



CONGRESS.

PHILADELPHIA.

HOUSE OF REPRESENTATIVES,

TUESDAY, NOVEMBER 8, 1791.

IN COMMITTEE OF THE WHOLE.

Debate on the motion to agree to the report of the Secretary at War, on the petition of John Torrey.

MR. AMES objected to the motion for accepting the report of the Secretary at War. He said, it must be apparent that he was placed by accident in a relation to the subject in debate, which he should not have adopted of choice. With very little knowledge of the parties and their connexions, and the interests that would be involved by the decision, he seemed to be considered as standing sponsor for the petitioner—He might justify this active support of the petition, by assigning motives which were common to other gentlemen—But as they have continued silent—I will assign a reason for speaking, said he, which is peculiar to myself. Nothing excites a person to a more fervid defence of his opinions, than the supposed discovery that they are misfunderstood, and the force of the reasons on which he formed them, unduly estimated.

Congress promised half pay to the officers who should continue in service to the end of the war—This was afterwards made a commutation for half pay. Major Torrey continued in service till Sept. 1783, when he died. The question is, did he continue in service to the end of the war?

The provisional articles of peace were signed on the 30th November, 1782; but they were to remain without force till terms of peace should be agreed upon between Great-Britain and France. This took place on the 30th January, 1783, and the ratifications were exchanged on the 3d February, 1783, at Paris. The provisional treaty between Great-Britain and America was then a treaty of peace, and according to the words of that treaty was concluded. Accordingly, on the 11th April, 1783, Congress by a proclamation made known those facts, and the stipulations made, in regard to the periods when hostilities should cease, by the contracting parties to the treaty. Hostilities did cease, and before the end of April, 1783, all America was in perfect peace—The late hostilities shook hands, our vessels sailed in safety—and by sea and land reconciliation succeeded to hostility.

But did all this put an end to the war? The children in the street would answer this question—They would say, it is peace when it is not war. Of all facts, the most notorious seems to be the state of war; and it is the fact that the war was at an end, (and not any after resolve of Congress) that the commutation of Major Torrey was made to hinge upon. When the meaning of a bargain is disputed, it is usual to search out the intention of the contracting parties when it was made; supposing, instead of interpreting a resolve of Congress, any twelve of this body had to try a case between two private persons—suppose that a man had given his note of hand for a sum to be paid at the end of the war. Would twelve of this House, or would any jury in the country say that the war continued longer than mentioned in the private life, a man would think it touched his character to refuse paying his note in such a case—Surely a public ought to perform its promise with as much delicacy and exactness. Congress did not promise the half pay, and afterwards the commutation on the condition that a man should serve till they should think proper to say the war was at an end. He depended on the stubborn fact that it did end, which no resolution of Congress could change; and not on the refining opinion when the officers might safely be discharged—for that we see might be differently formed, according to the different views of policy and safety at the time. An officer having this promise of Congress, has a right to this commutation on the cessation of hostilities, in pursuance of the treaty. If this is disputed, the meaning of the words "the end of the war," should be decided as it was understood at the time of the promise. Will any one believe that the 3d November 1783, was the term; after the state of war and all the treaties which put an end to it, had been long passed. If any doubt still remains, writers on the law of nations should be consulted. For the officer may justly claim an execution of the promise according to law; that is the umpire between government and the people.

On appealing to the law of nations, we find that war is defined to be "the state in which a nation prosecutes its right by force"—"Peace is opposed to the state of war—an accommodation is proposed and conditions agreed on, and thus peace puts an end to war." "When the powers at war agree to lay down their arms, the agreement is the treaty of peace." "The general and necessary effects of peace, are the reconciliation of enemies and the cessation of hostilities; it restores the two nations to their natural state."

Would any jury in this country say that the matter of fact and the principles of law were not in favor of the petition. Apply these maxims of law to the case. The provisional articles of November, 1782, were of themselves nothing, it is true, but they were to constitute the treaty of peace, whenever Great-Britain and France had agreed on the terms of peace. As these two powers did agree on the 30th January, and ratified the terms on the 3d February, 1783; then the provisional articles, to use the very words of the preamble, did constitute the treaty of peace; it was then a concluded thing—And peace in fact took place in the several parts of the world on the appointed days.

