

anticipation or by way of payment. It may precede or follow the service, supply or other object of expenditure—Either will equally satisfy the words, "in consequence of," which are not words of strict import, but may be taken in several senses. In one sense, that is, "in consequence of" a thing, which, being bottomed upon it, follows it in order of time.

A disbursement must be either an advance or anticipation of a payment.—'Tis not presumable, that the Constitution meant to distinguish between these two modes of disbursement—it must have intended to leave this matter wholly to convenience.

The design of the Constitution in this provision was, as I conceive, to secure these important ends, that the purpose, the limit and the fund of every expenditure should be ascertained by a previous law. The public security is complete in this particular if no money can be expended but for an object to an extent and out of a fund, which the laws have prescribed.

Even in cases, which effect only individual interests, if the terms of a law will bear several meanings, that is to be preferred which will best accord with convenience. In cases which concern the public, this rule is applicable with still greater latitude—Public convenience is to be promoted, public inconvenience to be avoided. The business of administration requires accommodation to so great a variety of circumstances, that a narrow construction would in countless instances arrest the wheels of Government.

It has been shewn, that the construction which has been adopted at the Treasury is in many cases essential in practice—This inclines the scale in favour of it—the words "in consequence of" admitting of various significations.

The practice of the Legislature, as to appropriation-laws, favours this construction.

These laws are generally distinct from those which create the cause of expenditure. Thus the act which declares that the President shall be allowed at the rate of twenty five thousand Dollars per annum, that which declares that each Senator and Representative shall be entitled to so much per day, that which determines that each Officer and soldier shall have so much per month, &c.—neither of these acts is an act of appropriation. The Treasury has not conceived itself authorized to expend a single cent upon the basis of any such act; regarding it merely as constituting a claim upon the government for a certain compensation, but requiring prior to an actual disbursement for such claim, that a law be passed authorizing the disbursement out of a special fund. This is what is considered as the law, by which the appropriation is made; from which results to the public a double security.

Hence every year a particular act (sometimes more than one) is passed appropriating certain sums for the various branches of the public service, and indicating the funds from which the monies are to be drawn.—The object, the sum and the fund are all that are to be found in these acts.—They are commonly, if not universally silent as to any thing further.

This I regard as constructive of the clause in the constitution.—The appropriation laws are in execution of that provision, and fulfil all its purposes. And they are silent as to the distinction between anticipation and payment in other words as to the manner of disbursement.

Hence I conclude that if there exist a law appropriating a certain sum for the salary of the President, an advance upon that sum in anticipation of the service, is as constitutional as a payment after the service has been performed: in other words that the advance of a quarter's salary at the beginning of a quarter is as much warranted by the Constitution as the payment of it at the end of a quarter.

It is in this sense that the present Secretary of the Treasury has affirmed, that not one dollar has at any time been advanced for the use of the President for which there was not an existing appropriation. He did not say that no money had been advanced in anticipation of the service; for the fact is otherwise; but nothing is more true than that the sums disbursed were within the limits of the sums appropriated. If there was an excess at the end of one year, there had been a previous appropriation for a succeeding year, upon which that excess was an advance.

It is objected to this practice, that the death of the party between the advance to him and the expiration of an equivalent term of service, by superseding the object of the advance, would render it a misexpenditure of so much money, and therefore a violation of the Constitution.

I answer, that the same casualty might have the same effect in other cases, in which it would be again common sense to suppose that an advance might not be made with legality and propriety.

Suppose for example a law was to be passed directing a given quantity of powder to be purchased for public use, and appropriating a definite sum for the purchase and suppose intelligence brought to the Secretary of the Treasury, that the quantity required could be procured for prompt payment at Boston. It cannot in such a case be doubted, that the full sum appropriated might be legally advanced to an agent to proceed to Boston to make the purchase; yet that Agent might die, and the money never be applied according to its destination, or the desired quantity might be procured for a less sum and a balance remain in his hands.

In either case, there would be money drawn from the Treasury, which was not applied to the object of the law—in the last case there is no final object for the disbursement, because the balance is a surplus. This proves that the possibility of a failure or falling short of the object, for which an advance is made, is not an objection to its legality. Indeed the consequence is a possible one in every case of an anticipation, whether to contractors or to other public Agents, for a determinate or an indeterminate purpose.

The consequence is, that the sum unapplied must be accounted for and refunded.—This distinction here again is between an advance and a payment. More cannot certainly be finally paid than is equal to the object of an appropriation, though the sum appropriated exceed the sum necessary. But more may be advanced to the full extent of the appropriation, than may be ultimately exhausted by the object of the expenditure, on the condition, which always attends an advance, of accounting for the application and refunding an excess. This is a direct answer to the question, whether more can be paid than is necessary to satisfy the object of an appropriation. More cannot be paid, but more may be advanced, on the accountability of the person to whom it is advanced.

