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[Whole No. 406.]

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.

(CONTINUED.)

MR. LEE observed, that as he found himself under the necessity of differing from his friend who had moved the resolution, with whom he generally agreed in opinion—and was accustomed to act, he begged the attention of the committee for a few minutes.

Mr. Lee observed, to determine whether the Secretary of the Treasury had acted legally, it was necessary to examine whether the authority from the President and his subsequent instructions, authorized him to consolidate the loans under the acts of the 4th and 12th of Aug. 1790.

On this question Mr. Lee observed that there seemed to be no objection to such a construction, except that which arose from the difference of interest allowed by those acts. That the first loan was commenced without any regular authority by a company in Amsterdam; that it received its authenticity from the acceptance to the Secretary of the Treasury. The interest and doucours on this loan amounted to more than an interest at 5 per cent, which was the only premium contemplated by the act of the 12th of August. It could consequently be accepted only under the act of the 4th of August, which gave no limitation to the interest which was to be allowed. This money seemed therefore solely applicable to the payment of the foreign debt. From his report of the 24th of Feb. 1791, the Secretary himself seemed to have had this impression. Congress seemed also to have had this impression, as on the 3d of March following they passed an act authorizing the application of this loan to the object of the act of the 12th of Aug. 1790.—After the 3d of March 1791, therefore, the Secretary of the Treasury had a right to bring this money to America for the purposes of the sinking fund. The interest of the foreign debt becoming due, for which domestic revenues were pledged, he thought it prudent to pay that interest out of this loan, relying on the domestic revenues to replace it, for the purposes of the sinking fund. This was a mode of bringing the money here, and he was not limited in his discretion as to the mode—and therefore had a right to follow that which appeared to him most advantageous. The paying of the foreign interest out of this loan was made after the 3d of March 1791.

Mr. Lee had no doubt as to the legality of all the proceedings relative to monies drawn to this country subsequent to the 3d of March 1791—even the monies borrowed for the foreign debt, because an higher interest than 5 per cent. was stipulated for, on any of the subsequent loans, and because the President in his instructions to the Secretary leaves the mode of paying the foreign debt to his discretion. If he judged it for the advantage of the United States to bring this money, in the first place, to America, the legality of such a measure cannot be questioned, tho' the economy and wisdom of it may not be admitted. On this point Mr. Lee acknowledged—that he had not time to examine minutely all the statements and reports of the Secretary, to judge of those exigencies which induced the drawing of all the money which had been drawn to America.

Whether it had been consistent or not with the interest of the United States—Mr. Lee was of opinion, that the Secretary had legally a right to bring all the money he had drawn for to America, except what was drawn prior to the 3d of March 1791. This money was drawn

out of the first loan; it was drawn, as declared, for the sinking fund;—the first loan, for the reasons before stated, could not be applied, and consequently, till the act of the 3d of March 1791, this money could not be legally drawn for to the sinking fund. Perhaps this act caused the irregularity of this proceeding.

But is not the Secretary of the Treasury subject to blame? Mr. Lee observed he thought he was not altogether free from it. At the meeting of Congress on the 8th day of Dec. 1790, the President in his speech informed both houses, that the first loan had been accepted, and that the secretary of the treasury had directions to lay the particulars before them.—But what did he do? On the 15th of Dec. following, he began to draw money on account of this loan to America, for the sinking fund; though from this report on the 24th of Feb. 1791, he appears to have had a doubt as to the legality of this proceeding—he delayed giving information, in conformity to the President's speech, till a few days before the dissolution of Congress. This conduct, Mr. Lee said, seemed to argue a distrust of the legislative councils. Mr. Lee dilated on the necessity of the purest and most confidential communication between the secretary of the treasury and the legislature; and said, though he could not agree to the resolution then under consideration, there was one, subsequent to it, relating to this point, which he was sorry to find himself under the necessity of voting for.

MR. BOUDINOT called the attention of the committee to the change in the usual situation of the House. They were no longer acting in a legislative capacity, but were now exercising the important office of the grand Inquest of the nation: It was necessary he said, to advert to this circumstance, to prevent running into the diffuse mode of argument that had improperly been adopted on this occasion. A gentleman of this committee had thought proper to institute an enquiry into the conduct of an officer of the government, in a very important and highly responsible station. He had exhibited his charges against him in writing—had reduced them to certain and specific facts. To these, and to these alone he had pointed his evidence, and we were bound in honor and conscience to give a just and decisive opinion on each independent charge.—In the first place the truth of the facts must be settled and established—if in their favour, the criminality would then necessarily require a second consideration. The honor and reputation of the officer thus charged, as well as the respect due to the gentleman who had brought forward the accusation, required a steady, uniform, and disinterested examination of every question from us.

