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CONGRESS.

HOUSE OF REPRESENTATIVES.

[illegible] March [illegible]

EXPENDITURE OF THE PUBLIC MO[illegible]

Mr. Randolph [illegible]

[illegible]

[illegible] motion on this subject, because he knew it might be said and truly that there was no time for the House to examine the documents during the present session. He was well aware of that objection, and therefore should not go into that examination; but should restrict his motion to so limited an extent, that it would be impossible for any man, as he believed, to deny its truth. It would be impossible for any man to complain that any difficlty existed as to a ready comprehension and prompt decision upon it. It was restricted only to a single case. If the House adopted the motion it would then be for the House to declare what should grow out of it. Mr. Randolph said he believed that it was understood in Great Britain that a dissolution of Parliament did not effect an impeachment, that the impeachment did not abate by the dissolution; and it belonged to the wisdom of the House, after the resolution was decided to say what should be done with it. He wished it to be distinctly understood that he made his motion to redeem a pledge given to the House; and that there was not a man, in the U. States, however limited his capacity, that would not be able to discern its truth or falsehood. It did not rest upon involved accounts or points of law, but upon the plainest and most luminous propositions which could be offered to the human mind, the truth or falsehood of which would at once appear.

On the 16th of March, 1802, an act passed fixing the military peace establishment of the United States. By that act it was provided "that the monthly pay of the officers, non-commissioned officers, musicians and privates, be as follows, to wit: to the brigadier-general two hundred and twenty-five dollars which shall be his full and entire compensation, without a right to demand or receive any rations, forage, travelling expences, or other perquisite or emolument whatsoever, except such stationery as may be requisite for the use of his department." This is the law of the land, said he, in relation to this officer. The law then goes on to state what shall be the pay of other officers, non-commissioned officers, & privates; the 5th section apportions the rations to the different grades of officers, and allows "to the commanding officers of each separate post, such additional number of rations as the President of the United States shall from time to time direct, having respect to the special circumstances of each post." I beg the House to attend that the words are "such *additional* number of rations;" and yet it is in proof before the House that Brig. General Wilkinson has received a considerable sum of money, to wit. S 1433 16 for *thirty-six* extra rations per day whilst commanding at Natchitoches and at New Orleans. Whilst at the latter place he has also recieved an allowance of 600 dollars for "quarters, stabling, &c." said allowance, both as relates to rations & quarters being prohibited by the law of the land. I know that the allowance has been made under very high authority, no less than [illegible] of the Attorney General of the [illegible] States under the sanction of [illegible] opinion than his.

Mr. R. said it did not behove him to enter into a contest with gentlemen learned in the law as to the exposition of the law; much less with the attorney general in a case susceptible of being [illegible] that a difference of opinion might arise [illegible] where the case was such that a difference of opinion could not take place where the terms of the law were attended [illegible] he should with great deference, as a representative of the people, not [illegible] think himself entitled to decide [illegible] that people and the administration [illegible] that he was so[illegible] express such [illegible] felt himself [illegible] perceiv-

[illegible]

[illegible] the force of the 4th section of the law cutting off the commander in chief from any other emoluments. [illegible] "To put a just interpretation on any clause contained in a statute you must look [illegible] the [illegible]. The entire act must be [illegible] view, and such a construction [illegible] give effect to every part." Mr. R. [illegible] quoted the *printed* document. The allowance made to general Wilkinson is not in his capacity of brigadier general, but in his quality of commander of a separate post. By the 5th section of the act above mentioned the President is authorised to allow the commanders of separate posts such *additional* number of rations as he may from time to time think proper to direct, having respect to the special circumstances of each post." Now surely the force of this term "additional" must have been overlooked by the attorney general in this particular case. To a man to whom rations are allowed by law you may allow additional rations. But can you allow additional rations to a man who is expressly prohibited from receiving any? Can you allow additional any thing to a man whose compensation is fixed by law, and who is precluded in the act itself from receiving any farther compensation? To inferior officers commanding at separate posts, additional rations were by the law contemplated to be allowed, and for a reason explained in the act itself. But it would be recollected that the commander in chief always had a separate command. The law contemplated that by having a separate command, incidental things as to inferior officers but inseparable as to the commander in chief, they might be compelled to entertain company and go into expences which their pay would not warrant; and therefore in such cases additional rations had been allowed. If my construction of the law be not correct, said he, words have lost their meaning; terms have no longer any signification; and we legislate here to no purpose whatsoever. And the force of this thing will be made more apparent when we come to consider that it is stated by the accountant of the War department that cols. Freeman and Cushing received "*additional* rations," agreeably to law, for commanding at Natchitoches and New-Orleans, for the same period of time which an allowance was made to the commander in chief at the same places. So that even if his construction was incorrect, if *white* conveyed the idea of *black*, if *right* was *wrong*, if "additional" signified *substractional*, still Mr. R. said that the law had been completely executed *quo ad hoc* the moment the President had authorised additional rations to cols. Freeman and Cushing for commanding at Natchitoches and New-Orleans. These were things which he thought it his duty to state to the House. If they were not true, if they were not as evident as the lights burning before his eyes, then the House would say so, would deny the fact. I could go on further & state a great many other illegal grants equally clear with this. I will state one more. It is stated in these documents. To be sure it is a petty affair and one which I would not have brought before this House, if I were not impelled by a sense of duty. It is an allowance of $ 47 41 for part pay, subsistence and forage from the 16th of March, 1802, to the 31st of May following—made how? "By an arrangement of the War Department." Now on the 16th of March, a law was passed, which took effect as a law of the land, from the time the President signed it; and if the President could have defeated the operation of the law till the 31st of May, 1802, he could defeat it altogether. It was the boast of a free government that law and not the discretion of men was to govern; and the highest officer of this government was as strictly amenable to law, as the [illegible] of society, in the [illegible] *Pro conscientia* [illegible] there be [illegible] clearer [illegible] proposition which I am about to submit to the consideration of the House. I know the lateness of the session, and the House will appreciate the motives by which I am actuated. If not, it is my misfortune, but not my fault. I should be sorry to labor under the censure of the House, but if I incur it in the discharge of my duty I shall bear it with equanimity—I trust, as becomes a man. I therefore move as follows:

