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FIVE DOLLARS PER ANNUM. WEDNESDAY, JANUARY 13, 1808. PAID IN ADVANCE.

BY AUTHORITY.

AN ACT

To extend certain privileges as therein mentioned to Anthony Boucherie.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That two years residence as required by an act, entitled, "An act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned; and to enlarge and alter the penalties for violating the rights of patentees;" shall not be required of Anthony Bouchérie, to enable him to obtain a patent for any discovery he has made in the art of manufacturing sugar, but that he shall obtain a patent therefor, on his conforming to the other requisitions of said act.

J. B. VARNUM, *Speaker of the House of Representatives.*

GEO. CLINTON, *Vice-President of the United States, and President of the Senate.*

JANUARY 7, 1808.

APPROVED,

TH: JEFFERSON.

CONGRESS.

HOUSE OF REPRESENTATIVES

DEBATE.

On the Resolution for requesting the President to cause an enquiry to be made into the conduct of GENERAL WILKINSON.

TUESDAY, JANUARY 5,

CONTINUED.

Mr. SLOAN said, he rose with an intention, and for the purpose of making some observations on what had fallen from his gentleman from New York (Mr. Gardenier) whom he did not now see in his place, but if he was within the walls he should be glad to know. He had intended in the first place to have acknowledged and expressed in his plain way, his gratitude to the gentleman for his endeavors to procure the business on this he should have endeavored to do in a very few words. This member had expressed his extreme surprise that the motion which he had offered on a former day had not been more adverted to by members of the House; he should have recollected that every member of the House was not endued with the same sagacity and penetrating genius which he so abundantly possessed. But permit me to say, said Mr. S. that I was not less surprised than that gentleman could be, that the first member this morning was not (under existing circumstances) to withdraw the resolution. It was a fact known and believed by every member on the floor, that the proper authority had undertaken to investigate the object of the resolution. Under a consideration and from a full conviction that this House was not the proper tribunal to try this case, his surprise and disappointment had surpassed that expressed by the member from New-York, that the subject had not been taken up yesterday morning. Mr. S. said he was then prepared to have made a pretty lengthy speech, the notes for which he had held in his hand; but the House had been taken up the whole day in discussing what money they should give to a certain (Yazoo) memorial. In the course of that debate he had been much lectured by the member from Vermont (Mr. Elliot) being warned of the taking the spoil by the horns, and also something about a club and Hercules: although these expressions were somewhat obscure, they had raised some sensation in his mind, and induced him to think he had better, on another hour be made speeches on that hour; he had therefore concluded not to make this long speech which he had digested and prepared.

But before he sat down, he would say, that being prior to these circumstances, although he had no right to speak of them, he had constrained himself to think; and he would state what thoughts this resolution produced in his mind. Knowing, as no doubt every member of the House did, of what had lately turned up between certain great men, it brought to his mind a circumstance which might be thought simple, but he hoped he might be permitted to introduce a similie: when he went to school in his youthful days he had seen little affray turn spritual on the boys, as he had known those who were likely to get the worst of the bargain, cry out, "I'll tell daddy or mammy; I'll tell my master!" This struck Mr. S. very forcibly as applicable to the present case.

He would not detain the House much longer, but barely observe, that he hoped the resolution would be rejected; and after that, that the resolution itself would be rejected with the contempt it deserved.

Mr. ELLIOT. Yam opposed to the amendment proposed to the motion of the gentleman from N. York, and to the motion itself; and shall probably be opposed to any amendment that may be offered to the original resolution. All this for the best of all possible reasons, because I am in favor of the original proposition in its original form.

Had I not long since resolved to adopt, as a political man, the motto *ni calumiare*, I should regret with some degree of admiration, if not of astonishment, the extreme squeamishness which is manifested by some gentlemen respecting an invasion of Executive functions, which they apprehend will be involved in the adoption of the resolution, and the very curious arguments which are advanced to support the position. But astonishment or astonishment ought not to be excited by any political events or opinions of the present day.

It is to be regretted, that the gentleman from New-York (Mr. Gardenier) has suffered himself to wander into so wide a field of eloquent declamation against the celebrated complain of the officer who is the object of the present resolution, against what he calls the conduct the Barriers at N. Orleans. I regret it, sir, because I wished argument and argument is the weapon I expected the present occasion. Still, whenever an opportunity fairly offered for the expression of an opinion upon that subject, I shall not hesitate for a moment to express my sentiments on the subject of the conduct of the U. S. in the chief command, subordinate to the President, who is the civil and military commander in chief of our armies, of that officer, since that period, has placed a disgraceful stain upon the early annals of our new western world, which the annual inundations of the Mississippi, were they increased to the magnitude and duration of those of the Nile, could not wash out or obliterate.