The case stated by way of example is also conclusive to the point that money may be drawn from the Treasury in anticipation of the object of expenditure.

But risk of loss to the public may attend the principle? this is true, but it is as true in all the cases of advances to contractors &c. as in those of advances upon salaries and compensations—nor does this point of risk affect the question of legality—it touches merely that of the prudent exercise of discretion. When large sums are advanced, it is usual to obtain security for their due application or for indemnification. This security is greater or less, according to the circumstances of the parties to whom the advances are made.—when small sums are advanced, especially if for purposes adequately secured, no collateral security is demanded.—The head of the department is responsible to the government for observing proper measure and taking proper precautions. If he acts so as to incur justly the charge of improvidence or profusion, he

may be dismissed or punished according to the nature of his misconduct.

But the principle which is set up would, it is said, be productive of confusion and bankruptcy at the Treasury: since the appropriation for the support of government is made payable out of the accruing duties of each year, and an established right in the officers of government to claim their compensations, either on the first day of the year, or on the first day of a quarter before the services were rendered, would create a demand at a time when there might and possibly there would not be a single shilling in the Treasury arising out of that appropriation to satisfy it.

It is not pretended, that there is an established right in the officers to claim their salaries by anticipation, at the beginning of a year, or at the beginning of a quarter. No such right exists. The performance of the service must precede the right to demand payment. But it does not follow that because there is no right in the officer to demand payment, it may not be allowable for the Treasury to advance upon account for good reasons. A disbursement of this sort in the Head of the Department can at least involve no embarrassment to the treasury, none of the formidable evils indicated, for the officer who makes the advance being himself the judge whether there is a competent fund, and whether it can be made with convenience to the Treasury—he will only make it, when he perceives that no evil will ensue.

Let me recur to the example of advances to contractors for supplying the army. Suppose that in the terms of contract certain advances were stipulated and made; but it turned out nevertheless, that the contractor, disappointed in the funds on which he had relied, could not execute his contract without further advances. Here there would be no right on his part to demand such further advances, but there would be a discretion in the Treasury to make them. This is an example of a discretion to do what there is not a right to demand. The existence of this discretion can do no harm, because the head of the Treasury will judge whether the state of it permits the required advances. But it is essential, that the discretion should exist, because otherwise there might be a failure of supplies, which no plan that could be substituted might be able to avert.

Yet the discretion is in neither case an arbitrary one.—It is one which the head of the Department is responsible to exercise with a careful eye to the public interest and safety. The abuse of it, in other words, the carelessness and wanton exercise of it would be a cause of dismissal for incapacity or of punishment for mal-conduct.

Thus advances on account of salaries, or to contractors for procuring public supplies, might be carried so far, and so improvidently managed, as to be highly culpable and justly punishable; but this is a distinct question from the violation of constitution or law.

In all the cases, it is a complete answer to the objection of embarrassment to the Treasury, that not the will of the parties, but the judgment of the head of the department, is the rule and measure of the advances, which he may make, within the bounds of the sums appropriated by law.

I consider the law, which has been cited with regard to the pay of the army, as a legislative recognition of the rule of practice at the Treasury. The Legislature could not have been ignorant that it was impracticable at certain seasons of the year to convey the money to the army, to fulfil their injunction, without an advance from the Treasury before the pay became due. They presuppose a right to make this advance, and enjoin that the troops shall not be left more than two months in arrears.

The origin of this law enforces the observation. It is known that it passed in consequence of representations, that the pay of the army was left too long in arrears, and it was intended to quicken the measures of payment. No person in either house of the Legislature, I believe, doubted that there was power to precede the service by advances, so as to render the payment even more punctual than was enjoined.

Indeed such advances, when the army operated at a distance, were necessary to fulfil the contract with it. Its pay became due monthly, and in strictness of contract was to be made at the end of each month, a thing impossible unless advanced from the Treasury before it became due. No special authority was however ever given for this purpose to the Treasury, but it appears to have been left to take its course on the principle, that the disbursement might take place as soon as there was an appropriation, though in anticipation of the term of service.

The foregoing observations vindicate, I trust, the construction of the Treasury as to the power of making disbursements in anticipation of services and supplies, if there has been a previous appropriation by law for the object, and if the advances never exceed the amount appropriated; and at the same time evince, that this practice involves no violation of the constitutional provision with respect to appropriations.

I proceed to examine that clause which respects the pay of the President. It is in these words:—"The President shall at stated times receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them."

I understand this clause as equivalent to the following:—"There shall be established by law for the services of the President a periodical compensation, which shall not be increased nor diminished during the term for which he shall have been elected, and neither the United States nor any state shall allow him any emolument in addition to his periodical compensation."

This will, I think, at first sight appear foreign to the question of a provisional advance by the Treasury, on account of the compensation periodically established by law for his services.