Under this view of the subject, Mr. Boudinot said, he should avoid the defultory mode of argumentation that had been run into on both sides, and confine himself to the nature of the facts charged, and the evidence adduced in support of them. The short time that yet remained of the session, was too precious to waste in collateral arguments, or the consideration of merely presumptive proofs.

The first charge in the resolution now before the committee, was, "That the Secretary of the Treasury has violated the law passed on the 4th of August 1790, making appropriations of certain monies authorized to be borrowed by the same law, in the following particulars, to wit:

"1st. By applying a certain portion of the principal borrowed, to the payment of interest falling due upon that principal, which was not authorized by that or any other law."

"2d. By drawing part of the same monies into the United States, without the instruction of the President."

These specific charges make it necessary for us to understand determinately the terms of the act mentioned in the resolution, and the nature of the proof offered in its support.

By the act of the 4th August 1790, sect. 2d,—"The President of the United States is authorized to cause to be borrowed, a sum or sums not exceeding in the whole 12,000,000 of dollars; and that so much of this sum as may be necessary to the discharge of the arrears of interest on loans heretofore made by the U. States in foreign countries, and the instalments of the principal of the said foreign debt, and (if it could be effected upon terms advantageous to the United States,) to the paying off the whole of the said foreign debt, be appropriated solely to these purposes, and the President was moreover further authorized to cause to be made such other contracts respecting the said debt as should be found for the interest of the said States."

It is asserted by the prosecutor of these charges that this act contains an emphatic appropriation

of the whole of the 12,000,000 of dollars to the payment of the foreign debt.

By a letter to Mr. Short of 9th May, 1791, read in the committee, it appears, that a loan of 3,000,000 of florins had been made; and that one half only was appropriated to the payment of our debt to France; and that 800,000 florins was to be drawn to this country. This was said to be contrary to the terms of the appropriation, and without authority; and the Secretary's report of Jan. 3d, 1793, fol. 3, was referred to, in proof of the fact—"that the interest arising on the principal borrowed under this act, was paid out of that principal," when by the same law, part of the domestic revenues of the United States, was appropriated to that purpose: The words of the report are, "payments on account of other foreign loans made and to be made to the first Jan. 1793, inclusively."

Feb. 1, 1791.—289,783 florins 6 stivers, with several other payments on the same terms, till Jan. 1st, 1793, amounting in the whole to 1,833,189 florins, 2 stivers, 8 den. These payments were asserted to be on account of interest on the principal borrowed, but without further proof.

By the report, fol. 4, it appears that on the 1st of Feb. 1790, there was borrowed no more than 1,167,000 florins, on which was due the 1st of Feb. 1791, one year's interest, amounting at 5 per cent. to 58,350 florins; but this evidence proves that 289,783 florins were paid on that day. Can gentlemen be serious when they assert that this was for interest on this principal borrowed being almost 25 per cent. per annum, instead of five. This certainly is an inattention to the subject that the serious nature of the charge, cannot justify.

Mr. B. then asserted that on a critical examination of these items, they will be found to be instalments of the Dutch loans made by the old Congress; and which this money was expressly appropriated to discharge.—But Mr. B. said he did not mean to avoid the fact, had it been proved, but he denied that any evidence fo its role from this testimony.

The President was generally authorized to make the loans.—Money arising from a domestic fund was appropriated to pay the interest. It happened that this loan was made in Europe, to the amount of 3 millions of florins.—Part of it was to be drawn to this country, but before that event interest became due; this was paid out of the monies intended to be drawn into this country, and re-paid by the fund here, to prevent the unnecessary sending the monies from one country to the other.

Mr. B. asked, if the Secretary of the Treasury had acted otherwise, would any man in his senses have thought him worthy of the trust committed to him? But the gentleman has proceeded on this charge, (and has so expressed himself) as if this loan was exclusively made under the act of the 4th August, mentioned in the resolution before us, and therefore was wholly appropriated by law to the payment of the foreign debt, and ought not, in any part, to have been drawn into this country for other purposes. This brings to consideration the act of the 12th August, 1790, passed eight days after the act alluded to. By the 4th section of this act, "the President of the United States is authorized to cause to be borrowed, a sum or sums not exceeding 1,000,000 of dollars at an interest not exceeding 5 per cent; and that the same should be applied to the purchase of the debt of the United States. The difference between these acts was, by that of the 4th of August, the President had a discretion as to the application of the sum borrowed towards payment of the whole of the foreign debt over and above the instalments, depending upon terms of advantage to the United States.

By the second act, there was no discretion, the whole monies being positively directed by law to be applied towards the purchasing of the domestic debt. By the first there was no restriction in point of interest to be paid, but an injunction that the terms of repayment should be stipulated within 15 years.—By the second interest was restricted to 5 per cent. and no terms of repayment enjoined. By the preamble to the first law, the object of it appears to be the doing of justice, and supporting the public credit by the payment of the foreign debt.—by that of the second, "the reduction of the public debt, which would be beneficial to the creditors of the union by raising the price of their stock, and be productive of savings to the U. States."

