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[Whole No. 403.]

CONGRESS.

HOUSE OF REPRESENTATIVES.

THURSDAY, Feb. 28.

ON the motion for referring the resolutions respecting the official conduct of the Secretary of the Treasury to the committee of the whole,

The two first resolutions being read, referring them to the committee was objected to; it was said they were abstract propositions—may contain self evident truths in themselves, but liable to modification in their application to particular circumstances; if these are referred—the committee may waste their time in discussing propositions which do not enter into the merits of the main object of the enquiry; this discussion may and probably would be spun out to such a length as to preclude a consideration of the main object; the charges adduced against the Secretary. The consequence will be that the resolutions will be printed, go out into the world, and make impressions on the public mind without being accompanied with any statements or reasonings to counteract or obviate their tendency.—That the present enquiry may involve a further step—an impeachment; it therefore appeared improper for the House to commit itself in respect to abstract positions, which would tend to embarrass both the House and the Senate should an impeachment be the consequence of the first discussion.

In answer to these objections it was said, that it was surely not the way to obtain a full discussion of a proposition to mutilate that proposition in the first instance.—That every member has a right to bring forward such propositions as he thinks proper—that it appeared a strange way to decide on the merits of a proposition, to preclude the House from a consideration of all the parts of such proposition.—That a difference of opinion appears to exist in the construction of the law between Congress and the Secretary of the Treasury.—That the two first propositions may be considered in the light of a preamble to a subsequent act—which is afterwards susceptible of modification but does not in any stage of the deliberation on the act, fetter or embarrass that deliberation.

The last resolution is to this purport, That a copy of the foregoing resolutions be laid before the President of the United States.

It was remarked on this, that the obvious motive for it is, that the President may take a hint to dismiss the officer in question from office—this it was said was giving the Resolutions all the force and effect of an impeachment; for dismissal from office is the only consequence of impeachment—so that the responsible officer is in this way to suffer all the consequences of criminality without one of the forms prescribed by the constitution in cases of impeachment.

The following remarks were made by Mr. Smith, of South-Carolina, on this occasion:

Mr. Smith was decidedly opposed to referring those resolutions to the consideration of the committee of the whole house, because he neither viewed a discussion of them as necessary on the present occasion or warranted by the nature of the inquiry into the Secretary's conduct. It was trifling with the precious time of the House to lavish it on abstract propositions, when the object of the enquiry ought to be into facts; he was satisfied that should the House once involve itself in an investigation of theoretic principles of government the short residue of the session would be exhausted, and no opportunity remain for examining the charges themselves; those charges being made, it became the House from a sense of duty to the public and justice to the accused to proceed immediately to consider them. If the mover intended to apply the principles of the two first resolutions to the facts contained in the subsequent ones, it was unquestionably proper first to substantiate the facts and then establish the principles which were applicable to them, but it was surely a reversal of order to spend much time in establishing principles, when it might happen that the charges themselves would be totally unsupported. He did not like this mode of proceeding because it might tend to mislead the House; it was sometimes a parliamentary practice to endeavor to lead the mind to vague and uncertain results by first laying down theorems from which no one could dissent and then proceeding to imperceptible shades to move unsettled positions in order ultimately to entrap the House in a vote which in the first instance it would have rejected. This mode of conducting public business he considered as inconsistent with fair inquiry. The question was, had the Secretary violated a law? if so, let it be shewn; every member was competent to decide so plain a question; he could examine the proofs, read the law, and pronounce him guilty or innocent without the aid of those preliminary metaphysical discussions.

If it were urged that the propositions are so plain and obvious that no time would be lost

in considering them, he then begged leave to observe that all antecedent discussions of constitutional questions had never failed to occupy a large portion of their time and that however self-evident the resolutions might at the first glance appear, a more critical attention would satisfy a mind not much given to doubt that they were by no means so conclusive as to be free from objections.

