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REPORT Of the Minority of the Committee of the House of Representatives appointed to investigate the affairs of the Bank of the United States.

[CONCLUDED.] The first resolution was regarded merely as an understanding on the part of the committee of investigation, that no publicity would be given by them, until otherwise ordered, to the matters that might appear in the course of the examination. The undersigned assented to this resolution, with the understanding of the parliamentary law, that the sittings of every committee are open, unless ordered to be secret by the House; and that it was not in the power of the present committee, by a vote of their own, either to shut their doors, or impose secrecy on any persons who might attend. But they assented to the injunction of confidence, in conformity with a usage which has prevailed in other committees of inquiry of the House, for their own convenience, as a rule binding on themselves, and with the express reservation that the adoption of this resolution should, in no degree, involve an assent to the principle asserted in the second. To that principle, viz., that no person should be permitted to attend during the inspection of the books of the Bank, and the examination of its proceedings, whose presence was not required nor assented to by the board, the undersigned were strenuously opposed. It was asserted as a right on the part of the committee, and (as the undersigned supposed, and the committee of the directors of the Bank appeared also to understand it) with an intention to enforce the right. In pursuance of this intention, (as the undersigned supposed,) the committee of investigation ceased to hold their meetings in the room set apart for them in the banking house, as soon as they understood the committee of the directors of the Bank to claim the right of being there present with their books, during the inspection of the same. It is true that, by a subsequent resolution, the committee of the House of Representatives disclaimed having decided that they should, in point of fact, exclude the directors from the room, during the inspection of the books; but they persevered in the assertion of the right to do so, as appears from the documents appended to this report.

This claim was regarded by the undersigned, as being without foundation and objectionable. In the first place, as has been observed, they believed it to be contrary to the *lex parliamentaria* for a committee of inquiry, on its own authority, to claim the right of holding its sittings, except when deliberating and voting, in secret. It can only be constituted a secret committee by express order of the House. Secondly, this principle involved the right of withdrawing the books of the Bank from the custody of the directors, and taking them into the possession of the committee of investigation. This is a power not given by the charter, which, as far as the books are concerned, authorises a committee only "to inspect the books." As the right thus reserved by the charter to Congress is not only one of the conditions of an agreement, but is in derogation of the rights and liberties of the citizen, and could not be claimed at common law, and its exercise at best, and under any circumstances, must be highly incommensurable, and create a serious interruption of the business of the Bank, it should be construed rather strictly than liberally, and not draw with it, by implication, any thing not necessary for its exercise. The entire confidence, which the undersigned feel, in the liberality and magnanimity of their colleagues, so to conduct the inspection, as to cause the least possible inconvenience to the officers of the Bank, could not authorise an acquiescence in a claim of right wholly to obstruct and bring to a stop the ordinary proceedings of the Bank; in fact, to suspend the charter.

It was a claim to take the books out of the possession of the directors into the possession of the committee, to detain them as long as they pleased, to carry them whithersoever they pleased, (a right afterwards more distinctly asserted and attempted to be enforced,) and to put them to whatever use the committee, in their uncontrolled discretion, might think proper. The undersigned again repeat, that it derogates in no degree from the objectionable character of this claim, to urge that the books of the Bank, thus taken from the possession of the directors, could have been put to no unworthy

use by the committee of investigation. Such an idea could only suggest itself to be repudiated. It is sufficient objection that they would have been put out of the custody of those responsible to the stockholders for their safe-keeping. The most improper use to which the books, or any other property of an individual or a corporation can be put, is to take them away from their rightful owner and lawful guardian. I may think I can better take care of my neighbor's property than he does himself, but I may not therefore take it from him and administer it, even for his own good; far less may I take it, without warrant of law, in order to extract from its unlawful use matter to be used, directly or by consequence, for his crimination. The books belong to the stockholders of the Bank, and are, by them, entrusted to the directors. They do not belong to the House of Representatives, nor to any committee of that House; and a right to inspect them no more involves a right to take possession of them, than a right to count the money in the vaults involves a right to take possession of it. It is a case of frequent occurrence in State Banks, that committees are sent to visit them, and, among other things, to count the specie in their vaults. Should such a committee claim the right of going into the vaults alone, and counting the money, without the presence of the directors of the Bank, or their authorized agents, it would be thought a very unwarrantable claim; and no personal confidence, reposed in the honor and probity of the committee, would render such a claim at all the less unwarrantable.

