 per cent.

The history of the Mississippi scheme I propose not to state fully but to mention a few particulars. In the year 1717 the government of France were deeply indebted, and had issued state bills to the amount of several hundred millions of livres, they were sold at 60 or 70 per cent. discount; and the Regent of France, desirous of appreciating them, established a commercial company with the exclusive privilege of trading to the Mississippi, to consist of such as would subscribe 60 millions payable in state bills at par; at first there were few disposed to be concerned, but at length the sum was subscribed, the stock by another arret was increased to 100 millions; the farm of tobacco, amounting to 4 millions a year, was then granted to the company as a fund to pay the interest, and, under the direction of Mr. Law, they made greater profits from it. Stocks were thus enhanced from 70 per cent. below to 20 per cent. above par. The India and African companies were afterwards incorporated with the Mississippi, whose capital was further extended, by which means stocks rose to 5 or 600, and, in the progress of this matter, to 1000 per cent. at this period a subscription was opened for 50 millions of livres, at 10 for 1, payable at ten different payments; and so infatuated was the nation, that the subscription in a few days amounted to 75 millions, being half as much more as was wanted, and the day after the subscription closed, those who had given 1000 sold for 2000 per cent. When the bubble burst, as it is expressed, no attempt was made by government to interfere in the transfers made by individuals, but all such transfers were valid.

From all which, I think it will appear that stocks are, in their nature, a species of property subject to great variations from calamities and other causes; that the market price will be regulated by public opinion, and that it is always considered as an equivalent. A transfer of property in the funds, at market price, differs widely from the gambling of stockjobbers, a pernicious species of traffick, of the nature of wagers or bets; and those concerned therein have no property in the funds, and generally are subject to punishment.

Should enquiry be made, what calamity have we been under to reduce so low the price of our stocks? I answer, the calamity of a defective national government; the effects of which were severely felt. In 1780, Congress called on the states to sink their respective proportions of the old paper money; part complied, and part did not. The consequence was, that in 1781 the bubble burst, and almost ruined the public credit. Early in 1783, the army, from want of pay, were nearly mutinying, and part of them soon after did mutiny, and drove Congress from Philadelphia. Again—Congress, by the confederation, were authorized to tax the states on a valuation of their respective property; but the states were unable to produce the documents required for forming that valuation, and refused to adopt a new rule proposed by Congress, who could therefore levy no tax. To evince an honest disposition, and to support public credit as far as possible, Congress proposed the plan of impost, and supplementary funds: this was accepted by some states, and violently opposed in others, which produced apprehension that a considerable part of the union wished to apply the sponge to the public debt. These circumstances, and the consequent commotions, so weakened government, that we had no credit, public or private, at home or abroad. By these and other calamities, and the load of our debt, were the stocks reduced, the public opinion fixed their rates, and taking the risk, they were worth no more; but circumstances are now altered, and they are increased in value.

Gentlemen, to support discrimination, have charged assignees with fraud. Are the assignees chargeable for the defects of the confederation? Or for a non-compliance of some of the states with the requisitions for sinking the old bills of credit? Or for the mutinying of part of the army? Or for defeating the plan of the impost and supplementary funds? Or for the consequent commotions? Or did the assignees deceive the original holders? Did they act the part of sharpers and swindlers? If so, bring the culprits to justice; your country demands it. But if their only crime is good fortune in their negotiations, if they have purchased the securities in open market, and honestly paid for them, treat them as good citizens, acquit them of fraud, and do them justice. Being among those original holders who have transferred part of their certificates, and not replaced them, I can feel for myself as well as for our brave soldiers, but am against discrimination. So much for the justice of the measure: Let us now consider the policy of it.

It is admitted on all sides that the preservation of public faith is indispensable to the welfare of the Union, and in what does it consist? Public faith, as I conceive, consists in a punctual fulfilment of engagements and contracts on the part of government. To preserve public faith, therefore, it is necessary that a nation should have adequate resources, the government adequate powers, and those who administer it, integrity and abilities. That our resources are equal to the payment of our debts has not been denied, that Congress have not sufficient power, I presume none will assert.