Though the position contained in the first resolution, as a general rule, was not to be denied; yet it must be admitted that there may be cases of a sufficient urgency to justify a departure from it, and to make it the duty of the legislature to indemnify an officer; as, if an adherence would in particular cases, and under particular circumstances, prove ruinous to the public credit, or prevent the taking measures essential to the public safety, against invasion or insurrection. In cases of that nature and which cannot be foreseen by the legislature, nor guarded against, a discretionary authority must be deemed to reside in the President, or some other executive officer, to be exercised for the public good; such exercise instead of being construed into a crime, would always meet the approbation of the national legislature: if there be any weight in these remarks it does not then follow as a general rule, that it is essential to the due administration of the government, that laws making specific appropriations should in all cases whatsoever, and under every possible circumstance be strictly observed. Before the committee could come to a vote on such a proposition, it would be proper to examine into the exceptions out of the rule, to state all the circumstances which would warrant any departure from it, to whom the exercise of the discretion should be entrusted, and to what extent. Did any member wish at this period to attempt this enquiry? He supposed not. Let every deviation from law be tested by its own merits or demerits.

The second resolution was liable to stronger objections; it might with propriety be questioned whether as a general rule the position was well founded. A law making appropriations may be violated in various particulars without infringing the constitution, which only enjoins that no monies shall be drawn from the treasury but in consequence of the appropriations made by law; this is only to say, that every disbursement must be authorized by some appropriation; where a sum of money is paid out of the treasury, the payment of which is authorized by law, the constitution is not violated; yet there may have been a violation of the law in some collateral particulars; there may even have been a shifting of funds, and however exceptionable this may be on other accounts, it would not amount to that species of offence which is created by the constitution. The comptroller of the treasury must countersign every warrant, and is responsible that it be authorized by a legal appropriation—yet it cannot be supposed that he is to investigate the source of the fund.

One of the alleged infractions stated in the subsequent resolutions, namely, the drawing part of the loans into the United States without the instructions of the President, evinces that the opposite construction is not a sound one, for suppose the fact proved, and suppose it a violation of the law, it certainly would be a very different thing from drawing money out of the treasury without an appropriation by law, for in this case there would be no drawing money from the treasury at all, the money never having been in the treasury.

Mr. Smith then said, he should also object to referring the last resolution, which is in these words, Resolved, that a copy of the foregoing resolutions be transmitted to the President.

The object of this resolution went clearly to direct the President to remove the Secretary from office: the foregoing were to determine the guilt, the last to inflict the punishment, and both the one and the other without the accused being heard in his defence; when the violation of the constitution was so uppermost in our minds, it would be indeed astonishing that we should be so hood-winked as to commit such a palpable violation of it in this instance. The principles of that constitution, careful of the lives and liberties of the citizens, and what is dearer to every man of honor his reputation, secure to every individual in every class of society, the precious advantage of being heard before he is condemned.

That constitution, peculiarly careful of the reputation of great public functionaries, directs that when accused of a breach of duty, the impeachment must be voted by a majority of the House of Representatives, and tried by the Senate, who are to be on oath, and two thirds of whom must concur before a sentence can pass, by which the officer is to be deemed guilty.—The officer is to be furnished with a copy of the charge, and is heard by himself or his counsel in vindication of his conduct.—Such are the solemnities and guards by which they are protected, and which precede a sentence, the only effect of which is a removal from office. But if the House proceed in the

manner contemplated by this resolution, if they first vote the charges, and send a copy of them to the President, as an instruction to him to remove the officer, they will violate the sacred and fundamental principles of this, and every free government; they will condemn a man unheard, nay, without his having even been furnished with the charges against him; they will condemn to infamy a high and responsible officer, convicted by the Representatives of the people, of a violation of the important trusts committed to him, without affording him one opportunity of vindicating his character and justifying his conduct.

In committee of the whole, Mr. Muhlenberg in the chair, on the 3d, 4th, 5th, 6th, 7th, and 8th resolutions, as published in the Gazette of Wednesday last.

MR. GILES, the original mover of the resolutions, rose. He was sensible, he said, that he stood in a peculiarly delicate situation, in which nothing short of the public good, could have induced him to place himself. If a public and highly responsible officer had violated the laws, it was necessary that he should be called to an account for it; and to determine, whether in the instances before the house he had been guilty of that violation, it is necessary to compare the testimony with the facts alleged in the resolutions before the committee. He first adverted to the law authorizing the President of the United States to borrow 12 millions of dollars, for the purpose of paying the foreign debt. On this he remarked, that the authority of borrowing was expressly given to the President, no doubt with an eye to the personal virtues of the character who fills that office; the loan is also directed to be made, solely for the purpose of paying the public debt. Here he remarked, that in every appropriation-law the appropriation is always emphatically mentioned, which is an evidence that the legislature intend to remain the sole judges of the applications of money. He read a letter from the Secretary of the Treasury, who was employed by the President to negotiate this loan, to Mr. Short, the Secretary's foreign agent for this purpose, dated the 9th May 1791, in which the Secretary informs Mr. Short, that one million and a half of the money he had obtained on loan was destined for France; of which sum he was authorized to apply immediately one million, but to reserve 800,000 florins to answer subsequent directions he should receive from the treasury. He cited this passage to shew that the million and an half which had been obtained on loan, was destined for France.

To remove any doubt that might remain upon this head, he referred to a preceding letter from the Secretary to Mr. Short, dated the 13th of April, in which it is also expressly said, that of the two millions borrowed, one million and an half is intended for France, the remaining half million to wait for further directions. Having established this point, he adverted to the resolution before the committee, which says, that he applied a portion of the principal borrowed to the payment of the interest falling due upon that principal, without being authorized so to do by any law. To shew this he referred to a report of the 3d January, containing sundry statements respecting foreign loans. That part of the report to which he alluded in proof of the fact, stated in general terms, a sum paid on account of foreign loans, and this sum was taken from the principal borrowed, and amounted to 1,833,189 florins. If his statement was accurate, the fact he wished to establish was, he said, proved. He wanted more light, however, he confessed, than he could collect from the Secretary's official communications. He should not go into the examination of what circumstances might have induced the Secretary to deviate from the positive injunctions of the law, or to make any remarks upon his conduct, until he had heard what gentlemen would say to controvert the fact he wished to establish.

Another fact of consequence he wished

to prove, viz. that part of the money obtained on loan in Europe had been drawn over, though not wanted here for any public purpose: this appeared, he said, from other papers.—He turned to the instructions from the President to the Secretary of the treasury, authorizing him to borrow fourteen millions of dollars, in which the Secretary is cautioned to keep in view the two several acts authorizing the loans, and the distinct conditions they contemplate. By the instructions of the President the Secretary is authorized to apply the monies. In the execution of the trust confided to him, the President generally directs him to employ Mr. Short to negotiate the loans, to borrow in the manner prescribed by the acts, and to discharge immediately the arrears of interest due to the French, to which purpose and to the complete payment of that debt, the 12 million loan was altogether appropriated. If this money, then, was shewn to have been drawn here, it was neither warranted by law nor by the President's instructions. The Secretary did begin to draw as early as 1790, and had continued to draw from time to time, till 1793, without giving notice of this to the legislature. Having shewn that the Secretary had drawn without authority to draw, he next proceeded to consider the object of those drafts.

The money thus drawn for was not, he stated, applied to the purchase of the public debt; no money obtained from foreign loans was thus applied until this year; the domestic resources appropriated to this object were never exhausted. These were the facts involved in the first resolution, which he wished to establish: before he proceeded further into the discussion, he wished to hear what gentlemen had to say to controvert them. He wished to see justice done in the business before the house; he meant justice, also, to be tempered with moderation and mercy, and if gentlemen could shew a necessity for the deviations from positive law, which he had endeavoured to point out, it would exonerate the Secretary from a very great share of blame.

Mr. Barnwell called for the reading of certain parts of the two acts authorizing the loans. One, of the 4th of August, authorizes a loan of 12,000,000 to be obtained without limitation as to the interest, for the purpose of paying the foreign debt, the other is of the 12th of August, for 2,000,000, the interest to be not more than 5 per cent. and for the purpose of reducing the domestic debt.

Mr. Sedgwick lamented the shortness of the time for the discussion of an object of so much importance to the party accused, and in which the honor of the government and the peace and quiet of the community were so deeply interested. For what object, he asked, was this extraordinary investigation at this time? It was not for the detection of fraud, corruption, peculation? These charges were relinquished, and now the prosecution was confined merely to an enquiry whether this officer had discreetly and ably discharged the important duties assigned to him; whether he had observed by shillings and pence, during the course of his administration, the precise limits of his authority, in points of appropriation; and whether, from conscious innocence, he has dared to express to this House, the natural sentiments of an injured and meritorious officer in language offensive from being too plain not to be understood, and too bold not to give offence, in short, in the language of freedom. Gentlemen did not hesitate, for these unimportant purposes, to consume the greater portion of the few days allotted to our political existence, and even attempt to agitate by founding an alarm, the public mind from St. Croix to St. Mary's: and for what ends? Did the gentlemen prosecuting propose an impeachment? No, they expressly disavowed any such intention. For what other purpose we were authorized