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## CONGRESS.

### HOUSE OF REPRESENTATIVES.

FRIDAY, March 1.

In committee of the whole, Mr. Mehlberg 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. MADISON. He wished not, he said, to waste a moment of the small portion of time left, by regretting its insufficiency for a full discussion of the subject before the committee. But he thought it due to truth, and to the honorable and independent motives of his colleague (Mr. Giles) in proposing the resolutions, to remark that the lateness of the day to which they had been postponed did not justify the strictures which had been made on it. If the delay was not to be considered as unavoidable, some blame at least would fall elsewhere. The enquiries in which the whole business originated, had been moved by his colleague and passed the house some weeks ago. The reports in answer to these enquiries had not been finally made and printed a single day before the present resolutions were submitted to the house. He admitted that it might have been impracticable to report the information called for as early as was desired by the house: He was sensible of the anxiety that would be naturally felt by the officer called upon, to present every consideration that might place his conduct in the most favorable point of view: yet with all these allowances, it was impossible to deny that the reports contained things which did not belong to them, and therefore consumed time which belonged to the period for discussion. He would mention one instance on which there could not possibly be a difference of opinion; viz. the vindication, formally undertaken by the Secretary, of the policy of borrowing money abroad. Whether this policy was right or wrong, the legislature had themselves decided in favor of it; and it was the duty of the Secretary in complying with the orders of the house, to inform the house, how the law had been executed, not why it had been made; to explain his own conduct, not to justify that of the legislature.

It had been asked why the call for information had not been sooner made? The answer was obvious and simple. It was not sooner perceived by the house, that there was such a necessity for it. The want of information was first suggested by the bill for paying two millions of dollars to the bank, altho' 200,000 only were immediately due, and for authorizing another foreign loan to the amount of two millions. From the dawn of light thrown by some circumstances incident to the occasion, on the darkness in which the house had remained, proceeded those doubts and enquiries which had led to the information now possessed. His colleague had great merit in having brought about this development. He had rendered a service highly valuable to the legislature, and no less important and acceptable to the public. One good effect of the information had been, that it prevented the passage of the bill for borrowing 2,000,000 of dollars as an anticipated payment to the bank. The bill had dropt from the hand of its patron with the first light that broke in upon the house. What other measures would have been prevented or varied, if a like knowledge of our funds and finances had been sooner obtained, was matter of serious consideration.

Another consequence of the reports taken together, was that the face of them presented to his colleague, an evidence of the charges contained in the resolutions. Whether at so late a day it was best to leave the subject as exhibited by the various documents in print, for the examination and opinion of the public, or to press it on the consideration of the house, was a point which every member had a right to decide for himself. His colleague had viewed the positions stated in his motion, as too important to be suspended; and as supported by such clear and authentic proofs, that a small portion of time would suffice for the subject. Under this impression, what was his right became his duty; and he had discharged it by offering his resolutions to the house.

As the house had refused to commit the two introductory resolutions which established the rule of judgment to be applied to the case, and the last also, which declared the inference to be drawn: the task of the committee was limited to a simple enquiry into the facts stated. They were to make out and report a special verdict of these, and leave it to the house to pronounce the proper judgment arising from them.

The resolution immediately before the committee imported "that the Secretary of the Treasury had violated the law passed on the 4th of August, 1790, making appropriations of certain monies," viz. "by applying a certain portion of the principal borrowed, to the payment of interest on that principal"—secondly, "by drawing part of the same monies into the United States, without the instruction of the President."

The questions here are questions of fact; and whatever quality may be attached by dif-

ferent gentlemen to the several facts, it would seem as if the facts themselves are too clearly supported by the reports of the Secretary, and the documents attending them, to be denied or controverted.

The law of August 4, 1790, authorized the President to cause to be borrowed 12,000,000 of dollars to be applied to the foreign debt of the United States. A subsequent law of August 12, 1790, authorized another loan of two millions of dollars, to be applied to the domestic debt of the United States.

A power to make these loans was delegated on the 28th August, 1790, to the Secretary by a general commission in the usual form, referring to the several acts above-mentioned; but without any farther discrimination of the loans to be made. As the law however for applying loans to the foreign object was prior in date, the presumption would rather be that it was to have a priority of execution; that the first money borrowed was to belong to the first object provided for. It was unnecessary however to dwell on this consideration, because the President had removed all uncertainty by the precise explanations and instructions which accompanied the power to the Secretary, and which ought in truth to be deemed a part of the commission.