It has been said that the preliminaries were no more than a suspension of arms, that the state of war still continued, until a definitive treaty. To this it is answered, that preliminaries bind the national faith, if violated, the perjured faithless nation would kindle a new war. By the law of nations there is not such a distinction as that which is alledged, between preliminary and definitive treaties. Let the authorities for such a distinction be produced by those who make it—But they do not exist—a truce does not put an end to a war—a truce is, however, a suspension of war for a specified term. At the end of this term, the war begins again of course, without any fresh declaration. But a suspension of hostilities for an indefinite period, is not a truce, but a peace; especially if it is added, that it is agreed upon by the belligerent nations in consequence of a settlement of their disputes, and if it happens in fact that the war is not revived.

Those who make so much of a definitive treaty, and so light of preliminaries, should consider that, on their own system, the former is a kind of defeasance which annuls the latter. But when the definitive treaty is signed, the preliminaries, which before were liable to be annulled, now become of force, and the treaty, now become indefeasible, takes its date from the preliminaries. Tho this mode of reasoning has not much weight on my own mind, it ought to have some with those who have set up the distinction which it is added to overthrow.

These are the reasons on which I have formed my opinion that the war ended in fact in April, 1783, when hostilities ceased by mutual agreement of the powers at war. My opinion is supported by authority much more reputable than any I can give to it. The law courts in this country have decided it judicially; cases of

captured vessels, and the question of interest on British debts, have produced decisions in every state of the Union, unless I am misinformed, that the war ended in March or April, 1783. The courts in England, and in every country where the war spread, on trials of property, have made similar decisions. Major Torrey died in September, 1783,—shall this body decide against the settled rule of all the law courts?

It remains to remove some objections.

It is alledged, that Congress have by various resolves fixed the period of the war, and have declared that the 3d November, 1783, is the term. If they had declared that it should be computed from the end of the world, it would not alter the truth of the fact. After declarations ought not to be received to change their own promises—But a declaration, or a dozen of them, made for another purpose, and not to declare the meaning of the contract, cannot on any principle be received to interpret it. It is not necessary, however, to contend against those resolves of Congress. They are reconcilable with the former engagement to Major Torrey.

In undertaking to reconcile them, I feel that I impose a task on myself, which is made heavy by the prepossessions of many of my friends; I believe the minds of gentlemen are perfectly fair, and well disposed to doing the petitioner justice. But I hope I shall not be thought to intend any offence, when I remark that certain ideas, such as that this claim is cut off by resolves of Congress, and that on allowing it, confusion would take place in the business of the public offices, were started with the discussion, and they have remained so woven into the texture of the debate, that I think it hard to unravel them. It was soon manifest that there was a general disposition to vote against the petition. This opportunity for debate seems to have been accorded as of grace, rather than as a means of removing any existing doubts of their own. Having adopted these opinions, this is rather a form of refusal than a mode of enquiring; and it seems to have been chosen with every circumstance of decency, and with all possible steadfastness of purpose.

Yet I will proceed to state, that the point whether the war was at an end when hostilities ended in April, 1783, being already considered fully, we are to look for other reasons than such as relate to the commutation, to explain the resolves of Congress which continued the service of the officers beyond the end of the war, and as late as November, 1783. A mistake seems to have crept in here, it seems to be supposed that the officers were engaged to serve to the end of the war, just long enough to secure their commutation. But the commutation depended on one thing—the term of their service on another. The former was their right at the end of the war; but they were to remain in service till dismissed, unless they should think fit sooner to resign. They held their commissions during the pleasure of Congress. Though when the war ended they had a right to the commutation, they had no right to lay their service was at an end—They did not chuse to resign—Congress for wise reasons did not chuse to dismiss them. A foreign army was still in New-York. They were sent home on furlough, but drawing pay, and liable to be called into the field—Congress in their resolves did not say that it was not peace, but in effect that it was unsafe to disarm. Gentlemen are not well agreed among themselves as to the end of the war. Some fix it at the definitive treaty of September 3, 1783, others to November 3—Their conclusions agree as illy with their principles; for if the definitive treaty put an end to the war, how can the same gentlemen say that the war was kept alive on the journals of Congress, till November, 1783. Here then were peace and war subsisting quietly together during two months.

