He did me the honor to converfe with me on the fubject. I pointed out a mode, which he adopted. He was able to buy bills on London, but not on Amfterdam; but to have done this would have been a lofing game. The merchants brought to him a cargo which, it was eftimated, would in Amfterdam, produce a certain fum. He agreed to advance two thirds of this fum on the merchants configning the property to our agent at Amfterdam; and to pay the remaining third on receiving advice that the amount of debt, contracted to be paid, was difcharged. Could the Secretary have fpent the amount of this money in Amfterdam? Nobody ever doubted of the tranfaction being a proper one. There was then a confidence in the government; and there muft ftill be a confidence in the government.

Subfequent to that period, the trade to Amfterdam has increafed in confequence of the war, by which our merchants, who have debts there to pay, are enabled to buy bills. But on the ceffation of hoftilities this facility in a great meafure ceafed. Another mode, therefore, was to be purfued, to make the neceffary remittance for the payment of the public debt. In the year 1802 the Secretary found it difficult to remit; he was afked 42 cents per guilder; for the merchants, and my houfe among the reft held out; they thought they had the Secretary in their power, knowing that he muft at all events remit to a large amount; and they would have got the better of him, but for his judicious fale of the Bank Shares. He thereby compelled us to fell out, and faved to the United States 58,000 dollars; and compelled the merchants to fell for 41 cents the guilder. If he had not done fo, I fhould have got 42 cents a guilder for my bills—for that was the proportion that bills on Amfterdam then bore to bills on London. But by taking the demand from the market, he reduced their value.

Since the beginning of the year 1803, one million nine hundred thoufand dollars have been required to be remitted to Holland. The Secretary again found difficulty from the high exchange required. I underftand that he has made a judicious contract, and with gentlemen too who are not favorites—a contract which I fhould not have been willing to make; by which means he has been enabled to obtain exchange at 41 cents the guilder. It is true, the merchant gets the money now, and makes the payment in September. He appears, at firft view, to gain the intereft for the intervening period, but this is not the fact, as he fells the bills proportionally lower; and government lofes nothing, as the money, if remitted, would lie ufelefs in Holland. In all this there is no favoritifm. For the Secretary places his terms in the banks, and every merchant of credit may buy; all, who have the means, may participate; it is an affair of public notoriety.

Mr. Smith concluded by obferving, that though this fubject had never before come to his view, he had thought it beft to throw out thofe few remarks in anfwer to the gentleman from Connecticut.

Mr. Griswold. It would not have been neceffary to anfwer the remarks made by gentlemen, but for the imputation caft upon the time at which this refolution has been offered. I did think the gentleman from Virginia (Mr. Randolph) would have done me the juftice to ftate to the houfe my conduct on this occafion. That gentleman will not deny that on the day the report of the Commiffioners of the Sinking Fund was referred, I fpoke to him, and that on the day after, I gave him my objections in writing, that he might converfe with the Secretary of the Treafury. Some days after I fhewed him this refolution, and at his inftance ftruck out one word.

Mr. Randolph afked what word.

Mr. Grifwold replied the words "in fact." I am therefore not liable to the charge of attempting to furprife gentlemen. I have tried, without fuccefs, to offer the refolution for feveral days paft. Yefterday I attempted it, but the gentleman from Maryland objected, and the houfe went to other bufinefs.

Since I am up, I will call the attention of the houfe to fome of the remarks offered by gentlemen on the obfervations which I had the honor to fubmit.

In reply to my firft objection that the Commiffioners have not applied in the year the fum of 7,300,000 dollars, they ground themfelves on two principles. They confider the Commiffioners as having a right to confider the proceeds of the Bank Shares as forming a part; and they contend, in the next place, that a part of the remittances made to Holland are intended to meet inftalments becoming due in the year 1803. Thefe two points I fhall confider diftinctly.