The instruction having been more than once read to the committee, he would content himself with referring to it. [The part referred to is in the following words, "I do hereby make known to you, that in the execution of the said trust, you are to observe and follow the orders and directions following, viz. Except where otherwise especially directed by me, you shall employ in the negotiation of any foreign loan or loans which may be made in any foreign country, William Short, Esq. 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 time of repayment and rate of interest, such sum or sums as shall be sufficient to discharge, as well all installments 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 installments, and parts of the principal and interest, and arrears of interest of the said debt. You shall not extend the amount of the loan which you shall make, or cause to be made, beyond the sum which shall be necessary for completing such payment, unless it can be done upon terms more advantageous to the United States, than those upon which the residue of the said debt shall stand or be. But if the said residue, or any part of the same can be paid off by new loans, upon terms of advantage to the United States, you shall cause such further loans as may be requisite to be made, and the proceeds thereof to be applied accordingly. And for carrying into effect the objects and purposes aforesaid: I do hereby further empower you to make or cause to be made, with whomsoever it may concern, such contract or contracts, being of a nature relative thereto, as shall be found needful and conducive to the interest of the United States."—By this formal act issued along with the commission to the Secretary, the President designated the object to which the loans to be made, were to be applied; and declared the object to be that provided for by the act of August 4th, 1790; he expressly placed the loan under the authority and provision of that act; so that the moment the money should be borrowed, it was to stand legally appropriated to its specified object; as much as if another law, authorizing another loan, for another purpose, had not existed.

This arrangement of the President was the more proper, not only because provision for the payment of the foreign debt had been the primary object of the legislature, and the payment of the French debt, the anxious wish of their constituents; but because payments to France were no longer matter of option, but of strict and positive obligation on the United States. In proof of this, he stated, that the debt to France, calculated to the end of 1791, and computing the livre at 5 4-10 to a dollar, amounted to 4,814,814 dollars, whilst the payments actually made, computing the florin at 2 1-2 to a dollar, amounted to no more than 3,372,717, leaving as a balance at the end of 1791 of 1,442,097—Adding to this balance the installments due for 1792, amounting to 683,888 dollars—there were to be paid within the year 2,085,985 dollars. The entire payments, however, composed of 656,500 dollars in Europe, and 726,000 put to the account of St. Domingo, (although 444,263.83 were actually paid) amounting to 1,382,500 dollars, leaving due at the end of 1792, a balance of 698,485.

Here he adverted to and read a paragraph in the report of the secretary, page 16, where in allusion to the measure of drawing bills in the latter part of 1792, he says, "I feel myself the more at liberty to do it, because it did not interfere with a complete fulfilment of the public engagements in regard to the foreign debt. It could be done confidently

with a full reimbursement of all arrears and installments, which had accrued on account of that debt." Mr. M. observed, that as he could not reconcile this paragraph with the calculations which he had stated, and which were drawn from official documents, he must regard it as an unquestionable error produced by some hasty view of the subject.

Returning to the commission, Mr. M. repeated that all the money which that instrument, defined and qualified by the instruction annexed to it, authorized the secretary to borrow, was actually and specifically appropriated to the payment of the foreign debt, and under circumstances particularly urgent, in relation to a part of it.

In what manner had this trust been carried into execution? It was to be observed with regret, that on the very day, on which the commission and instruction issued from the President, the secretary commenced his arrangement for diverting part of a loan, accepted and ratified by virtue of his commission, to a purpose different from that specified and required by his instruction. That a fact of so extraordinary a complexion, might be grounded on the most unexceptionable proof, Mr. M. said, he would take the liberty of supporting it by the authority of the Secretary himself. Here he read from the Secretary's letter dated August 28, 1790, to the Dutch houses from whom the loan had been accepted, the following passages, viz. "I should also wish for particular reasons that the business may be so regulated as to give it the form of two loans, one for two millions under the first act, and the other for one million under the second. But neither about this, am I so solicitous as to be willing it should constitute an embarrassment."

"I define a million and an half of this sum as a payment to France under the direction of Mr. Short, our charge des affaires at that court, whose orders for that purpose you will please to follow."

The aspect here presented by a comparison of the several documents, was singular and remarkable. The subordinate officer appeared in direct opposition to the chief magistrate. The agent was seen over-ruling by his own orders, the orders of his principal. The language of the President was—By virtue of the power vested in me by law, I define the money to be borrowed, to the discharge of the installments and interest of the foreign debt. The language of the secretary was—I define a part of the money only to that purpose, and a part to be brought to the United States for other purposes. He left every member to make his own reflections on the subject. He would only observe in general that it demonstrated the truth asserted in the proposition, that the secretary had violated both the law of August 4th, 1790, and the instruction of the President relating to it.

He then proceeded to a more distinct view of the two points particularly stated in the resolution.

The first was, "That a certain portion of the principal, borrowed under the act of August 4, 1790, had been applied to the payment of the interest falling due on that principal." As the fact would not, he presumed, be denied, he forbore to quote that part of the documents, which admitted and authenticated it. He would, however, premise to any observations on it, a cursory view of the nature of appropriations.

