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CONGRESS.

HOUSE of REPRESENTATIVES.

SATURDAY, *May* 1, 1802.

DEBATE

On recommitting the Report of the Committee of Investigation.

[CONCLUDED.]

(Mr. Bayard in continuation.)

We found that in the treafury it was common, in keeping the accounts to charge individuals even for debts due them by the United States. There appears a long lift of this kind—of thofe entitled to the pay and fubfiftence of officers. In thefe cafes two or three hundred dollars advanced are charged, though each individual is entitled to fix or feven hundred dollars. I am therefore, juftified in faying, that there is no doubt but that in the navy and war departments the charges made are generally againft the creditors of the United States.

There are even ftronger cafes. The accounts of the navy and war departments, after being fettled in the refpective departments, go to the comptroller of the treafury. Owing to the great weight of bufinefs, they remain in his office unfettled for many years. In this way the accounts, though definitely fettled, remain for years to be finally fettled by the comptroller, which fettlement is very much a matter of form. So you will underftand the report of the committee, when they fpeak of accounts returned to the treafury of the United States. But on this point, I do not know that there was any difference between the majority and the minority of the committee, as I do not know one of the committee contended that this document threw any light on the fubject.

Now if the report is of this kind, if it is calculated to make the impreffion that millions remain unaccounted for, is not this a good reafon for recommitting it? Give me leave to fay that it is not a report in part; for the committee will expire with the feffion.

It is not my intention at this late hour to have recourfe to each item of the report. They have been ftated explicitly by the committee, and my friend from Connecticut (Mr. Grifwold) has given each a diftinct anfwer. They therefore ftand on the beft ground. But I cannot withhold a word or two on the ground of the fix navy yards. I did conceive that the letter of the late fecretary of the navy ought to have accompanied the report. I believe his conduct to have been perfectly correct, and that he had a legal authority to make the purchafe, though there was no fpecific appropriation for that object. A million was appropriated for feventy fours; 50,000 dollars for two docks; and 200,000 dollars for timber, and land on which timber grew. The authority of the fecretary was bottomed on the implication that juftified the inference of the fecretary, from the injunction impofed upon him to build fix feventy fours. He knew that they could not be built in any exifting navy yard; for there was none large enough in the United States; and yet they muft be built. They muft have been built on land, not on the ocean or the clouds, as had been ftated by his friend from Connecticut, though there might be gentlemen who would wifh to fee them there. Now, what was he to do? Land, he muft have. He knew nobody difpofed to make a gratuitous gift to the United States; there was, therefore, no alternative but to hire or purchafe it. Suppofe he had leafed for five years. He had no orders to complete the feventy fours immediately; money fufficient was not appropriated; it was confidered as a work of time. It was neceffary, then, that the period of the leafe fhould be fufficiently long to finifh the veffels. For what would have been the fituation of the United States if the leafe had run out before the fhips were ready to be launched. The owner of the land might have taken out an ejectment, might have taken the feventy fours, or compelled you to launch them before they were ready, and have ruined them. The leafe could not have been made for lefs than ten years, and that would have been equivalent to purchafe in many parts of the country. He would, therefore, have paid as much in one cafe as in the other. But I afk if he had leafed, would he not have rendered himfelf as liable as for the purchafe? There is not a word in the law to authorife him to hire. For you get the appropriation by no other way than by the inference that what is incident to the main thing directed to be done is within its limits. There would therefore in this cafe have been the fame objection. But there is another circumftance that ought to be known. The fact is that the fecretary of the navy had difcovered that the moft expenfive mode that could be adopted by the United States was that of renting land. Before the veffels could be built, great labour was neceffarily expended. The yard was to be levelled and formed, and great incidental expences incurred, before it was poffible to embark in the building. I have been informed by the fecretary that the mere additional expence in building one frigate would amount to from twenty to thirty thoufand dollars in preparing the yard, barely from the article of labour. Farther; at the end of the leafe the United States are obliged to render up the yard without the profit of a dollar. I have underftood from the fecretary that in the cafe of the Conftellation one hundred thoufand dollars had been expended on dock yards. He, therefore, from experience, confidered the hiring to be three times as expenfive as the purchafe. Now, what had he to do? He knew, that if he bought, he would fave 500,000 dollars; for each yard coft 100,000 dollars; what has he laid out? 175,000 dollars.—And are we now to be told there is no appropriation for the purchafe, before gentlemen fhew us that the fame objection does not apply to leafing that does to purchafing?