The fears of making confusion by opening a door to many applications, seem to be groundless. A man must have died between the end of hostilities, and November 1783, to place a claim on the like footing: The living have had their commutations. They cannot come, and no other officer died in that period as far as I can learn—I have enquired and cannot find at the office of the Secretary at War any precedent which militates with this claim, nor any reason to suppose that any similar one will be offered: The case is a new one, it stands alone, and probably ever will, and it must be decided on its own merits.

Believing the fact to be indubitable that Major Torrey served to the end of the war, confiding in the principles of the law of nations, and the settled decisions of the judicial courts, I have endeavored to explain my ideas with perspicuity and to impress them with force. I have said more than questions touching an individual will, often, be found to merit; but when public principles are concerned to the prejudice of private rights, the debate cannot be treated too seriously.

Mr. Boudinot said, he differed in opinion from the gentleman in his construction of the business. He did not coincide in the idea that the decision of the present question should be on a strictly judicial principle. The petition is founded on certain resolutions and laws of Congress; and as there are certain established rules which have been observed in settling with every other officer similarly circumstanced, Congress cannot now with propriety break through those rules, to these they ought to adhere, till by the decision of some judicial court it shall appear that they are contrary to the rules of justice. [Here Mr. Ames requested Mr. Boudinot to point out the rules to which he referred.] Mr. Boudinot referred to the report now under consideration, which was founded on a resolution of Congress, that the time for which the army was engaged should expire in November 1783. This has been made a rule in all the settlements with the officers of the army.

The terms of the contract, between the officers and the United States, depended (he said) on the decision of the sovereign power; that was authorized alone to determine when the war should cease. That power was vested in the then-existing Congress, who, altho' they entered into provisional articles in November 1782, did not however think proper immediately to disband their armies, or put an end to the war, as it was yet uncertain whether those provisional articles would be ratified by Great-Britain, or a treaty of peace concluded between Great-Britain and France; a circumstance, which was necessary, before those articles could be definitively binding. It was only when the definitive treaty was made, that Congress determined the period of the war. The army when finally disbanded, and paid up to that day, acknowledged, by accepting their pay, that it was then only the war ended; and, as far as was in their power, assented to the principle which he maintained, that the provisional articles had not before put an end to the war. Suppose (continued he) that, on the arrival of the definitive treaty, Congress had not agreed to the terms, would the war have then been considered as at an end? would not Congress have been in the same situation, as before the signing of the provisional articles? It was necessary that Congress should, by a definitive act, determine when the war ceased: Congress had passed such an act; and the house at present cannot with propriety enter into a resolution to alter the period.—The argument of inconvenience ought also, he observed, to have some weight with the house: for if any alteration were now to be made in the law, it must have a retrospect to all the widows and children of deceased officers, who have received half pay for years past. Besides, many officers, who have not hitherto considered themselves as entitled to half pay, would, in consequence of such an alteration, have a right to apply for it.

Mr. Lawrance said he doubted not the gentleman who supported the petition was fully satisfied as to the justice of the claim which he advocated with so much ardor; he beg'd leave to state his opinion however on the subject, in which he should differ from that gentleman:

The contract with the officers of the late army was, that those should be entitled to certain benefits who served to the end of the war. But Major Torrey was not thus circumstanced, as he died previous to the period when the war ceased, and left neither widow or orphans, to receive the benefit of the provisions allowed by

law; his case is not contemplated by any existing resolution of Congress.