The manifest object of the provision is to guard the independence of the President from the legislative control of the United States or of any state, by the ability to withhold, lessen, or increase his compensation.

It requires that the law shall assign him a definite compensation for a definite time: It prohibits the Legislature from increasing or diminishing this compensation, during any term of his election.

These ideas with regard to the administration of the fund appropriated, are very crude and incorrect; but it would complicate the subject to go into the developments.

and it prohibits every state from granting him an additional emolument. This is all that the clause imports.

It is therefore satisfied as to the United States, when the Legislature has provided that the President shall be allowed a certain sum for a certain term of time,—and so long as it refrains from making an alteration in the provision. All beyond this is extraneous to the subject.

The Legislature having done this, an advance by the Treasury in anticipation of the service cannot be a breach of the provision.—'Tis in no sense an additional allowance by the United States. 'Tis a mere advance upon account of the established periodical compensation. Will legal ideas or common parlance warrant the giving the denomination of additional compensation to the mere anticipation of the term of an established allowance? If they will not, 'tis plain such an advance is no breach of this part of the constitution.

If the clause is to be understood literally, it leads to an absurdity. The terms are:—"The President shall at stated times receive, &c. And again:—"he shall not receive within that period," &c.

His allowance is at the rate of 25,000 dollars per annum, 6250 dollars quarterly.—Suppose at the end of a year an arrear of 5000 dollars was due to him, which he omits to receive 'till some time in the succeeding year, and in the succeeding year actually receives that balance with his full salary for the last year; 'tis plain that he would not have received in the whole more than he was allowed by law, and yet in the stated period of one year he would have received 30,000 dollars, five thousand more than his salary for the year. In a literal sense then the constitutional provision as to actual payment would not have been complied with; for within the first of the stated periods he would not have received the compensation allotted, and within the second of them he would have received more. In a literal sense, it would be necessary to make the payment at the precise day; to the precise amount, neither more nor less; which as a general rule the indispensable forms of the Treasury render impossible. It follows, that actual receipt and payment are not the criterion—but the absolute definitive allowance by law. An advance beforehand or a payment afterwards, are equally consistent with the true spirit and meaning of this part of the constitution.

Let us now see if the construction of the Treasury violates the law which establishes the President's compensation.

The act of the 24th of September, 1789, allows to the President at the rate of "25,000 dollars per annum, to commence from the time of his entering on the duties of his office, and to be paid quarterly out of the Treasury of the United States."

The question is, what is to be understood by these words:—"to be paid quarterly out of the Treasury of the United States?"

The conception of the Treasury has been, that these words, as used in this and in the analogous cases, were meant to define the time when the right of an individual to the compensation earned became absolute; not as a command to the Treasury to issue the money at the precise day and on other.

By an arrangement between each House and the Treasury Department, the course actually pursued has been as follows:

Certain gross sums, usually at the commencement of each session and from time to time afterwards, have been advanced from the Treasury at request, to the Secretary of the Senate for the members of the Senate, to the Speaker of the House of Representatives for the members of that House, on account and frequently in anticipation of their accruing compensations. The Secretary of the Senate, and the Speaker of the House of Representatives, disbursed the monies to the Individuals, and afterwards upon the close of each session settled an account at the Treasury accompanied with the certificates required by law, and the receipts of the members, which were examined, adjusted, and passed as other public accounts. They also refunded to the Treasury the monies which remained in their hands respectively beyond the compensations due to the members of the Senate and House of Representatives as will appear by referring to the printed statements annually laid before Congress.

Whether there were any advances actually made to the members, in anticipation of their compensations, was a point never discussed between the Treasury, and the Officers of the two Houses, with whom the money was deposited; but I understand that examples of such advances did exist in relation to the House of Representatives. The fact is, however, immaterial to the point in issue.—That must be settled by the times of the advances from the Treasury; and it is also certain that these were actually made in anticipation of compensations to grow due; and it is also certain, that the course was well understood by both Houses of Congress, and exhibited by the accounts of the Treasurer laid before them in each session.

If therefore the advances for the President were unconstitutional and illegal—those for both Houses of Congress were equally so; and if the President be chargeable with a violation of the Constitution, of the laws, and of his oath of office, on account of extra advances to his Secretaries whether with or without his privity, the members of both Houses of Congress without exception have been guilty of the same crimes, in consequence of the extra advances with their privity to the officers of their respective Houses.

A distinction may possibly be attempted to be taken in the two cases from this circumstance—that the law which allots the compensation of the members of the two Houses does not use the words "to be paid every day out of the Treasury," while that which establishes the President's compensation does use the terms "to be paid quarterly out of the Treasury." But this distinction would be evidently a cavil—when a law fixes the term of a compensation, whether per day, per month, per quarter, or per annum, if it says nothing more, it is implied that it is payable in the same sense as if this was expressly said. This observation applies as well to

† The advances for the Senate have usually been about 5,000 dollars—and for the House of Representatives from 12 to 20,000 dollars.

the monthly pay of the Army as to the daily pay of Congress. The motive to the arrangement which was made for the payment of Congress was two-fold. It was to obviate embarrassment to them by facilitating and accelerating the receipt of their compensations, and to avoid an inconvenient multiplication of adjustments, entries, warrants, and payments. The theory of the provision admitted of as many Treasury settlements, entries, warrants, and payments, each day as there were members in both Houses.

Having examined the question as it stands upon the constitution and the laws, I proceed to examine the course of the fact.

But previous to this I shall take notice of one point about which there has been doubt, and which was not definitively settled by the accounting officers of the Department until after the President's first term of four years was completed.—It respects the time of the commencement of the President's compensation.—The law establishing it, refers to the time of his entering upon the duties of his office, but without defining that time.

When in a constitutional and legal sense, did the President enter upon the duties of his office?

The constitution enjoins that before he enters upon the execution of his office, he shall take a certain oath, which is prescribed. This oath was not taken till the 30th of April, 1789. If we date the entrance upon the duties of his office at the time of taking this oath, it determines the epoch to be 30th of April 1789.

But there is room for another construction.—The 4th of March 1789 is the day when the term for which the President, Vice President, and the members of Congress, were first elected, was deemed to commence. The constitution declares that the President shall hold his office for four years; & it is presumable that the clause respecting his compensation contemplates its being for the whole term for which he is to hold his office. Its object may otherwise be evaded.

It is also, I believe, certain that the President may execute his office and do valid acts as President without previously taking the oath prescribed; tho' in so doing, if voluntary, he would be guilty of a breach of the constitution and would be liable to punishment. The taking of the oath is not therefore necessarily, the criterion of entering upon the duties of office.

On the strength of these facts, it may be argued that by force of the constitution, dating the commencement of the President's term of service on the 4th of March 1789, the law respecting his compensation ought to be considered as referring to that period for a virtual entrance upon the duties of his office.

In stating this construction, however equitable it may be deemed I must not be understood to adopt it. I acknowledge that the other is most agreeable to the more familiar sense of the terms of the law has appeared to me preferable, and it was accordingly established, though not till after all the advances, for the first four years had been made.—The result in point of fact would however have varied as the one or the other had been deemed the true construction.

I return to an examination of the course of the transaction.

Authentic statements which have been published, with some supplementary ones received from the Treasury upon the occasion, exhibit the following results:

1st RESULT. The sums advanced for the use of the President, from the Treasury, have never exceeded the sums previously appropriated by laws: though they have sometimes exceeded, sometimes fallen short of, the sums actually due for services. This is thus explained:

An act of the 29th of September, 1789, appropriated for paying the compensation of the President, Dollars 25,000

The sums advanced to the 8th of April, 1790, and charged to this appropriation, are 25,000

An act of the 26th March, 1790, appropriated for the same purpose, 25,000

The sums advanced from May 4th, 1790, to the 28th Feb. 1791, and charged to this appropriation, are 25,000

An act of the 11th Feb. 1791, appropriated for the same purpose, 25,000

The sums advanced from the 28th Feb. 1791, to the 28th Dec. in the same year, and charged to this appropriation, are 22,150

Excess of appropriation beyond the advances, 2,850

An act of the 23d Dec. 1791, appropriated for the same purpose, 25,000

The sums advanced from the 3d Jan. 1792, to the 15th Jan. 1793, and charged to this appropriation, are 25,000

An act of the 28th Feb. 1793, appropriated for the same purpose, 25,000

The sums advanced from the 9th March, 1793, to the 27th December in the same year, and charged to this appropriation, are 25,000

An act of the 14th March, 1794, appropriated for the same purpose, 25,000

The sums advanced from the 17th March, 1794, to the 1st of Jan. 1795, and charged to the same appropriation, are 25,000

An act of the 2d January, 1795, appropriated for the same purpose, 25,000

The sums advanced from the 12th January, 1795, and prior to 1st of October in the same year, and charged to this appropriation, are 12,500

Excess of appropriation beyond advances on the 1st of October, 1795, 12,500

Excess of appropriation on the act of the 11th Feb. 1791, 2,850

Total excess of appropriations beyond advances on the 1st Oct. 1795, 15,350

Thus it appears not only that the disbursements have never exceeded the appropriations; but, on the contrary, that the appropriations have exceeded the disbursements. An accurate attention to dates shews particularly that there was always a pre-existing appropriation which was never exceeded by the disbursements, having regard to order of time.

The residue of the proposition is illustrated by the quarterly statement of salary and advances at foot.

2d RESULT. The Treasury never has been in advance for the President beyond the sums actually agreed, and due to him for services to the amount of one