And firft with refpect to the Bank Stock, I want nothing but the report of the Commiffioners to fhew there can be no pretenfions to the firft argument gentlemen ufe.

The Commiffioners fay they have received certain fums: And how?

"From the funds appropriated by the 1ft fection of the "act for the redemption of the whole of the public debt"—viz.	
"From the fund arifing from intereft on the domeftic debt transferred to the Commiffioners of the Sinking Fund, as per ftatement herewith for 1802,	326,449 92
"From the fund arifing from payments into the treafury of debts which originated under the late government, - -	888 79
"From the fund arifing from dividends on the Capital Stock, which belonged to the U. States in the Bank of faid ftates from 1 July 1801, to 31 Dec. following, -	33,960
"From the fund arifing from the fales of public lands, being the amount of monies paid into the Treafury in the year 1802,	179,575 52
"From the proceeds of duties on goods, wares, and merchandize imported, and on the tonnage of fhips or veffels, -	6,759,125 77
Making in the whole the annual appropriation by law for the year 1802, under the act aforementioned, - -	7,300,000

What do they fay to the proceed of Bank Shares? Do they pretend that they have a right to it?

They further obferve that thefe have been applied to the re-imburfement of "temporary loans obtained of the Bank of the United States."—From what fund? From the 7,300,000 dollars? No.—From the proceeds of 2,220 fhares of Bank Stock."

This, I think, is a fufficient anfwer to this part of the remarks of gentlemen.

In the fecond place, gentlemen fay, the Commiffioners had a right to remit money in 1802, to meet the inftalments of 1803. I admit, if to take the money entitles them to it, they had the right, and that if they had a right to avail themfelves of the remittances for 1803, they have laid out the feven millions three hundred thoufand dollars.

But how do they make this right out? What fays the law? By it they as well as we are bound. If words can be plain, the words of that law are plain. The firft fection of the act of the laft feffion provides for the annual appropriation of feven millions three hundred thoufand dollars to the payment of the debt.

The fecond fection directs the Secretary of the Treafury to pay, in each year, to the commiffioners the fum of 7,300,000 dollars.

The third fection provides how this fum fhall be applied; and fays "it fhall be the duty of the faid Commiffioners to caufe to be applied and paid out of the faid fund, yearly and every year, at the treafury of the United States, the feveral and refpective fums following," &c.

They are here directed to apply thefe fums yearly and every year. I afk, have they done it? Is making a remittance to meet inftalments becoming due the next year, or fix years hence, applying this fund to this year? If that is deemed paying the debt, I can only fay there is nothing like it in the law—it only enables the Commiffioners to draw the feven millions three hundred thoufand dollars out of the treafury, and not to keep it in their own hands, and fay we mean to apply it fix years hence. I contend, therefore, that this is no anfwer; and that under this view of the fubject, the Commiffioners may have received the annual appropriation without having applied it. I have no idea of criminating the Commiffioners. A new report may explain all thefe difficulties. But I do contend, that according to this report, they have not applied in the year 1802 the whole feven millions three hundred thoufand dollars appropriated.

But gentlemen fay, it is impoffible for them, and they are not obliged to account for the application of the whole amount; that from the nature of the debt due in Holland, part of the money muft be remitted in the year preceding that in which it is due; and that if the whole were paid in one year, there would not remain enough for the fucceeding year.

Mr. Nicholson faid he had obferved no fuch thing; he had faid the Commiffioners had power to draw for the enfuing year, but that it refted with the Secretary of the Treafury, according to the ftate of the treafury, to admit their drafts.

Mr. Griswold—Gentlemen then contend that the Commiffioners had only a right in the firft inftance to draw 7,300,000 dollars; but that the provifo directs the Secretary to make the neceffary advances. Will it then be pretended that there was not money enough in the treafury to pay the 7,300,000 dollars, and to provide for the neceffary remittances? What fays the report? Why, that four millions and a half lie dead in the treafury. In thefe circumftances would the Secretary dare, under this provifo, to refufe to allow drafts for the neceffary remittances? There was money enough; and the Commiffioners might have drawn a much larger fum than they actually have drawn. The argument therefore falls.