The preservation, then, of public faith, will principally depend on their integrity and abilities. Their abilities may not be questioned; but their conduct in this case will be critically examined and tried by the standard of morality: If it will stand the test, they will have the confidence of the people; but if not, vain will be every attempt to establish public credit. For this is nothing but the confidence of the people in public faith, and the people will think that, whatever resources they may have, or power to change the form of government, the defective principles of their rulers can only be corrected by the Sovereign of the Universe. Is it good policy, then, to rest the public faith on an act of discrimination, which is intended to fuddle one class of citizens with a tax to repair the loss which another class has sustained by a breach of contract on the part of the public? This will wear the appearance of committing one fraud to cure another. The right of speculators to purchase certificates, at the market price, is undoubted, and their conduct in making the purchases and payments is unexceptionable; but if there was a doubt of this, in regard to some, would it be sufficient ground for a discrimination?

Again, the whole expence of the war is supposed to be about one hundred 76 millions dollars, of which there is now due about 8000000 dollars, exclusive of 2000000 supposed to be due to the third class of soldiers. Is it good policy by funding the debt to do every thing necessary for the support of public credit, except making payment of 2000000 dollars, and then, at the risk of public credit, by an act of discrimination, to save the sum last mentioned, which is but one eighty-eighth part of the expence of the war?

But how are we to obtain loans in future? Some gentlemen conceive the establishment of our funds will always precede the loans: Can any gentleman insure this? I conceive not. There is not a nation in Europe so happily circumstanced; and if an unfunded debt should again be requisite, who will lend when your unfunded securities cannot be transferred, because you have esta-

blished a precedent for discrimination? Is it not evident, then, the proposition is pregnant with ruinous consequences?

If enquiry be made what is to be done with the suffering soldiers? I answer, Pay them, if your funds are sufficient; if not, assure them you will do it as soon as funds can be provided. It has been suggested, that they have relinquished to the public seven-eighths of their property: If they have, I think it unjust to accept it. But is this the fact? Would they not have received the whole of their liquidated demands in specie, had it been offered? There can be no reason to doubt of this. Some gentlemen say, they wish to compound the matter, between the soldiers and their assignees, because we cannot pay both: Would not a composition, on such principles, be a declaration of national bankruptcy? And shall the United States, with 3000000 inhabitants, with the most flattering prospects arising from the increase of commerce, husbandry and manufactures, with such an extensive territory, and in the vigor of their youth, declare bankruptcy for a debt, including the federal, state, and foreign loans, not exceeding 80000000 dollars, or 18000000 sterl. when Great Britain, with only 8 millions of inhabitants, can fund a debt of 240 millions sterl.? I hope not—and consenting to such a measure, would never acknowledge myself an American.

Some gentlemen have referred us to the act of Congress for scaling the continental currency, to prove both the policy and justice of a discrimination. Let us examine that matter: Congress, from the commencement of the war to Feb. 1781, were but a meeting of State Commissioners, without any form of government or powers, except such as were contained in their discordant commissions. From April 1775, to the end of 1779, they supported the war by artificial credit: At that period they had issued 200000000 of paper dollars, and borrowed 35000000 of dollars on loan office certificates, which were afterwards reduced to 11000000; they had borrowed all they could in Europe, and were reduced to the necessity of stopping emissions, and of depending on the States for monthly supplies of 15000000 of depreciated dollars, and on domestic loans. In March, 1780, the proposed taxes and loans failed; emissions on the former plan were at an end, and Congress were reduced to the necessity of scaling the old debt, to sink it, and of beginning anew, or of giving up the cause; Sad alternative! to violate the public faith or be enslaved. They chose the former, but aimed to do all possible justice. Indeed they had one reason for scaling bills of credit, which applies not to the liquidated debt. The public did not receive the value of the former, but did of the latter, according to the nominal sums; and had each emission been scaled according to its value when issued, the public would probably have been better satisfied, but having reduced the old bills from 40 to 1, did Congress attempt to rescale them when they sunk to 1000 for 1? Or did they provide that original holders, who passed continental money for less than they received it, should be reimbursed by the assignees? If not, the precedent is against discrimination. Indeed if the precedent favored such a measure, it is admitted by the gentleman who produced it to have been a violation of faith, and is therefore a bad precedent, which can never sanctify a bad act, or alter the eternal rules of justice. Because then Congress, in a distressing war, without a form of government, and at the end of their resources, violated faith, can we, on a principal of policy, in a profound peace, with a strong government, and sufficient resources, be justified in taking a measure which promises so little advantage; and which may involve such dangerous consequences? If this measure is adopted, what is to be done with them who have given Congress a dollar in public securities for an acre of land, such as you will now sell for one fifth of a dollar in the same securities. Ought not Congress, on their own principle, as the assignee of the purchaser, to reimburse four-fifths of this property? But what security, will a speculator in land have, who may purchase of an original proprietor, that when the value of the land is enhanced, a similar discrimination will not be made? And who, thus circumstanced, will purchase your lands.