* *Resolved*, That the allowance of 1,433 dollars and 16 cents for "36 extra rations per day" made by the department of war to brigadier-gen. Wilkinson at Natchitoches, from the 13th to the 30th of September, 1806, and from the 1st of Oct. to the 11th of Nov. in the same year, and whilst commanding at New Orleans, from 12th Nov. 1806, to 24th Nov. 1807, and of 600 dollars for "quarters, stables, &c." at the same place is contrary to law: the said allowance being expressly prohibited by the act passed the 16th day of March, 1802, entitled "An act fixing the military peace establishment of the U. States."

The House agreed now to consider the resolution.

Mr. Randolph said it would be recollected that he had said the Attorney-General had misapprehended, because he had mistated the law on the subject of the military peace establishment; and yet, when he came to read the attorney-general's opinion *as printed*, he found to his very great surprize and embarrassment, that the law was correctly quoted. He would state how it happened. In the 10th page of the printed report, fifth paragraph and fourth line, the word "additional" preceding the words "number of rations" will be found, but ought not to be, because it was not in the attorney general's official report. It was omitted, and Mr. R. said he wished to state how it got in. When the copy of the attorney general's opinion had been put into his hands, he had perceived the difference between the opinion and the law as it now stood, and with his pen had marked the omission as a guide to himself, and the printer had insarted it in the printed copy: and thus Mr. R. said when he read the printed report to the House, he was astonished that it did not tally with his conception. This being a palpable error, every gentleman who had the report, and those who published it. ought to omit the word "*additional*." This would shew to the House, he hoped, that it was not very unreasonable in him to differ on this occasion with a gentleman of the attorney general's erudition; as he had so far misunderstood the law.

Mr. J. G. Jackson moved that the resolution lie on the table. He said it would be unnecessary for him to state, that at this late period of the session it would be impossible to give to the resolution that consideration to which it was entitled. As it was announced by the mover of the resolution, said he, and as I find by the printed statement, of which I was really never possessed before this evening, the attorney general has given in his official capacity an opinion that the allowance was just and proper; and that in pursuance of such opinion the amount charged was allowed. What is the House about to do? What are they asked to do? Even admitting that there was no difficulty on the subject, that a person of the high responsibility of the attorney general had not given an opinion, they are called upon to decide that the construction given by one of the departments to their law is an incorrect one. To make such a declaration would be an encroachment on the other parts of the government. It would be the essence of despotism to enact laws, and after they have been construed by the proper tribunals, to say that that construction is erroneous. I incline to the opinion that the decision has been incorrect, but deny the authority of this House to reverse the decision. It is a fundamental principle of free governments that the powers of the several departments shall be separate and distinct. The legislature enacts; the judiciary expounds; but it would be as improper for us to expound as for the judges to enact laws. We have witnessed already the impropriety of legislative exposition of laws. It is almost six years since I brought before the House the question respecting the construction of a contract—though I did not wish to have involved that question—between the United States and the state of Ohio, in relation to lands of the United States exempt from taxation by that state. The contract declared that five per cent. of the nett proceeds arising from the sales of lands should be applied to roads. The legislature of Ohio, in accepting the proposition inserted a provision that three per cent. should be applied, under the direction of the legislature, in opening roads in the state. The House of Representatives when the bill was before them contemplating the appropriation of five per cent. solemnly declared that only two per cent. was applicable The legislature of Ohio unanimously declared that five per cent. was proper; and Mr. Brackenridge, then Senator from the state of Kentucky, afterwards attorney general of the United States, (I quote him as high authority) was of opinion that the decision of this House was incorrect. What does this amount to? That it is extremely dangerous for the legislature of a country to give an exposition of its own laws. With regard to the word "additional," I should rather presume that the attorney general in his original opinion, must have inserted it; for on recurring to the letter of the Secretary at War, we find that he says, in the 5th section, &c. the President is authorised to allow the commanding officers of posts such *additional* number of rations as he shall deem proper." Mr. Jackson said he could not perceive that any good could flow from the adoption of this proposition at this or any other time. If it was intended to effect any thing by legislative construction of the law, it would be inefficacious, because it could only be done by prospective construction. Impeachment of the Secretary of War could not be intended, because he acted correctly from the opinion of the attorney-general; nor of the attorney general, because, if wrong, he had not so acted corruptly, but from a mere error of opinion. For these reasons and believing it impossible to act on the subject with that deliberation which it required, Mr. Jackson wished the resolution to lie on the table.