But the attempt to fortify the right of taking possession of the books, by urging that, in its exercise, it would not have been abused, wholly fails, in the apprehension of the undersigned, because they deem that the use which was avowedly to be made of them, was the greatest possible abuse. It was intended to employ them for the purpose of a general search, not only to ascertain, in the most general form, whether the charter of the Bank has been violated, but also what corruptions, abuses and malpractices had taken place in its management; and this, by way of inquiry, among other things, whether a criminal prosecution, in legal form, should be instituted, (see resolution of committee of investigation of 7th of May,) in which prosecution the directors, called to submit the books, would have been the party implicated.

The undersigned believe, that, in a land of constitutional liberty and law, it can need but little argument to show that a claim, on the part of a committee of either House of Congress, acting in virtue of the general parliamentary power of inquiry, to demand as a matter of right, the production, and to take possession of, the books and papers belonging to an individual or a corporation, in order to search therein for matter on which to found a criminal procedure against said individual or corporation, is a claim at once of the most unfounded and pernicious character. They confidently believe that no court of justice in the United States, or any other free country, has ever claimed such a power as a right, or attempted, in point of fact, to execute it. They have never heard of any statute which gives this power to any court or other tribunal. And they would deem the assumption of such a power, by either House of Congress, as an incident of the general powers of the House, and, resting on the *lex parliamentaria*, as unwarrantable, and in the highest degree dangerous.

3. The committee having withdrawn from the occupation of the room in the banking house, for the reason stated, adopted a resolution requiring the president and directors of the Bank to submit certain of the books of the Bank to the inspection of the committee, at their room in the North American Hotel. (See Doc. No. 25.) With this requisition the committee of the directors declined complying, for reasons which appear in their resolutions adopted May the 3d. (Doc. No. 50.) The undersigned regarded this resolution of the committee as open to the objections already urged against an *ex parte* inspection of the books, and to others peculiar to itself. By its terms the president and directors are required to submit certain of their books to the inspection of the committee at the North American Hotel. If, by the term required, nothing is to be understood but a request, with which the directors of the Bank were at liberty to decline a compliance, they were of course free so to decline, and their doing so argues no contempt of the House. But the majority of the committee evidently regarded, as in some way obligatory, the demand for the production, at their hotel, of certain of the books of the Bank. Such a demand the subscribers deemed to be unauthorized. If valid, in reference to the books named in the requisition, it was of course valid as to all the books of the Bank and all its branches; which, by parity of right, the committee might have required to be brought to their lodgings, and there detained and used at their pleasure. The question whether (supposing them brought to the com-

mittee's room at the North American Hotel) they should there be submitted in person by the directors, or inspected *ex parte* by the committee of investigation, was not distinctly raised. But considering that the committee ceased to hold their meetings at the banking house, precisely because the directors insisted on their submitting the books for inspection in person, it appeared to the undersigned that, whether exercised or not, the right of an *ex parte* inspection was designed to be reserved, and that the inspection was required to be had at the private room of the committee, to enable the committee, if they deemed it expedient, to act on that reservation. All the objections, therefore, which lie to an *ex parte* inspection in the banking house, hold with equal force to an *ex parte* inspection out of it.

In addition to this, the requisition of the books, to be carried away from the banking house, appeared to the undersigned, for other reasons, of an inadmissible character. It was to take them away from the place where the important interests of the Bank require them to be, and to be used. It was to expose them to the risks of transportation thro' the streets, & detention in private rooms, not constructed for the safe preservation of valuable papers. While it is the constant practice of individuals to deposit for safe keeping valuable books and papers in the vaults of the Bank, the Bank was required to remove its own books and papers containing the evidence of pecuniary transactions to the amount of several hundreds of millions of dollars annually, to the committee's room in the North American Hotel, a public house of great resort in Philadelphia. The undersigned opposed this requisition, from the belief that it was totally beyond the authority of the House; and they should have deeply regretted a compliance with it by the Bank, which would have devolved on the committee the care and responsibility of a deposit so delicate and valuable.

By the 25d section of the charter, whenever a *scire facias* against the Bank is sued out of the circuit court of Pennsylvania, it shall be "lawful for the court, in examining into the truth of the alleged violation of the charter, to require the production of such of the books of the Bank as it may deem necessary to the ascertainment of the controverted facts." This is the only case in which the contract between the Government and the stockholders authorises a requisition of the books; and this cautious authority, granted by law to one of the high judicial tribunals of the country, on an examination into an alleged violation of the charter, to require the production of the books which it may deem necessary to the ascertainment of controverted facts, sufficient to disprove by exclusion, the grant of any similar or additional power, of the same kind, to any other tribunal. That the House of Representatives, independent of the charter, has a right, by one of its committees, to require the production of any or all of the books of the Bank at the lodgings of said committee, or any where else, the undersigned cannot bring themselves to admit. At all events, as no authoritative form was given to the requisition, the directors, in respectfully declining to comply, are of course guilty of no contempt of the House.