By virtue of these acts the President thought proper to constitute the Secretary of the Treasury his agent to make the loans; and accordingly on the 28th August 1790, by a commission under his hand and seal, reciting both the said laws, authorized him, "by himself or any other person or persons generally, to borrow within the U. States or elsewhere, a sum or sums not exceeding in the whole 12,000,000 of dollars, subject to the restrictions and limitations in the said several acts contained.

With this commission the Secretary received instructions relative to the said loans in these words: You shall borrow or cause to be borrowed, on the best terms which shall be found practicable, and within the limitations prescribed by law as to the time of repayment, and rate of in-

terest of such sum or sums as shall be sufficient to discharge as well all instalments or parts, of the principal of the foreign debt, which now are due or shall become payable to the end of the year 1791, as all interest and arrears of interest which now are or shall become due in respect to the said debt to the same end of the year 1791.—And you shall apply or cause to be applied the monies which shall be so borrowed, with all convenient dispatch to the payment of the said instalments, and parts of the principal and interest, and arrears of the interest of the said debt. You shall not extend the amount of the said loan beyond the sum which shall be necessary for completing such payment, unless upon terms more advantageous to the United States, &c. &c.

These institutions related solely to the application of the 12,000,000, the 2,000,000 as before observed, being applied by law without any discretionary power to the reduction of the public debt.

Under this commission it is in proof the Secretary caused 3,000,000 of florins to be borrowed in Europe generally, without expressing particularly under which law, but reciting them both. He directed half of this sum to be applied to the payment of the foreign debt and part of the other half he appropriated for the purposes mentioned towards the reduction of the public debt. But it is insisted, that the whole of this money was borrowed, under the act of the 4th August, and therefore it was highly criminal to apply any part of it to the discharge of the interest arising on the principal so borrowed, there being another fund designed for that purpose. But it has clearly appeared, that the Secretary made this loan in Europe, where the interest was to be paid and had become due; the fund for its payment was in this country, and therefore if he was authorized to draw any part of that principal into the United States, it was a mere productive and economical operation, to pay the interest there out of those monies on the spot, and repay them out of monies here, where they were to be applied and by that means prevent the loss, of insurance and interest, that must have arose by any other negotiation. This question then depends wholly on the fact, whether this money was borrowed by virtue of both acts or under that of the 12th of Aug. exclusively.

The loan was made at 5 per cent. subject to charges and doucours of 4 and a half per cent. on the whole. The Secretary thought this within the act of the 12th of August, limiting him to an interest not exceeding 5 per cent.—This was the opinion of others besides the Secretary. Mr. Boudinot himself had been of that opinion, and at the time thought an application to the legislature unnecessary. But the prudence and caution of the Secretary led him to state this fact to Congress for their consideration and determination, who by an act of the 3d March 1791, declared their sense of the act of the 12th August, and that the loan was legally made under that act. The preamble to this act removes all doubt on this question: "Whereas it hath been made known to Congress, that the President of the United States, in consequence of an act making provision for the reduction of the public debt, (this is that of the 12th of August) hath caused a certain loan to be made in Holland, on account of the United States, to the amount of 3 millions of florins, bearing an interest of 5 per cent. &c. And whereas it hath been also stated to Congress, that the charges upon said loan have amounted to 4 and an half per cent. whereby a doubt hath arisen, whether the said loan be within the meaning of the said last mentioned act, which limits the rate of interest to 5 per cent. per annum. And whereas it is expedient that the said doubt should be removed,—be it enacted, &c. that the loan aforesaid shall be deemed and construed to be within the true intent and meaning of the said act, making provision for the reduction of the public debt, &c."

This then puts an end to any dispute on this subject, and if this money was borrowed under both acts jointly or exclusively under the act of the 12th August, there can be no propriety or justice in the charge, that the Secretary had violated the act of the 4th of August, in applying part of this money to the purposes of the act of the 12th of August, under which the loan, as to a greater sum, was certainly made. By this act also the opinion of the Secretary of the meaning of the act of the 12th August, as to the restriction of the interest to 5 per cent. was confirmed, and of course all his proceedings under it. There can then be no foundation for the charge, and it remains unsupported by proof.

The next part of the accusation attempted to be supported, was the drawing part of the same monies into the United States without instructions from the President. The instructions from the President as to the making the loans and applying them were only called for, he has therefore only reported these to the house—from this negative testimony it was presumed that no other instructions have been given. This is weak support indeed, to a criminal charge of this nature. I know it has been urged by one gentleman (Mr. Mercer) that the Secretary has been called upon for the instructions, and if he has failed to report them to the house, he ought to suffer.—This shows how fallible gentlemen's memories are. There has been no call whatever