



CONGRESS.

PHILADELPHIA.

HOUSE OF REPRESENTATIVES,
MONDAY, FEBRUARY 6.

In committee of the whole, on the Fishery Bill.

[CONTINUED.]

MR. MADISON. In the conflict I feel between my disposition on one hand to afford every constitutional encouragement to the fisheries, and my dislike on the other, of the consequences apprehended from some clauses in the bill, I should have forborne to enter into this discussion; if I had not found that over and above such arguments as appear to be natural and pertinent to the subject, others have been introduced, which are in my judgment, contrary to the true meaning, and even strike at the characteristic principles of the existing constitution. Let me premise however to the remarks which I shall briefly offer, on the doctrine maintained by these gentlemen, that I make a material distinction in the present case, between an allowance as a mere commutation and modification of a drawback, and an allowance in the nature of a real and positive bounty. I make a distinction also, as a subject of fair consideration, at least, between a bounty granted under the particular terms in the constitution, "a power to regulate trade," and one granted under the indefinite terms, which have been cited as authority on this occasion. I think however that the term "bounty" is in every point of view improper as it is here applied, not only because it may be offensive to some, and in the opinion of others, carries a dangerous implication; but also because it does not express the true intention of the bill as avowed and advocated by its patrons themselves. For if in the allowance nothing more is proposed than a mere reimbursement of the sum advanced, it is only paying a debt; and when we pay a debt, we ought not to claim the merit of granting a bounty.

It is supposed by some gentlemen, that Congress have authority not only to grant bounties in the sense here used, merely as a commutation for drawbacks; but even to grant them under a power by virtue of which they may do any thing which they may think conducive to the "general welfare." This, Sir, in my mind raises the important and fundamental question; whether the general terms which have been cited, are to be considered as a sort of caption or general description of the specified powers, and as having no further meaning, and giving no further power, than what is found in that specification, or as an abstract and indefinite delegation of power extending to all cases whatever; to all such at least as will admit the application of money, which is giving as much latitude as any government could well desire.

I, Sir, have always conceived,—I believe those who proposed the constitution conceived, and it is still more fully known, and more material to observe, that those who ratified the constitution conceived, that this is not an indefinite government, deriving its powers from the general terms prefixed to the specified powers, but a limited government, tied down to the specified powers, which explain and define the general terms.

The gentlemen who contend for a contrary doctrine are surely not aware of the consequences which flow from it, and which they must either admit or give up their doctrine.

It will follow in the first place that if the terms be taken in the broad sense they maintain, the particular powers afterwards so carefully and distinctly enumerated would be without meaning, and must go for nothing. It would be absurd to say first, that Congress may do what they please, and then that they may do this or that particular thing; after giving Congress power to raise money and apply it to all purposes which they may pronounce necessary to the general welfare, it would be absurd, to say the least, super-add a power to raise armies, to provide fleets, &c. In fact the meaning of the general terms in question must either be sought in the subsequent enumeration which limits and details them; or they convert the government from one limited as hitherto supposed, to the enumerated powers, into a government without any limits at all.

It is to be recollected that the terms "common defence and general welfare" as here used, are not novel terms first introduced into this constitution. They are terms familiar in their construction and well known to the people of America.

They are repeatedly found in the old articles of confederation, where altho they are susceptible of as great latitude as can be given them by the context here, it was never supposed or pre-

tended that they conveyed any such power as is now assigned to them. On the contrary, it was always considered as clear and certain, that the old Congress was limited to the enumerated powers; and that the enumeration limited and explained the general terms. I ask the gentlemen themselves whether it ever was supposed or suspected that the old Congress could give away the monies of the states in bounties, to encourage agriculture, or for any other purpose they pleased. If such a power had been possessed by that body, it would have been much less impotent, or have borne a very different character from that universally ascribed to it.

The novel idea now annexed to these terms, and never before entertained by the friends or enemies of the government, will have a further consequence which cannot have been taken into the view of the gentlemen. Their construction would not only give Congress the complete legislative power I have stated: it would do more; it would supercede all the restrictions understood at present to lie on their power with respect to the judiciary. It would put it in the power of Congress to establish courts throughout the United States, with cognizance of suits between citizen and citizen, and in all cases whatsoever. This, Sir, seems to be demonstrable: for if the clause in question really authorises Congress to do whatever they think fit, provided it be for the general welfare, of which they are to judge, and money can be applied to it, Congress must have power to create and support a judiciary establishment, with a jurisdiction extending to all cases favorable in their opinion to the general welfare, in the same manner as they have power to pass laws and apply money, providing in any other way for the general welfare—I shall be reminded perhaps, that according to the terms of the constitution the judicial power is to extend to certain cases only, not to all cases. But this circumstance can have no effect in the argument, it being presupposed by the gentlemen that the specification of certain objects does not limit the import of general terms. Taking these terms as an abstract and indefinite grant of power, they comprize all the objects of legislative regulation, as well such as fall under the judiciary article in the constitution, as those falling immediately under the legislative article; and if the partial enumeration of objects in the legislative article does not, as these gentlemen contend, limit the general power, neither will it be limited by the partial enumeration of objects in the judiciary article.

There are consequences, Sir, still more extensive, which, as they follow clearly from the doctrine combated, must either be admitted, or the doctrine must be given up. If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may establish teachers in every state, county, and parish, and pay them out of the public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the union; they may undertake the regulation of all roads, other than post roads: in short, every thing, from the highest object of state legislation, down to the most minute object of police, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called, if Congress pleased, provisions for the general welfare.