From this ftatement it follows that the conduct of the fecretary of the navy has been difcreet and wife; and that his letter ought to have made a part of the report. We are told by the gentleman from Maryland that the committee were not called on to report the opinion of the fecretary, or of any other individuals. But I do not know that the committee was authorifed to report their own opinions, any more than thofe of the fecretary. I believe it was their fimple duty to report facts. If they had fo confined themfelves, there would have been no occafion to call on the fecretary of the navy. But as their report is a bare inference, I think it reafonable that his reafoning fhould alfo accompany it, as being likely to give information and lights that the committee had not before. I think, therefore, that it would have been a piece of juftice to Mr. Stoddert, and to the community, to have accompanied the report with this document. In the committee there were three of a minority and four of a majority on agreeing to the report; it may, therefore, be confidered as the act of one; but it goes out as the report of the whole committee. This is an additional reafon why the report fhould be recommitted.

I will fay a word or two on the cafe of Mr. Tracy. Application was made by the minority of the committee to ftate the cafe of Mr. Dawfon. The gentleman from Maryland contends to day that there is a difference between the two cafes: I believe, there is a difference, becaufe one is the cafe of Mr. Dawfon, and the other the cafe of Mr. Tracy. I mean not, in the cafe of Mr. Dawfon, to impute any blame. My own opinion is, that there is nothing cenfurable in it. But, ftill, I think it ftands on the fame ground with that of Mr. Tracy. It is true that Mr. Tracy, a member of the fenate, had authority to difcharge certain executive duties, and received an allowance for his fervices. The great objection is, that he difcharged thefe duties and received this compenfation while a member of congrefs; that the appointments are incompatible; and that the money paid by the executive was mifapplied. The only attempt to difcriminate the cafe is that Mr. Dawfon was not a member of congrefs when he was appointed by the Prefident to go to France. The fact, however, is that he was elected a member before his executive appointment expired; and I recollect to have feen in the public prints, an intimation from him that if elected, he would be at his poft. Mr. Dawfon is therefore to be confidered as a member from the time of his election, as it was on his own intimation that he was elected. The only difference is, that when appointed by the Prefident, he was not a member. And give me leave to tell the gentleman (Mr. Dawfon) that in impeaching the credit always due to the ftatements of my friend from Connecticut, he miftook him. The gentleman from Connecticut had ftated correctly, that Mr. Dawfon, a member of this Houfe, received compenfation for the performance of executive duties.

But, I wifh to know, whether there is any thing wrong in appointing any member of congrefs to an executive office? Has this right ever been difputed? Under the adminiftration of gen. Wafhington, this has been done in many cafes; to eftablifh the right, it is only neceffary to refer to one cafe under the prefent adminiftration—to that of Mr. Pinckney, whofe capacity cannot be doubted. There is therefore, no difficulty in that cafe. There is a power in the Prefident to appoint, and a complete right in the member to accept the office. The only difficulty is, that which arifes afterwards;—that the individual fhould receive pay for both appointments. If, then, there be any blame in the cafe of Mr. Tracy, where does it attach? Why to the Senate of the United States. If he thought the appointments incompatible, it was his duty to refign one of them. If he thought the appointment by the executive an agency and not an office, he muft have been of opinion there was no incompatibility. It is not, however, my purpofe to go into an examination of the incompatibility of thefe two trufts, as it belongs, entirely to the other branch of the legiflature. If they allowed him to take his feat, I do not know that it belongs to this body to interfere with the privileges of that body. I now afk, if there is any diffimilarity in thefe two cafes? I fhould not have dreamt of introducing into this debate the name of Mr. Dawfon, if a cafe of a fimilar nature, in which the name of Mr. Tracy has been made ufe of, had not occurred. We did think that as his cafe was inferted in the report, the other fhould alfo be reported.

Mr. Bayard here noticed the cafes of Meffrs Stone and Sheafe, as analogous to that of Mr. Tracy. They had received double mileage, both for coming to the feat of government and going home. This they appeared to have been entitled to from the ufual practice of the government. Suppofe a member does not go home. Suppofe he ftays at the feat of government. Still the allowance is made; for whether the member goes or ftays, it makes no difference to the government. Mr. B. faid, he had known repeated inftances of members who had not gone home, and yet had received mileage; and he thought they were entitled to it. He, therefore, faw not what the government loft in the cafe of Mr. Tracy. Mr. B. faid, he regretted extremely, that he had found it neceffary to enter into this difcuffion; but he did believe, that impartial juftice required the putting of both the cafes on the fame footing.

It had been faid, there was no fund from which the arfenal near Philadelphia had been raifed. To elucidate the authority under which that building had been erected, we appealed to the erection of the public ftores in this place. Nor can I fee the difference. [Mr. Bayard here repeated the ideas of Mr. Grifwold, refpecting the neceffity of new ftores near Philadelphia.] It was confidered that when funds were applied to particular objects, it was proper to apply them to what was neceffary for the prefervation of thofe objects; and I think the gentleman from Maryland (Mr. Nicholfon,) in explaining the reafons why the ftores were raifed here has furnifhed a complete vindication of thofe erected near Philadelphia. As one cafe was reported, I thought it incumbent on the committee to report the other.