4. After the directors of the Bank had declined a compliance with the requisition of their books to be produced at the North American Hotel, the committee of investigation, on the 5th of May, adopted a resolution (See Doc. No. 32) that they would repair to the banking house, at one o'clock that day, to inspect the books specified in the resolution of the 28th, and such others as they might require to be produced. A copy of this resolution was sent to the chairman of the committee of the directors, but reached him at his dwelling house, at a time when the committee of the directors was not in session, and a short time before the hour named in the resolution of the committee of investigation. He immediately informed the chairman of the committee of the House by letter, that it would be impracticable to reassemble the committee of the directors in season to submit the books for inspection that day, but that they would be reassembled without unnecessary delay. The committee, however, deemed it expedient, for the purpose of making up an issue, to repair to the banking house at the hour named, and then and there to call on the president and cashier of the Bank to submit certain of their books to the committee. This accordingly took place, first in the large hall of the banking house, and then, by repetition, in the president's room. The president and cashier declined a compliance with this request, on the ground that they had, neither of them, the custody of nor control over the books and papers; the general custody of the same being with the board of directors, who had already apprised the committee of the House, that they had placed them under the direction of a committee, to be by that committee submitted for inspection, and that they, the president and cashier, were therefore unable to comply with the demand of the com-

mittee of investigation. This demand, and the answer to it, were then reduced to writing, and will be found among the papers, Nos. 35 and 36, appended to this report.

This proceeding was but a repetition in a form a little varied of the attempts before made to acquire the means of conducting the inspection of the books, apart from those to whom the directors had confided the duty of submitting them to the committee of the House of Representatives. It was avowedly intended only to make up in another form, the issue which it was supposed would be created between the Bank and the committee of investigation, by the failure of the committee to obtain the books thus required of the president and cashier. It was known to the committee of the House that the directors, by an authentic act, of which a copy had been communicated, had placed the books at the disposal of the committee of the board, to be by them submitted in person for inspection. The said committee of the directors had twice positively made known their inability to depart from the instructions of the board in this respect. The committee of the House were apprized that the books asked for were not, under the instructions of the board, at the voluntary disposal of the president and cashier, and the demand made of these officers by the committee in person at the Bank, was not of the nature of a legal process to compel their production, supposing them to have been *de facto* in the keeping of the said officers. For these considerations, the undersigned opposed the personal demand for the production of the books now under consideration, as a measure which must, for the reason stated, prove ineffectual, unnecessary for the making up of the desired issue, and open to the objection of wearing a vexatious appearance. To make a third application for a voluntary submission of the books in a manner which it was known was deemed inadmissible, at the same time that no recourse was had to compulsory process, could not but have the effect, though certainly not so intended, of gratuitously throwing upon the directors the odium of repeated refusal of the requests of the committee of the House. However this may be, as the fact is undoubted that the directors had placed the books under the control of the committee of the Board; as their right to do so is unquestionable; as the chairman of the committee of the directors had apprised the chairman of the committee of investigation that the former could not be reassembled at the very short notice given, but should be so, without unnecessary delay, to submit the books for inspection; as the books were not in point of fact in possession of the officers called on; the undersigned feel confident that, in respectfully declining to produce them, those officers were guilty of no contempt of the authority of the House.

5. But whatever difference of opinion might at the first have existed between the committee of the House and the committee of the directors as to the propriety of permitting the latter to retain the custody of the books, and submit them in person to the committee of the House, further consideration appears to have led the committee of the House to admit the reasonableness of this mode of conducting the investigation, so far at least as to acquiesce in it—a consideration which exonerates the directors from any charge of contempt in the course hitherto pursued by them. Accordingly, without waiting their right to require the production of the books at their lodgings, they repaired again to the banking-house, to the room set apart for their accommodation, and required the production of certain of the books of the Bank.

It will be observed that, up to this time nothing had been arranged as to the mode of conducting the inspection beyond the single point, settled by the acquiescence of the committee of the House of Representatives, that the books should be submitted in person by the committee of the directors. No objects of inquiry had been announced by the committee of investigation, further than they appear in the resolution of the House under which the committee was raised, and in the calls made for information, as to a great amount and variety of matters, as appear from the resolutions in the appendix. The correspondence which had taken place between the committees had been confined almost exclusively to the single ground of the course deemed proper to be pursued by the committee, to obtain possession of the books of the Bank.