Mr. Randolph said the House would act on the resolution as in its judgment and wisdom it should think fit, and as a sense of duty and respect to its own character and the interests of the public should dictate He had discharged his duty. But before I sit down, said he, permit me to observe, that to presume the existence of a word, in the official letter which the House have proof, the letter being before them, never was in the letter, is one of the highest stretches of presumption that man ever attained. I know that the word was not in the letter. I pledge my reputation on the fact; and I think that the reputation of the Attorney-general as a lawyer is sustained by the word's being omitted in the letter. I have seen the letter on file; there is no such word in the letter. On what ground, sir, did I rest this motion? On the ground of oversight in the Attorney-general in giving the opinion, inasmuch as this important word "additional" is omitted in that opinion. But if you put that word in the opinion, do you not see that instead of involving oversight you involve deliberate perversion of law? Do gentlemen call themselves friends of the gentleman and contend that this word must have been inserted? We have heard of the people being their own worst enemies; it very often happens that a man's friends are his worst enemies. The omission of this word "additional" might—I charge no improper motives—have proceeded from hurry of business; we are all liable to oversights. But it is said that we cannot construe our own laws, except by enacting new ones. Then, sir, I hope we shall not enact new laws, if, when broken through, our only remedy is to reenact them. This is indeed a grand discovery. Can you expect the new law to be adhered to, when the old one is with impunity to be departed from? Unquestionably you cannot. The law, it seems, must be construed by the proper tribunal—and which is the proper tribunal to try any thing touching the malversion of public money, but this House? Can you bring it before a judicial tribunal? You cannot. Well, sir, suppose when Mr. Whitbread brought forward his motion in the House of Commons that certain uses and abuses of public money were contrary to law, he had been met at the threshold by such an objection—We should have heard and correctly too, of corruption and ministerial intrigue. Mr. Pitt was then in office, and Melville his bosom friend, his co-adjutor in public life; but he had too high a reputation for his own fame, for his own reputation, for that glory which was the first, the last and only object of his life, to make such objection. I have stated the circumstances under which the balance is due. This matter is important to the people into whose bosom we are about to return to account for our stewardship, who are not to be put off on questions of money by questions of order and opinions of high authority, who over matters of money will cavil to the ninth part of a hair. If gentlemen think this course will suit them, if they wish to attach what I call this foul stain to the administration, they shall not have my aid in doing it. On them will rest the reponsibility. Having done my duty I shall submit as it behoves me to submit. I do not appear here as a partizan. I appear here in the legal and constitutional exercise of my Representative duties. I have exercised my duty; the House will do theirs in the manner which to their wisdom shall seem fit.

Mr. Holland said that it was with a wish to preserve the honor and dignity of this House that he rose to make a few remarks. He thought that both would be compromitted by the adoption of the resolution under consideration. A committee had been appointed to examine into this subject, and the gentleman from Virginia was the chairman. It would seem proper that that committee should have made a specific report on the subject. Wherefore had they not done it, and why was this motion brought forward at 8 or 9 o'clock on the last night of the session and of the existence of the present Congress? Was it for the purpose of forcing the House into a vote of this kind without consideration? If that committee had done their duty, they would certainly have favored the House with a detailed report. The committee had not thought proper to do so, and therefore the gentleman from Virginia had presented this resolution. Mr. H. said that no person could be prepared to decide on the propriety or impropriety of the opinion of the Attorney-gen. For what purpose, said he, can this resolution be brought forward? Suppose this House were to resolve that the opinion of the Attorney-general was incorrect, what good purpose would it answer? Would it bring back into the Treasury the money improperly applied? No. Is it conistent with the honor and dignity of the House to pass an opinion on the subject? Is is the duty of this House to make laws, and of another tribunal to de-