But gentlemen fay, that by the law of the laft feffion, the Commiffioners are not obliged to apply 7,300,000 dollars in the year 1802; but that they have a right to compute the year from April 1802. I defire here, again, nothing but the report to fhew the fallacy of this argument. The report itfelf fays they have received the whole appropriations for 1802. Why? Becaufe the expreffion of the law requiring the payment either every year, clearly means the year for which the accounts are made up.

To account for the deficiency of 114,000 dollars, the gentleman from Maryland (Mr. Nicholfon) has ftated certain items, which, if admitted, will reduce the fum unaccounted for. I did not contend that the Commiffioners could not account for this balance; but only that they had not accounted for it. The gentleman, however, is miftaken in his calculations. The firft item to which he alludes, is that of 7,994 dollars on account of debts due to foreign officers, and 14,996 on account of certain parts of the domeftic debt. But I beg leave to inform the gentleman that no part of thefe two fums appear to have been paid. They are not ftated on account of payments made; but only as difburfements from the treafury.

The gentleman confiders the Commiffioners in ftating the guilders remitted right in making an eftimate. Now, if on examining their report, it will appear that this tranfaction had nothing to do with the bankers in Amfterdam, the obfervation of the gentleman falls. The report fays "that befides the above mentioned re-imburfements and payments, there remained at the clofe of the year 1802, exclufively of the amount of fundry protefted bills ftill outftanding and of unexpended balances in the hands of agents, an *unapplied balance estimated at* 5,914,606 guilders," &c —Of monies in the hands of bankers? No. Of "remittances purchafed and paid for."—Have not the Commiffioners an account of this?

Mr. Randolph here faid it was extremely difagreeable to him to interrupt the gentleman. But he muft be permitted to obferve that the date of the report was the 5th of February 1803—Was it then reafonable to fuppofe that the treafury department had received from its agents, who were fcattered from Savannah to Portland, an account of every bill purchafed antecedent to the 1ft of January, and that the books of thofe agents fhould be then fully fettled and balanced? Could it be expected that any more than an eftimate fhould be exhibited?

Mr. Griswold begged the gentleman from Virginia to refer to the report, by which it would appear that the fum of 5,914,606 guilders was exclufively of money in the hands of agents, and that it confifted of money remitted. Of this fum the Commiffioners could and ought to have rendered a particular account.

The gentleman from Maryland (Mr. S. Smith) has mentioned the fale of the Bank Stock. I did not expect this circumftance would have been mentioned, as it has nothing to do with the fubject now before us. I did hope that refpecting that tranfaction an enquiry would have been made. I did believe the fale to be unwarranted by law, and to have involved a large facrifice of public property. But this tranfaction has nothing to do with the refolution before us, and I have only made thefe obfervations in reply to the gentleman from Maryland to fhew that I neither fubfcribe to the prudence, legality or goodnefs of the fale.

With regard to any application of my remarks to individuals, I can only fay I know nothing. I am not in the fecrets of the treafury; but I do know, that if there fhould be a difpofition to accommodate friends, it may be done in the difburfement of fo large a fum as ten millions of dollars.

The queftion was then taken by yeas and nays, on agreeing to Mr. Grifwold's refolution, and carried unanimoufly in the affirmative.

NOTICE.

The Creditors of James Robinfon, late of Wafhington county, deceafed, are hereby notified that the fubfcriber has now in hands a confiderable fum of money as affets of the faid deceafed, and that he will make a diftribution of the fame among fuch of the creditors as will attend for fuch purpofe, with proper vouchers, on the fecond Tuefday in April next, at Rhodes's Hotel, in the city of Wafhington, at 11 o'clock A. M.