It is well known that hostilities ceased at the time of publishing the provisional articles which formed the basis for the treaty of peace; but can any man say that every soldier had a right on that event to demand a discharge? Surely not. The provisional articles had the peace in contemplation, but the army was not to be discharged till the articles of the definitive treaty were ratified by the belligerent powers. The army of the United States was therefore only furloughed, and Congress retained the power of recalling them into service; and had the officers and soldiers been recalled from their furloughs to take the field, it would have been a continuance of the same war; but if the definitive treaty had been signed and hostilities had commenced the very next day, it would have been a new war, and would have been prosecuted on entirely new principles. The 2d article of the provisional treaty looks forward to a future period for a conclusion of the war—and he inferred that the definitive articles being ratified, and the ratifications exchanged, alone constituted a termination of the war. Mr. Lawrance added some observations on the legal ideas of Mr. Ames, in which he also differed from that gentleman; and concluded by expressing his approbation of the report of the Secretary of War.

Mr. Ames's remarks were further combated by Mr. Williamson, Mr. Dayton, Mr. Hillhouse, Mr. Wadsworth, Mr. Clark and Mr. White.

Mr. Wayne was opposed to the report, and stated certain particulars to shew that the army was not furloughed by Congress, because it was apprehended there would be any further demand for their services, but because it was inconvenient to give them an absolute discharge at that period.

The motion for accepting the Secretary's Report was carried by a large majority.

WEDNESDAY, NOVEMBER 9.

Mr. Sumpter from South-Carolina, and Mr. Murray from Maryland, appeared, and took their seats.

The Speaker laid before the house a letter from the executive of the State of Maryland, enclosing a copy of the resignation of William Pinckney, who had been elected one of the Representatives of that State, and a certificate of the election of John Francis Mercer, to serve in his stead.

On motion of Mr. Seney, those communications were referred to the committee of elections.

Mr. Sedgwick, of the committee appointed to prepare a bill for the renewal of destroyed or lost certificates, represented to the house the impossibility of guarding against fraud, when applications should be made for the renewal of those that might be said to have been lost; and moved that the committee should be discharged from the further consideration of the subject, so far as it extends to lost certificates.

Some remarks being made for and against the motion; and the question being taken on it, and lost.

Mr. Sedgwick soon after reported a bill for the renewal of lost or destroyed certificates, which was read a first time.

Mr. White laid on the table a resolution that a committee should be appointed to bring in a bill to provide for the settlement of unliquidated claims against the United States.

On motion of Mr. Benson, the committee of the whole house was discharged from the further consideration of the proposed amendments to the constitution, which were then referred to a committee of seven.

On motion of Mr. Lawrance, resolved that the attorney-general should be directed to report to the house such further information as he might possess, relative to the operation of the judicial system.

Mr. Vining called up a motion, heretofore made by him, for the appointment of a committee to prepare a bill or bills to establish an uniform system of bankruptcy throughout the United States. The question being taken on the motion, and carried, a committee was accordingly appointed.

A committee was also appointed (pursuant to a motion heretofore made by Mr. Fitzsimons, and since amended) to bring in a bill or bills, for the regulation of pilots, and the superintendance of the beacons, buoys, and public piers in the bay and river of Delaware, and in the bay of Chesapeake, and the rivers disemboguing thereinto.

The report of the Secretary of the department of war, on the petition of John Younglove, and the counter-petition of sundry inhabitants of the state of New-York, being then called up, a resolution was moved,

That the prayer of the petition of sundry inhabitants of the counties of Albany and Washington, in the state of New-York, for the repeal of so much of the act, entitled, "An act for the relief of disabled soldiers and seamen lately in the service of the United States, and of certain other persons," as relates to the pension of John Younglove, cannot be granted.

[John Younglove having been, but not then actually being in the service of the United States, was disabled in his own house, in repelling an attack of the enemy during the late war. He obtained from the late Congress a pension; and the contra-petitioners endeavored to effect the revocation of the grant. All the papers on this subject being referred to the secretary of the war department, he reported as his opinion, that Mr. Younglove did not, by any of the existing acts of Congress, seem entitled to a pension.]

An interesting debate took place on the propriety of withdrawing the pension. On the one hand, it was urged, that if Mr. Younglove's title was admitted, every man, who might suffer in his person or his property, from an attack of the