I afk pardon for detaining the houfe fo long; but as the fubject is extremely important, I thought it my duty to make thefe remarks. I do not perceive it important to gentlemen on the other fide of the houfe to lay the report on the table this feffion, as they do not intend to proceed on it during the feffion. We find that after five months employment they have been able to go through but a fmall part of the bufinefs referred to them; and if they were to fit for five years, with judiciary powers, they would not be able to go through the whole of it. The committee, in truth have done nothing; they have reviewed a few accounts; they have gone two or three times to the public offices; they have looked into the accounts of Meffrs. Tracey, Wilkins and M[illegible] but with refpect to the unaccounted millions in the war and navy departments they have done nothing; nor do I believe that they would be able to do any thing in ten years. I believe nothing can be done but by a commiffion, or by the Secretary of the Treafury. I believe that officer is the fitteft to perform thefe duties, and that he can and ought to be trufted with them; as a committee can only cover a fmall part of the ground.

MR. NICHOLSON. When I was up before I avoided going into a general difcuffion of the report. By what I then faid I only meant, & in what I fhall now add it is my fole intention to fhew that the reafons affigned for commitment are not valid, and ought not therefore to influence this houfe. If they have convinced the houfe, they have not convinced me. I only rife now to anfwer the remarks made by the gentleman from Delaware (Mr. Bayard) on the mode of conducting bufinefs in the committee. That gentleman fays it is ufual for committees in the firft inftance to form diftinct propofitions. Not being heretofore much accuftomed to fitting on committees, I know but little about their ordinary mode of procedure. But I have underftood that it is the bufinefs of the chairman to receive the propofitions of the individual members, and from thefe to make a report. I know no better mode than that of drawing a fketch of the report, and then fubmitting it to a committee.—This I did as foon as the documents were received. The report is lengthy; and the fubject of the balances was intricate, on which it was neceffary to beftow fome attention before it could be underftood. For thefe reafons, I deemed it my duty as chairman of the committee, to draw up the report, any part of which any gentleman on the committee might have moved to ftrike out. I do not recollect that any gentleman moved to ftrike out any part of it. On Monday or Tuefday the form of the report was fubmitted to the committee. The prefenting it to the houfe was deferred till the next day, in order to receive an anfwer to a letter written to Mr. Stoddert. The day after, that anfwer was received, when a propofition was made to incorporate it with the report. This was not agreed to, for reafons already ftated. Another propofition was then made, that Mr. Dawfon's account fhould be obtained from the treafury, and a letter was accordingly written to that effect. Application was moved to be made to Mr. Tracey, and the member from Delaware was about writing to him, the chairman being indifpofed, when it was fuggefted that the gentleman from Connecticut (Mr. Grifwold) fhould wait upon Mr. Tracey, and agreed to by the committee. Mr. Grifwold accordingly waited upon him, returned and ftated that he had fpoken to Mr. Tracey, who had informed him that he was then engaged in the bufinefs of the Senate; but would give an anfwer the next morning. It was then refolved to make report the next day. The committee accordingly met the next day to receive Mr. Tracey's anfwer; they met at 9 in the morning. The gentleman from Connecticut was afked if any anfwer would be received from Mr. Tracey. He ftated, he did not know. The committee fat till 12 o'clock, and then reported.

MR. RANDOLPH. Senfible of the latenefs of the hour, and of the fatigue of the houfe, I fhall not purfue the gentleman from Delaware (Mr. Bayard) thro' his long detail of what point was, or what point was not decided by one or two of the committee, who made the report which has occafioned the motion now before us. I believe if this new mode be adopted, we fhall find many of our moft important laws the act of one or two men. It is not my object to defend the report, which has been already fo ably done by my friend from Maryland. But I will advert to a fingle cafe. I allude to the cafe of Mr. Tracey, which has been attempted to be likened to the cafe of Mr. Dawfon; I fay attempted, becaufe it is impoffible for any man to miftake one, as being like the other; fpeaking with an exception as to the gentleman from Delaware. Mr. Tracey was a member of the Senate when he accepted his appointment under the executive. It has been faid that his being a member of the fenate did not incapacitate him from accepting the office, unlefs the office was created during the time for which he was elected. Be this as it may, I fhall wave altogether that confideration, though I believe it would be no difficult tafk to prove that it was fo created. Nor fhall I much infift (tho' I might) upon one great point of difference, which arifes from one having accepted an office while he was a Senator, which place his conftituents had no power of revoking; while the other accepted an office when a private citizen, and in refpect to whom the act of legiflative confidence was a fubfequent act, difcharged by a portion of the people amenable to no power on earth.