The language held in various discussions of this house, is a proof that the doctrine in question was never entertained by this body. Arguments, wherever the subject would permit, have constantly been drawn from the peculiar nature of this government as limited to certain enumerated powers, instead of extending, like other governments, to all cases not particularly excepted. In a very late instance, I mean the debate on the representation bill, it must be remembered, that an argument much urged, particularly by a gentleman from Massachusetts, against the ratio of one for 30,000, was that this government was unlike the state governments, which had an indefinite variety of objects within their power, that it had a small number of objects only to attend to, and therefore that a smaller number of representatives would be sufficient to administer it.

Several arguments have been advanced to shew that because, in the regulation of trade, indirect and eventual encouragement is given to manufactures, therefore Congress have power to give money in direct bounties, or to grant it in any other way that would answer the same purpose: But surely, Sir, there is a great and obvious difference which it cannot be necessary to enlarge upon. A duty laid on imported implements of husbandry, would in its operation be an indirect tax on exported produce; but will any one say, that by virtue of a mere power to lay duties on imports, Congress might go directly to the produce or implements of agriculture, or to the articles exported. It is true, duties on exports are expressly prohibited; but if there were no arti-

cle forbidding them a power directly to tax exports could never be deduced from a power to tax imports, although such a power might directly and incidentally affect exports.

In short, Sir, without going further into the subject, which I should not have here touched on at all but for the reasons already mentioned.—I venture to declare it as my opinion, that were the power of Congress to be established in the latitude contended for, it would subvert the very foundation, and transmute the very nature of the limited government established by the people of America:—and what inferences might be drawn or what consequences ensue from such a step, it is incumbent on us all well to consider.

With respect to the question before the House for striking out the clause, it is immaterial whether it be struck out, or so amended as to rest on the avowed principle of a commutation for the drawback; but as a clause has been drawn up by my colleague, in order to be substituted, I shall concur in a vote for striking out, reserving to myself a freedom to be governed in my final vote by the modification which may prevail.

Mr. Bourne (Mass.)—Mr. Chairman, I think little can be added after so full a discussion of the subject before you. The object of the first section in this bill, is intended for the relief of the fishermen and their owners; they complain that the law now in force was meant for their benefit, by granting a drawback on the fish exported; this they find by experience is not the case—for they say that neither the fishermen who catch the fish, or the importer of the salt, receives the drawback; and I rather suppose, Sir, it is the case. The owners of the greater part of the fishing vessels are not merchants, neither do they import the salt they consume; but when the fish they take are cured for market, they are sold at the market price; and it frequently happens, that those persons who purchase the fish, are not the exporters of them, or the importers of the salt—but a third person, who purchases with a prospect of selling them at a profit, is the exporter; and when it so happens, neither the fisherman who catches the fish, or the importer of the salt, receives any benefit from the drawback, unless the purchaser (the third person) gives a greater price in contemplation of the drawback, which I think is not to be supposed.

Is it worthy the attention of government that the cod fishery should be preserved?—It appears to me that it is. When we consider the labour and assiduity bestowed on this object by our ministers, at the settlement of peace between us and Great-Britain, and the care then taken to secure this privilege, as appears by the treaty [Here Mr. Bourne read that part of the treaty which secures to us the fishery, he then proceeded] and consider the struggle made to deprive us of this inestimable branch of commerce, I cannot suppose that any one would at this day voluntarily relinquish it, and suffer Great-Britain to monopolize this branch, and supply the Mediterranean, French, and other markets. Great-Britain, at present, enjoys a sufficient portion of this commerce, while France is confined to the narrow limits of St. Peters and Miquelon. If we relinquish this branch of the cod fishery, what is left us?—Our whale fishery is nearly at an end, and unless government speedily interposes by granting relief, we shall totally lose it.—Does not the British government wish to deprive us of this branch also? have not letters or agents been sent to the island of Nantucket, as well as New-Bedford, where this branch of business is principally prosecuted, inviting the whale fishermen to remove, and offering them permanent settlements at Milford-Haven, at the expense of their government?—This must be viewed as a great encouragement, in addition to their bounties on oil, to a class of poor men employed in that business. If the cod fishery is relinquished, the fishermen have only to remove to the opposite shore of Nova-Scotia, where they will find encouragement fully adequate to their services—of all which they are not unapprized. By encouraging this class of men, your revenue will be increased; for in return for the fish exported, you will receive sugar, coffee, cocoa, indigo, molasses, pimento, cotton, dyeing woods, rum, wine, salt, fruit and other articles subject to duty, and consumed in the country.—And again, your treasury will receive an excess by the provision in this bill—for I presume the greater proportion of vessels employed in this business, are from 20 to 40 tons—the town of Marblehead, perhaps, have principally large ones. Suppose then a vessel of 30 tons obtains in a season 600 quintals of fish (a very moderate voyage indeed) her tonnage is 75 dollars, the drawback on exportation would be 78 dollars, so that your treasury retains three dollars gain by this bill, which would be a loss on the drawback.

Mr. Chairman, I think, upon the whole, that by granting this encouragement to the fishermen and their owners, held out in the bill, would prove very beneficial to the United States, I hope therefore the section before you will not be struck out.

(TO BE CONTINUED.)