It was unnecessary to repeat the emphatic remarks on this subject, which had fallen from the member from Pennsylvania (Mr. Findley). It was sufficiently understood, he concluded, that appropriations of money were of a high and sacred character; that they were the great bulwark which our constitution had carefully and jealously established against executive usurpations. He meant only to take notice of the different plans into which appropriations might be moulded, and of the particular operation, which ought to be given to them.

One of the plans, was that of appropriating specified funds to specified objects; in which the supposed certainty of the funds was adjudged to the supposed importance of the objects.

The other plan formed all the branches of the revenue into an aggregate fund; on which the several objects should have a priority of claim, according to their superiority of importance.

It was evident, that in both these cases, the legislature alone possessed the competent authority. The exclusive right of that department of the government to make the proper regulations, was the basis of the utility and efficacy of appropriations.

There was a third question incident to the doctrine of appropriations, viz.—Whether, under specific appropriations, such as had been adopted by Congress, the executive authority could, without special permission of the law, apply the excess of one fund to the aid of a deficient one; or borrow from one fund for the object of another. On this question there might perhaps be a difference of opinion. He would only remark, that admitting such a discretion to be implied in the trust of executing the laws, it would still be requisite that the

due sanction of the executive should be given, that a regular account should be kept between the different funds; and that all advances from one to the other should be replaced as soon as possible. This was equally necessary to the preservation of order in the public finances, and to a proper respect for the authority of the laws.

In the present case it did not appear that the monies taken at different times from the loans designated by the President, and thereby placed under the appropriation of the act of August 4, 1790, to the foreign debt, had ever been replaced. It did not appear that any such replacement was regularly planned or provided for. It was particularly worthy of observation moreover, that the only use within the United States for which any loan in Europe could be assigned, was that of the sinking fund; that the trustees of this fund had never been even informed of the drafts; that if all the monies drawn had been carried to the sinking fund, the limited sum of 2,000,000 of dollars would have been exceeded; and that the statements and accounts had in fact been so wound up, as mentioned by the Secretary, that not a single dollar of the money laid out in purchasing the public debt, had been charged on loans drawn into the United States; although such was the only purpose to which they were legally applicable, and such the principal reason assigned for making the draft.

He did not go into a particular proof that the sum drawn into the United States, after subtracting the whole sum placed to a foreign account, exceeded the sum of 2,000,000 of dollars, because the fact had been conceded on the other side, particularly by the statement of the member from Connecticut (Mr. Hillhouse).

Thus it appeared clearly, in confirmation of the first point, that the application of a certain portion of the principal borrowed in Europe, to payment of the interest, was not a mere transposition of monies, to prevent the sending them backwards or forwards; nor an advance of money from an overflowing fund in favor of a deficient one; but an absolute diversion of appropriated money; and consequently a violation of the law making the appropriation.

The second point in the resolution, relating to the drawing of monies into the United States without the instruction of the President.

This point had been fully established by the documents and explanations applied to the first. They had done more: They had demonstrated that the instructions of the President which designated the loans to be made under his commission, to a foreign object, were an express prohibition of drafts for any domestic object. It was sufficient therefore to refer to the instructions of the President, and to the contradictory steps taken by the Secretary.

Two attempts had been made to elude the force of these official proofs.

The first appealed to the President's speech at the opening of the Session in 1790; to the report of the Secretary made in consequence of it to the house; and to the supplementary act of Congress passed in conformity to the report.

Had the circumstances involved in this transaction been attended to by those who seemed to rely on it, Mr. M. was persuaded that a reference to it would never have been made by gentlemen on that side. As they had thought fit however to draw arguments from that source, it was proper to give an answer to them; and the best answer would be a naked statement of facts.

The instruction of the President to the Secretary, was given, as has been seen, on the 28th of August 1790. The letter of the Secretary contravening this instruction, was dated, as has also been seen, on the same 28th day of August, 1790.

The actual drawing of bills by the secretary commenced the 15th of December, 1790.

The law now pleaded in justification of the conduct of the secretary passed on the 3d of March, 1791.

There are other facts material to a correct and full view of the business.

The speech of the President was delivered on the 8th of December, 1790. It briefly informed the two houses that "a loan of three millions of florins, towards which some provisional measures had previously taken place; had been completed in Holland,"—and, "That the secretary of the treasury had his direction to communicate such further particulars as might be requisite for more precise information."

The consequent report of the secretary recommending the provision in the supplementary act, was not received till the 25th of February, 1791: six days only before the constitutional dissolution of the house.

In the interval between the speech of the President and the secretary's report, he had proceeded to draw bills to the amount of 793,392 florins.

His report, notwithstanding what had been said of it, contained not a word from which it could be known that a single florin had been actually drawn over to the United States.

[To be continued.]