LEWIN TALBURTT,
Adminiftrator.

March 21. ep3t

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March 2.

MANDAMUS.

Supreme Court of United States,
February term, 1803.

William Marbury vs. James Madifon,
Secretary of State of the
United States.

OPINION OF THE COURT.

[CONTINUED.]

SOME point of time muft be taken when the power of the executive over an officer, not removeable at his will, muft ceafe. That point of time muft be when the conftitutional power of appointment has been exercifed. And this power has been exercifed when the laft act, required from the perfon poffeffing the power, has been performed—This laft act is the fignature of the commiffion. This idea feems to have prevailed with the legiflature, when the act paffed converting the department of foreign affairs into the department of State. By that act it is enacted, that the Secretary of State fhall keep the feal of the United States, 'and fhall make out 'and record, and fhall affix the faid feal 'to all civil commiffions to officers of 'the United States, to be appointed by 'the Prefident:' 'Provided that the faid 'feal fhall not be affixed to any com'miffion, before the fame fhall have 'been figned by the Prefident of the U'nited States; nor to any other inftru'ment or act, without the fpecial war'rant of the Prefident therefor.'

The fignature is a warrant for affixing the great feal to the commiffion; and the great feal is only to be affixed to an inftrument which is complete. It attefts, by an act fuppofed to be of public notoriety, the verity of the Prefident's fignature.

It is never to be affixed till the commiffion is figned, becaufe the fignature, which gives force and effect to the commiffion, is conclufive evidence that the appointment is made.

The commiffion being figned, the fubfequent duty of the Secretary of State is prefcribed by law, and not to be guided by the will of the Prefident. He is to affix the feal of the United States to the commiffion, and is to record it.

This is not a proceeding which may be varied, if the judgment of the executive fhall fuggeft one more eligible; but is a precife courfe accurately marked out by law, and is to be ftrictly purfued. It is the duty of the Secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this refpect, as has been very properly ftated at the bar, under the authority of law, and not by the inftructions of the Prefident. It is a minifterial act which the law enjoins on a particular officer for a particular purpofe.

If it fhould be fuppofed, that the folemnity of affixing the feal, is neceffary not only to the validity of the commiffion, but even to the completion of an appointment, ftill when the feal is affixed the appointment is made, and the commiffion is valid. No other folemnity is required by law; no other act is to be performed on the part of Government. All that the executive can do to inveft the perfon with his office, is done; and unlefs the appointment be then made, the executive cannot make one without the co-operation of others.

After fearching anxioufly for the principles on which a contrary opinion may be fupported, none have been found which appear of fufficient force to maintain the oppofite doctrine.

Such as the imagination of the Court could fuggeft, have been very deliberately examined, and after allowing them all the weight which it appears poffible to give them, they do not fhake the opinion which has been formed.

In confidering this queftion, it has been conjectured that the commiffion may have been affimilated to a deed, to the validity of which, delivery is effential.

This idea is founded on the fuppofition that the commiffion is not merely *evidence* of an appointment, but is itfelf the actual appointment—a fuppofition by no means unqueftionable. But for the purpofe of examining this objection fairly, let it be conceded, that the principle, claimed for its fupport, is eftablifhed.

The appointment being, under the conftitution, to be made by the Prefident *personally*, the delivery of the deed of appointment, if neceffary to its completion, muft be made by the Prefident alfo. It is not neceffary that the livery fhould made perfonally to the grantee of the office: It never is fo made. The law would feem to contemplate that it fhould be made to the Secretary of State, fince it directs the Secretary to affix the feal to the commiffion *after* it fhall have been figned by the Prefident. If then the act of livery be neceffary to give validity to the commiffion, it has been delivered when executed and given to the Secretary for the purpofe of being fealed, recorded and tranfmitted to the party.