With respect to the practicability of discriminating, gentlemen in favor of the measure have not removed the objections of those who are against it, and have only said provision must be made in certain cases, without explaining. It has been said, if the latter will unite with the former, the difficulties, altho great, may be removed; but no effort can make a measure practicable, which is impracticable. Such attempts tend to weaken government, and to bring the laws into contempt, as we have seen in regulating acts. Public opinion has been mentioned as an argument in favor of the plan. I have the highest respect for the public opinion, but have not argued on this ground: First, because in the present case we know not the public opinion; and secondly because conjecture is endless and useless. Indeed, in great national concerns, the public will generally form their opinions by the proceedings of the Legislature, because the latter have a more general view of matters, and the best means for forming a judgment. If on the whole, then, the justice, policy, or practicability of the measure, was only in question, ought we to accept it. But when we are doubtful of all, ought we not to reject the proposition!

Mr. BLAND seconded Mr. GERRY'S motion. He said he was apprehensive the idea of discrimination had already worked mischief. He then explained the fallacy and injustice of such a measure, which he thought had been clearly proved to the house, and assigned among other reasons its impracticability, which, if there were ninety-nine reasons for it, that in itself was sufficient to make him vote against the amendment.

Holders will come to the treasury and demand payment; there they must deposit their certificate, and there they must lie until proofs can be obtained. The same inconvenience will arise respecting the interest: suppose a creditor, if the amendment should pass, was obliged to look for proofs, where must he seek them? in the grave, beyond the sea, in Asia! Suppose a creditor was unwilling to comply with this law, you must then pass another law to compel him to deposit his security.

The question had not been answered to his satisfaction, and he shall not have risen were it not on account of the point of discrimination, to which he had always entertained an aversion, as involving the loss of that most valuable and inestimable jewel PUBLIC CREDIT.

If we commit this breach of public faith, it would be little better than the tender laws of Rhode-Island. No doubt some of the speculators had deserved punishment, but others are innocent. Mr. Bland observed that he was no speculator, but he held original securities, therefore the decision could not affect him. There is hardly a state in the union that wishes for any discrimination. If the state accounts are to be all reckoned, what a day of reckoning would that be, to travel back and issue fresh notes; it would be two final settlements. In short, there appeared so much intricacy and difficulty, that it was utterly impossible and impracticable in his opinion; he therefore was against Mr. Madison's amendment, but would second that of Mr. Gerry.

[Some explanations with respect to order then took place, and Mr. Gerry agreed to withdraw his motion until the proposition of Mr. Madison should be first disposed of.]

MR. BURKE rose and observed, that on Friday last he had laid before the committee a motion for making a discrimination between original holders and assignees of public securities, and for establishing a scale of depreciation of those securities; this motion he afterwards thought proper to withdraw, as, on further consideration, he deemed it altogether impracticable, and because he was not convinced that such a measure was honest and consistent with public faith. He did not think himself at liberty to give it his support.

As to the question before the committee, Mr. Burke said he could consider it in no other view than as a question, Whether we shall commit a