Few members, perhaps none, have expressed any doubts of the propriety of the measure; they possess the constitutional power to adopt it. But as many serious doubts are entertained of its constitutionality, it may be proper to go into an argument with a view to ascertain the truth.

It is triumphantly asked, from what constitutional source do you derive the power? Here it is but for to meet gentlemen on their own ground, and to admit that if we cannot find in the constitution authority for the measure, they may very properly enquire, gentlemen? By what warrant do you attempt its exercise? To answer the enquiry, as it is certain that the constitution has no express authority given us authority to adopt this particular measure, let us take a cool review of the whole of our constitutional powers.

To me it appears that these classes of powers are bestowed by the constitution. Two of them by express terms or implication, and the third by unavoidable implication.

The first is the great and comprehensive power of legislation, powers, properly so called; powers given to us as one of the branches of the national legislature, and in that character alone.

Our warrant for the exercise of these all important and all comprehensive powers, while we confine ourselves within the proper orbit of legislation, exists in the first section of the first article of the constitution. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." These are the initial words of the constitution. They describe no specific powers. They merely invest the general power of legislation. They refer us to a key parts of the constitution for the definition of the particular attributes of the legislative character. They attach those attributes to us in common with the Senate. They give us no distinct and independent powers. Nor does any other clause of the constitution, in direct terms, vest in us the power for which we are now contend.

The second class of powers is given to us, rather as a distinct and independent assemblage of individuals, than as a component branch of the national legislature.

These are not powers, strictly speaking of a legislative character, but powers with which we are invested for the purposes of our own organizing, operation and discussion, as an independent political body. Such as the power to choose our Speaker and other officers, to judge of the elections and qualifications of our own members; to adjourn; to compel the attendance of absent members; to expel a member; to establish rules of proceeding; and to keep and publish journals.

Before I proceed to the third class of constitutional powers, I beg leave to just notice two excentric or anomalous authorities with which the House of Representatives is invested by the constitution, and which complete the catalogue of our functions. We have the sole power of impeachment. As it respects the exercise of that function, we are considered of our legislative character, and transformed into the great inquest of the nation. In certain cases we become a tribunal of the President. We then again lose our legislative character, and are transformed into an electoral body.

The third class of our constitutional powers, and it is by far the most and important one, although it is not given to us in express terms, is essential to our political existence. It is a power, which, by an irresistible and inconceivable implication, are bestowed in indefinite terms on those which are specifically vested by the constitution.

This indefinite authority must of course be extensive and important. While it is our duty to cherish and protect our rights and prerogatives of power, we ought cautiously to govern ourselves by the true spirit and intention of our constitution. Here great discretion is required, because here arises that danger of usurpation with which gentlemen are alarmed on the present occasion. For the existence of indefinite power is quite sufficiently nonce. By this alone are we authorised to pass resolutions to enquire the Secretary of State information, a practice coeval with the government itself. Gentlemen will say that we have not in our legislative capacity. But they are mistaken. The legislative power is the power of passing laws, and of carrying laters, when we discuss among ourselves the propriety of a law, or act, we are acting in our legislative character. The information which we ask may be very useful to give a law hereafter. It is true that it is but constitutional duty to give us information from time to time; but it is not stated in what manner is left to his own discretion. Where we have no exercise we have the legislative authority for information, if it be obtained, may or may not be such as to require or even indicate us to act legislatively. If then we possess this power of calling upon the Secretary of State information, it has long been settled, by a practical construction of the constitution, that we possess it; it is in our possession as incident not only to the actual but to the potential exercise of the general functions of legislation.

But an important distinction is taken, and one which would be conclusive, if it would bear examination. It is, however, a nominal rather than a real distinction. It is admitted that we may call upon the Executive for information, but it is said that we have no right to call upon him to perform his duty, in a case exclusively within his own constitutional jurisdiction. It is just so as every case of a call for information. It is his duty to give it, if it be in his own time and his own way. Calling upon him to comply with our wishes, in relation, upon any subject whatever, we call upon him to perform a duty which the constitution authorises him to perform when and how he pleases. In every instance we may or may not legislate in consequence of what we obtain, and we do not legislate in the act of asking for it. We cannot coerce the communication, we cannot even demand it, we can only request it. We ask the President to do his duty in the one case as well as in the other. But it is said that as we cannot impeach a military officer, as the President alone can remove him, we can neither call for his removal nor for an inquiry into his conduct. It seems to me to be considering rather too curiously to consider so: The fact is, that we propose no removal, no inquiry, for the very purpose of obtaining information, and for that purpose alone; and, as in every other case, the information, when obtained, may induce us to act in our legislative capacity. Here it is proper to call the attention of the House to the clause of the constitution which was read this morning by the honorable mover of the resolution. "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Can any one doubt our power to pass a law for the purpose of giving effect to this great and prominent provision of the constitution? We cannot legislate upon the subject *post facto*; we cannot provide for the punishment of an infraction of this article which has already taken place, but we can guard against such infraction in future. It is said that your commander-in-chief sailing from the peninsular of a foreign power. We only wish that his innocence may be established or his guilt developed. If the development of his guilt should be the result of the proposed enquiry, if he should be proved to have been the great infractor of the constitution, what more powerful argument could be urged to the members of the national legislature, to induce them to pass a law to prevent or punish such treacherous conduct in future?

Some gentlemen also appear to doubt our power to pass the resolution, declare that the information which we possess upon the subject ought not be transmitted to the President, and that they will vote for its transmission, if, as this to be done, the Speaker or the Clerk transmit it without the order of the House. It is to be presumed not. The House, then, must act upon the subject. And surely it will be more dignified, and, as relied to request the President to do a certain act, than to bid him that we expect him to do. And our right is the same in one case as in the other.

To this point then the case is clear. We only ask for information, and we have a right so to ask. But we shall be told that we are acting the grand inquisition, and that the great difficulty which exists in the case still recurs upon us, *he is perfectly at liberty not to do his duty. One branch of the government has no right to make such a call upon another.* I grant, sir, I alone I should be willing to rest the decision. Has not one branch of the government a right to make a request to another? What forbids it? The right is certainly not express, given, but if it be not forbidden by any part of the constitution; if it be not inconsistent with the exercise of any power on earth; if it be naturally incident to the intelligent and proper exercise of the general powers vested; and if it has long been declared to exist, by a practical construction of the constitution; if the exercise of such a right is at least harmless, and of course neither unconstitutional, nor extra-constitutional. From the course which I have thought it my duty to pursue, my duty in the present situation, but on former occasions, I shall not be suspected of possessing an overweening confidence in my judgment; but I will venture to say that the Executive will feel none of that squeamishness upon this subject, which is manifested here. Whatever may be my opinion as to particular measures of the Executive, I have too much confidence in his good sense and patriotism, to believe that he would object to a compliance with our request. If indeed, he shall be of opinion that we are invading or usurping the proper province of executive prerogative, he will be his duty to tell us so, and he will tell us so. But this, I presume, is not apprehended by any one.

I have confined myself closely to the question. The view which I have taken of the subject occurred to me after the debate commenced this morning. I feel a real, not an affected diffidence, in my powers of argument upon this very important subject. I cannot hope to convince—I will not say the members of this House, for the members of this Legislature, they are attentive to my observations—any attempt of that kind would be vain. But was doubts arise upon a great constitutional question, it is proper for every one who is in the House, in a view to dispel those doubts. Doubts has been shown. Many good effections have produced, in my mind, I know, I have done my duty.

Mr. DAVIS said it was but strange, that gentlemen object that as greatly interesting to the people of the United States as this—that a subject that went very seriously to affect the character of the continuing officer of the army, that gentlemen should entertain a diffidence of sentiment to be the best course proper to be pursued. They seemed to be but one opinion as respected the general character, that it ought to claim attention in some way and in some form. It concerned the character of the officer himself if innocent, that an enquiry should be had, as well as it concerned the people and the nation if he were guilty! In the instance in which he was now placed, and which he felt so deeply touch the reputation of a military officer and his estate, Mr. D. thought it necessary to state, that he was actuated by motives not (though other gentlemen appeared to think differently) to express any opinion on the character of the officer. If there were information before the House which might lead to a bad opinion of his conduct, would wish it should be so disposed of as to meet the enquiry; and could wish also that the delicate New-Orleans should be called upon to declare what he learned of the conduct of by this officer of any money, or of the project or agreement of any persons to dismember the Union, or to overset it dependent on any foreign power: and for this reason, that this resolution, received from the mover of this House, though not having the sanction of the Speaker, yet they enjoyed every other privilege of members of the House, being entered with the dignity of a high judicial functions and amenable to the authority of the House; and that the privilege of the House was the unbounded precedent and paramount to the authority of any court martial or court of enquiry. Although this was his general opinion on the subject, he was not very willing to the propriety of adopting the motion of the gentleman from New-York, for the appointment of a committee of enquiry. If the House had resolved to appoint a committee of enquiry which should direct the enquiry into the conduct of any officer, it would be proper to arm such committee with the power of sending for persons and papers. As he now understood the object of the present resolution it was merely to appoint a committee to enquire whether the House should adopt a particular resolution recording an enquiry, and was therefore different from a motion for enquiry, as the mover of Sixteen Resolutions had been quoted, the committee was appointed to enquire, and not to compel the attendance of persons, so that the case did not apply. It was therefore unnecessary for the committee where