But in all cafes of letters patent, certain folemnities are required by law, which folemnities are the evidences of the validity of the inftrument. A formal delivery to the perfon is not among them. In cafes of commiffions the fign manual of the Prefident, and the feal of the United States, are thofe folemnities. This objection therefore does not touch the cafe.

It has alfo occurred as poffible, and barely poffible, that the tranfmiffion of the commiffion, and the acceptance thereof, might be deemed neceffary to complete the right of the plaintiff.

The tranfmiffion of the commiffion, is a practice directed by convenience, but not by law. It cannot therefore be neceffary to conftitute the appointment which muft precede it, and which is the mere act of the Prefident. If the executive required that every perfon appointed to an office, fhould himfelf take means to procure his commiffion, the appointment would not be the lefs valid on that account. The appointment is the fole act of the Prefident; the tranfmiffion of the commiffion is the fole act of the officer to whom that duty is affigned, and may be accelerated or retarded by circumftances which can have no influence on the appointment. A commiffion is tranfmitted to a perfon already appointed; not to a perfon to be appointed or not, as the letter enclofing the commiffion fhould happen to get into the poft office and reach him in fafety, or to mifcarry.

It may have fome tendency to elucidate this point, to enquire, whether the poffeffion of the *original* commiffion be indifpenfably neceffary to authorife a perfon, appointed to any office, to perform the duties of that office. If it was neceffary, then a lofs of the commiffion would lofe the office. Not only negligence, but accident or fraud, fire or theft, might deprive an individual of his office. In fuch a cafe, I prefume it could not be doubted, but that a copy from the record of the office of the Secretary of State, would be, to every intent and purpofe, equal to the original. The act of Congrefs has exprefsly made it fo. To give that copy validity, it would not be neceffary to prove that the original had been tranfmitted and afterwards loft. The copy would be complete evidence that the original had exifted and that the appointment had been made, but, not that the original had been tranfmitted. If indeed it fhould appear that the original had been miflaid in the office of State, that circumftance would not affect the operation of the copy. When all the requifites have been performed which authorize a recording officer to record any inftrument whatever, and the order for that purpofe has been given, the inftrument is, in law, confidered as recorded, altho' the manual labour of inferting it in a book kept for that purpofe may not have been performed.

In the cafe of commiffions, the law orders the Secretary of State to record them. When therefore they are figned and fealed, the order for their being recorded is given; and whether inferted in the book or not, they are in law recorded.

A copy of this record is declared equal to the original, and the fees, to be paid by a perfon requiring a copy, are afcertained by law. Can a keeper of a public record, erafe therefrom a commiffion which has been recorded? Or can he refufe a copy thereof to a perfon demanding it on the terms prefcribed by law?

Such a copy would, equally with the original authorize the juftice of peace to proceed in the performance of his duty, becaufe it would, equally with the original, atteft his appointment.

If the tranfmiffion of a commiffion be not confidered as neceffary to give validity to an appointment; ftill lefs is its acceptance. The appointment is the fole act of the Prefident; the acceptance is the fole act of the officer, and is, in plain common fenfe, pofterior to the appointment. As he may refign, fo may he refufe to accept: but neither the one, nor the other, is capable of rendering the appointment a non-entity.

That this is the underftanding of the Government, is apparent from the whole tenor of its conduct.

A commiffion bears date, and the falary of the officer commences from his appointment; not from the tranfmiffion or acceptance of his commiffion. When a perfon, appointed to any office, refufes to accept that office, the fucceffor is nominated in the place of the perfon who has declined to accept, and not in the place of the perfon who had been previoufly in office, and had created the original vacancy.

It is therefore decidedly the opinion of the court, that when a commiffion has been figned by the Prefident, the appointment is made; and that the commiffion is complete, when the feal of the United States has been affixed to it by the Secretary of State.

Where an officer is removeable at the will of the executive, the circumftance which completes his appointment is of no concern; becaufe the act is at any time revocable; and the commiffion may be arrefted, if ftill in the office. But when the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled.