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[Whole No. 405.]

CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, March 1.

In committee of the whole, Mr. Muhlenberg in the chair, on the 3d, 4th, 5th, 6th, 7th, and 8th resolutions, respecting the official conduct of the Secretary of the Treasury, for which see Gazette of the 6th inst.

MR. MERCER. None of the communications from the Secretary of the Treasury, he said, had removed his suspicions relative to the transactions of that department; what had fallen in the course of the discussion had not removed his doubts. He confessed himself more at a loss than ever to account for the conduct of that officer. To judge of the propriety of his conduct, it was necessary to consider what his duties are, and investigate whether a necessity existed to justify the drawing complained of. Gentlemen in their arguments had alluded to some observations that had fallen from him on other occasions expressive of his opinion—that there had been corruption in that department. This opinion he still entertained. He suggested that some irregularities had, he believed, taken place as to the money appropriated to the sinking fund. This might be the fact, and his suspicions were sufficiently urgent to warrant him in suggesting, that it might be possible. At the close of ninety-two he stated there was a balance of cash in the treasury of 2,331,182 dollars; and the bonds due in the course of the present year would produce a sum of about 2,269,000 dollars—Yet a proposition was made in the House, predicated on a total want of money in the treasury, to borrow 800,000 dollars in addition to the 400,000 already borrowed of the bank.

Here Mr. Boudnot interrupted the member, as being out of order.

The Chairman, conceiving Mr. Mercer's remarks to be introductory to, and connected with the observations he intended to make on the resolution, declared him in order.

Mr. Mercer proceeded to shew, by sundry statements and calculations, that there was no necessity for this loan of 800,000 dollars. The House, he said, to discharge their duty, should be satisfied how the money appropriated was applied, before they consented to repeated additional appropriations. When calls for information had been made by the House, with a view to comply with this their indispensable duty, the Secretary had thought it sufficient to balance money actually received, by calculations of sums that would probably be wanted agreeably to appropriations—Were dollars, he asked, to be balanced by obsolete appropriations? can things certain be balanced by things uncertain?—Actual expenditure would alone balance actual receipt. Appropriations founded only on uncertain calculations could not shew the money actually laid out. He adverted to some calculations made to ascertain the probable expenses of the war department.

Here the member was again called to order, and was declared out of order by the Chairman.

Mr. Mercer confined his observations more immediately to the resolution before the committee. It had been said that the interest paid was paid out of monies that were to be drawn to this country, and were replaced here by funds from the domestic resources originally appropriated for that object, and that the dead letter of the law, if any part of it, had alone been violated. He contended there had been an essential violation.

The sums drawn for and appropriated to reduce the public debt, were not applied to that purpose; the domestic resources appropriated to that object, never were exhausted. If this is the case, conclusions surely unfavorable to that officer must naturally follow.

He proceeded to make some remarks on the question, whether the Secretary had acted under instructions from the President. It was disagreeable, he premised, to criminate the character of any officer. He bore a great respect for the President, for his virtues, talents, and services, but however grating to his feelings it might be to find fault with any part of his conduct in this business, he was unable to discharge his duty under his present impressions, unless he avowed that he conceived that officer had violated the law, though he allowed, without intention, by not enquiring into the business, while transacting, as it was his duty to do. He must declare that he saw no proof that the Secretary had acted under the President's instructions; on the contrary he saw the reverse, there was even no presumptive proof of the act.—The House had called for information as to the extent of the authority delegated in the business by the President to the Secretary. Either the Secretary has produced the proof of this authority, or he has not complied with the order of the House;—it does appear that he has gone beyond it in making the drafts complained of. The President directed that the proceeds of the loan be immediately applied to pay the French; yet a great portion

of that money was brought over here. It was said, that he might have brought the whole here, if he chose, and paid it to the French here. This argument goes on the presumption, he observed, that the President might do wrong without incurring blame. But the President expressly directed it to be paid immediately to France; and the House had no right to presume that he did direct the money to be drawn here, when proof to the contrary appears. Upon the whole, he concluded that the law had been broken in letter and substance, and that the Secretary had acted without proper instructions from the President.

Mr. Livermore observed, that the charges against the treasury department were at first well calculated to beget serious alarm. When misapplications of the public money are founded in the public ear, all feel interested, knowing, that what affects the public purse, must in a degree affect the purses of each private individual. In the present stage of the business, he was happy in being able to felicitate himself and his fellow-citizens, that even should the whole of the charges contained in the resolutions be proved, it would not appear that they had lost a farthing by the business so loudly complained of. What is the charge? That the Secretary has paid an interest that was justly due; why then, he presumed, we should not have it again to pay. If the Secretary has paid what was due, what then is the complaint? It was surely not intended, that it should not have been paid. This was not the intention of Congress; for they passed an act providing funds for its payment; the Secretary was then right to pay it. But it is said, he paid it with the wrong money; he saw no harm in not paying it with the very dollars appropriated, and approved of the operation, which saved drawing with the one hand and remitting with the other; in this there was no crime committed, no loss incurred. It appears, on the contrary, that something was gained by it: So far then, he was clear, no law had been violated, nor was any rule of propriety departed from.—He then touched upon the Secretary's disputed right to draw. He contended, that he had that right. The loans were obtained under the joint authority of the two acts. It was said that more than two millions, the amount appropriated for the sinking fund, were drawn over; but, he insisted, he might have drawn the other twelve millions, if it had been for the public interest so to do. The French wished to be paid here, and it being no loss, rather a profit to comply with their wish, where was the harm in so doing? If any public loss had been incurred owing to these drafts, then blame would lie. He concluded, by expressing his hearty approbation of the conduct of the officer who is criminated by the resolutions, and declared it as his firm intention to give them his negative.

Mr. Smith regretted that so important an enquiry had been instituted at the very close of the session, when the members were thronged with business of an indispensable nature, and it was scarcely possible for them to bestow that attention and deliberation, which the nature of the business called for. But, while he expressed this regret, he assured the committee that it was mingled with much satisfaction in finding that the vague charges of mismanagement, with which the public had long been alarmed, were at length cast into a shape, susceptible of investigation and decision.

Previous to an examination of the specific charge then under consideration, he claimed the indulgence of the committee, in offering a few preliminary remarks, which, though they did not bear precisely upon the charge itself, yet were intimately connected with the subject-matter of the enquiry, and were justified by the general remarks of gentlemen, who had preceded him.

In recurring back to the origin and progress of this examination, he said, it must appear somewhat surprising, that that, which, in the commencement of the session, was founded forth as gross speculation, now turned out to be nothing more than a mere substitution of funds, and that that which was announced as abominable corruption, was dwindled away into a mere drawing of money from Europe into this country, to be applied here according to law.

Whatever credit might be due to the motives which had originated this enquiry, every member would concur in the sentiment, that in a government constituted like that of the United States, which had nothing but the public confidence for its basis, premature alarms and groundless suspicions respecting the conduct of public officers, were pregnant with the most injurious consequences.

This opinion was more peculiarly applicable to the important station of the Secretary of the Treasury. Entrusted with the management of a large revenue, and necessarily clothed with some latitude of discretion, it was to be expected that he would excite the jealousy of the public vigilance; but as long as he kept in view the injunctions of law, and the public good, his reputation was entitled to that security which is due to every citizen.

An officer, entrusted with the care and distribution of public monies, is generally looked at with a watchful eye; mankind are too prone to suspect the purity of his conduct; slight insinuations are but too often sufficient to injure him in the public estimation. Such being the natural propensity of things, it doubtless behoved those who wished for tranquility in the country, to withhold charges, not clearly warranted by proof—to suspend animadversions which were not likely to terminate in conviction. A contrary proceeding had an inevitable tendency unnecessarily to alarm the public mind, to instil into it suspicions against the integrity of men in high stations—to weaken their public confidence in the government, and to enervate its operations.

There was something remarkable in the nature of the present allegations against the Secretary; taking them all into view, they presented nothing which involved self-interested pecuniary considerations; and in this, they essentially differed from accusations against financiers in other countries, to whom motives of interest were generally ascribed as the source of their speculations. To the Secretary no such motive was imputed; notwithstanding former insinuations against his integrity, the sum of all the charges now amounted to nothing more than arrogance, or an assumption of power, or an exercise of unauthorized discretion.

With respect to discretion, Mr. Smith observed, that though in the present enquiry it was not necessary to say much on that topic, being firmly persuaded the Secretary had strictly pursued the injunctions of law, yet, while on the subject, he took occasion to insist that in all governments a latitude was implied in executive officers, where that discretion resulted from the nature of the office, or was in pursuance of general authority delegated by law. This principle was so obvious that it required no illustration; were it contradicted, he would appeal to the conduct of the Secretary of State, who, though directed to report to the House on the commercial intercourse with foreign nations, had, in the exercise of a warrantable discretion judiciously withheld his report: he would appeal to the report of the committee on the failure of St. Clair's expedition, wherein that failure was in part attributed to the commanding general's not being invested with a discretion to act according to circumstances.

There was one more observation which he thought proper to premise before he entered into a discussion of the charges; and that was the disadvantageous situation in which the financier of this country was placed, when compared with that of similar officers in other nations. The minister of finance in Great-Britain being always a member of the legislature and on a footing with other members, was prepared to defend himself when attacked; no charge could be made against his administration, which he had not an immediate opportunity of repelling, and the charge and the refutation went out to the world together. The Secretary of the Treasury was on the contrary not even permitted to come to the bar, and to vindicate himself. Through the imperfect medium of written reports he was compelled, when called upon for information, to answer, as it were, by anticipation, charges which were not specific, without knowing precisely against what part of his administration subsequent specific charges would be brought to bear.

If in his reports he was concise, he was censured for suppressing information; if he entered into a vindication of the motives which influenced his conduct, he was then criminated for stuffing his reports with metaphysical reasonings. A gentleman from Pennsylvania (Mr. Findley) had said that the Secretary's reports were so voluminous that he was quite bewildered by them, and that instead of their throwing any light on the subject, he was more in the dark than ever. It is true, the reports were voluminous, but not more so than the imputations on the Secretary's conduct, and the orders of the House justified. He did not think that any member who had attentively perused them, could justly complain of want of information, or of being more in the dark than before: he on the contrary believed, that so much light had been thrown on the whole of the Secretary's fiscal operations, that if any member could not see it must be owing to the glare of light being too strong for his eyes.

Having made these observations, Mr. Smith said he should proceed to examine the first charge, which, after much reflection bestowed upon it, appeared to him to contain nothing that was not authorized by the strict letter of the law.

Mr. Smith, in his examination of the charge under consideration, observed that it consisted of two items: the first, the application of a certain portion of the principal sum borrowed in Europe, to the payment of the interest falling due upon that principal, which it was contended was not authorized by any law; the second, The drawing part of the

same monies into the United States, without the instructions of the President.

The first item of this supposed violation of law appeared of so frivolous a nature, that it did not merit much discussion; at any rate, it was more an objection of form than of substance. If he comprehended well the purport of the charge, it was nothing more than this—that the secretary, having monies at his disposal in Europe applicable to the purchase of stock in this country, and having at the same time monies in this country applicable to the payment of the interest abroad, had substituted the one for the other; he had paid the foreign interest out of the foreign funds, and he had purchased stock with the domestic funds.—This was the heinous crime with which he was charged, and which was thought sufficient to remove him from office! If the money in Europe might have been drawn to this country by bills, for the purchase of the debt, it might have equally been drawn here, by ordering the application of a sum there (in Europe) for a purpose which would be represented by an equal sum here, to be applied to the purchase. The substance, not the form, is to decide whether this mode of negotiating the business was proper. Suppose bills had been ordered to be drawn on the commissioners, and remitted to them, on account of the foreign interest, would not this have been as regular as to draw them for sale? Did the execution of the law require, that the secretary, having funds in Europe, with which the foreign interest might be discharged, should nevertheless remit monies abroad for that purpose, and then, having funds in this country, with which the purchases of the debt might be made, should draw bills to bring the foreign funds here? Was there any necessity for this complex operation, for the expence of remittance, the probable loss on the sale of bills, the loss of interest while the money was in transitu, when the whole business could be negotiated by the simple and economical mode pursued? So far from this arrangement being a ground of censure, Mr. Smith asserted that, had the secretary pursued the other mode, he would have been animadverted upon with great severity, for such an absurd and expensive operation; he would have been accused of ignorance of his duty, and every loss incidental to the transaction would have been charged to his account.

The second division of the charge, being of more magnitude, required a more lengthy discussion. This instance of violation consisted in a supposed deviation from the instructions of the President, or a supposed acting without any instruction whatever. It was, however, begging the question; it was taking for granted that which did not appear, and which ought not to be presumed. And here Mr. Smith observed, the gentlemen on the other side had entirely reversed one of the fundamental maxims of criminal jurisprudence, which declared that innocence should be presumed, and guilt proved; whereas they had presumed guilt, and called upon the accused to prove his innocence.

And what was the slender basis on which the presumption was built? Why, say the gentlemen, the instructions from the President to the Secretary, which have been laid before the house, relate only to the payment of the French debt, and convey no authority to draw any of the foreign loan into this country for the purchase of stock, and hence they infer, he had no authority for this latter purpose.

To comprehend the fallacy of the inference, it was only necessary to recur to the laws, and to the President's commission to the secretary to negotiate the loans. Two acts of Congress had passed; one the 4th of August, the other the 12th August, 1790. The first authorized a loan of 12 millions of dollars, applicable to the payment of the French debt; the other a loan of 2 millions, applicable to the purchase of the domestic debt. The President's commission to the secretary embraced both acts and both objects, and under that commission one loan was negotiated applicable to both objects. True it is that the President's first instructions