The true difference between the cafe of Mr. Tracy and mr. Dawfon confifts in mr. Tracy's having accepted the emoluments of two offices for fervices rendered at a time when he could only exercife the functions of one. This is a trait appropriate to the cafe of mr. Tracy. If mr. Dawfon had received pay for his miffion to France, and for his feat on this floor, then there would have been a fimilitude, and then as the gentleman from Delaware has triumphantly faid, the only difference between the two cafes would have been in name. But mr. Tracy received the emoluments of an office, which he did not, and could not fill, and which if he had filled, was actually incompatible with the other.

The queftion whether a gentleman holding an executive office could be elected to a feat in this Houfe is a queftion, which the gentleman from Delaware might have made, and which the gentleman from Virginia (Mr. Dawfon) had challenged when he took his feat.

With regard to the other cafe, that of a Senator receiving double allowance, I will remark that this is not the cafe before the Houfe; that it is a cafe which came not before the committee; and that it is a cafe, on which if we act at all, we muft act upon the unauthorifed and unfounded declarations of the gentleman from Delaware. Though I believe thefe cafes might be fhewn to be diffimilar; and I fhould lament their being affimilated from my refpect to one gentleman named. Did either of thefe gentlemen receive the compenfation of a Reprefentative at the fame time with that of a Senator? They received in this Houfe their compenfation to the 3d of March, for one Congrefs. They then went into the Senate, in another Congrefs, with their prefent appointment, and received the compenfation attached to their new office. But let the gentleman fhew me, if he can, that they received compenfation for two incompatible offices at the fame time? It cannot be done. When I fay this, I do not mean to defend the practice of the Senate, which if not corrupt, I will denominate an abufe, and which if one of the gentleman named has fallen into, my knowledge of him enables me to fay that no confideration but a defire not to decline from the appearance of falfe modefty a compenfation that ought to be attached to his ftation had induced to accept it.

From thefe confiderations I believe the cafe of Mr. Tracey to be one *sui generis*, and one of which, I truft, the treafury books will not furnifh a parallel.

I will add a few words refpecting the Navy Yards. It is faid the building a houfe on a Navy Yard is precifely fimilar to the purchafe of ground for thefe yards. Now, it appears to me, even granting that houfes do not form a part of a navy yard, that yet there is a wide difference between erecting houfes on public ground, or the erecting them on ground over which neither jurifdiction or right of foil attaches to the United States.

But why dwell upon thefe cafes? Why dwell upon cafes in which there are effential differences, in order to fhew that the report fhould not be committed. Granting the utmoft that can be faid; granting that the officers of the treafury put a different conftruction on the laws from the committee; granting, though it is not the fact, that other officers have done the fame thing, what do all thefe remarks prove, but that if there has been abufes in one cafe there have alfo been abufes in another.

The committee have difcharged the duty confided to them in a manner highly honorable, and with the utmoft temper; I, therefore, truft the houfe will not, in the face of fact and truth, recommit the report, barely to give a colour to the tranfactions of the late adminiftration. And I believe that many of the remarks of the gentleman from Delaware would have better fuited a defence of culprits under a criminal profecution, than the elucidation of the fubject before the houfe.

MR. GRISWOLD read a paper, which he ftated to be a certificate from Mr. Otis, Secretary of the Senate, ftating that Meffrs. Stone and Sheafe had received travelling expences in the Senate. Mr. G. added that the accounts on the table would fhew that they had alfo received compenfation for the fame from the houfe.

The queftion was then taken by yeas and nays on the recommitment of the report to a felect committee, and loft—Yeas 22—Nays 46, as follow:

YEAS.

Meffrs. Bayard, Baude, Campbell, Cutler, Dana, Davenport, Fofter, Goddard, Grifwold, Haftings, Henderfon, Hoger, L. R. Morris, T. Morris, Read, Shepard, Stanley, Tallmage, Tenney, Upham, L. Williams, Woods.—22.

NAYS.

Meffrs. Alfton, Archer, Bacon, Bailey, Bifhop, Brent, Brown, Clay, Clopton, Condit, Cutts, Davis, Dickfon, Elmendorf, Euftis, Fowler, Gregg, Hanna, D. Heifter, J. Heifter, Holland, Holmes, Leib, M'Clean, Mitchill, Moore, Mott, New, Newton, Nicholfon, Randolph, Smilie, J. Smith (of New-York) J. Smith (of Virgi) Southard, Stanford, Stanton, Taliaferro, Thomas, Thompfon, A. Trigg, J. Trigg, Van Cortlandt, Van Nefs, Varnum, R. Williams.—46.