On the arrival of the committee at the banking house on the 7th of May, a call was made on the committee of the Board, in pursuance of the following resolution:

Resolved, That the committee will proceed to examine into the truth of the statements made by the Government directors to the President of the United States and to Congress, and for that purpose with this day call for the production, for inspection, of the minute books containing the proceedings of the directors of the Bank, and the expense books and vouchers for expenses incurred.

As preliminary to a reply to this demand, the following paper was read by the chairman of the committee of the board:

May 7, 1834. Whereas it appears, from the resolution of the House of Representatives of the U. States, appointing the committee of investigation, that two distinct inquiries were contemplated, one of them directed to ascertain whether the charter had been violated, and limited to the acts of the corporation, and the other so very general and indefinite, as to make it difficult, if not impossible, to say whether it has any limits at all; either as to the matters to be inquired into, or the mode of pursuing the inquiry; and whereas it appears, from calls made by the committee of investigation, that they have proposed a very wide range, embracing, among other things, an extensive examination of the acts, transactions, accounts and letters of individuals, and thus instituting a kind of general search, which is the more objectionable, because if it has any purpose at all it must be to eliminate those individuals as well as the Bank, and if it have not this purpose, it is without any assignable object, and would be an injurious invasion of private interests; and whereas, under these circumstances, it is the duty of the committee, by all lawful means, to protect the rights and sacred confidence entrusted to their keeping, and to yield nothing by consent which cannot be legally demanded from them; and whereas, after careful and anxious consideration, they are of opinion that the inquiry can only be rightful if extended to alleged violations of the charter, and this inquiry ought to be conducted according to some certain principles and rules; therefore,

Resolved, That the committee of investigation be respectfully required, when they ask for books and papers, to state specifically in writing the purposes for which they are proposed to be inspected, and, if it be to establish a violation of the charter, then to state specifically in writing what are the alleged or supposed violations of charter to which the evidence is alleged, or supposed to be applicable.

Resolved, That, in the opinion of this committee, it would very much conduce to the purposes of justice, as well as the convenience of all concerned, if the committee of investigation would furnish a specification of all the charges intended to be inquired into, and proceed with them in order as stated.

The undersigned opposed the call above recited, made on the 7th May, for the production of books. They feel themselves, therefore, called upon to explain briefly the considerations which influenced them. The undersigned have already stated that they conceived the committee, of which they have the honor to be members, to be clothed with a two fold power, and to be competent, or rather required, by the order of the House, to act in a two fold capacity. They were a committee of visitation, appointed under the 25d section of the charter. As such, they were authorized to visit the Bank, to inspect the books, and to examine into the proceedings of the Bank, and report whether the charter had been violated. They were, also, a committee of inquiry into the causes of the present commercial embarrassment and pecuniary distress, and into the corruptions, abuses, and malpractices of the Bank. In the former capacity, they had a right to inspect the books of the Bank. They had this right by the charter, and would not have had it without the charter. In the latter capacity, they had no right to inspect the books, unless voluntarily submitted by the Bank, because the charter does not give them that right for such purposes. The Bank is obliged, by the charter, to submit its books to the inspection of a committee of visitation, authorized to report if the charter has been violated; and it is not bound to submit them to a committee of general inquiry authorized to report on malpractices and corruptions. The right of inspection possessed by the committee, as a committee of visitation, cannot be used by it in its other capacity of a committee of general inquiry and accusation, as an instrument of search after crimes and misdemeanors in general.

But the directors of the Bank had been apprized, at the outset, by the resolution of the House of Representatives of the 4th of April, that the committee was of a two fold character, as stated. That resolution distinctly enumerates, as objects of inquiry, not only violations of the charter, for which the books might be inspected, but various acts of mismanagement & corruption, for which they might not be inspected, unless voluntarily offered for that purpose. The committee of investigation had addressed various calls, by way of resolution, to the committee of the directors, touching matters concerning which the charter does not require the Bank to submit its books for inspection. The call of the 7th May, on the last visit to the banking house, is for certain of the books of the Bank, to enable the committee "to examine into the truth of the statement made by the Government directors to the President of the United States and to Congress." That statement embraces matters which neither are, nor are alleged to be, violations of the charter; and consequently, in reference to which the directors are not required to submit their books for inspection.

Had it pleased the House of Representatives to create two committees, one of visitation, under the twenty-third section of the charter, and one of general inquiry, under the power of the House to send for persons and papers, these committees would not have been authorized to amalgamate nor interchange each other's functions.

The committee of charter visitation would not have been authorized to engage in general inquiry, nor would the committee of inquiry have been authorized to demand the books for inspection.

But to what avail has the charter limited the objects for which the books may be inspected, and protected the corporation, and those who transact business with it, from the annoyance and mischiefs of a general search, if a committee of visitation may be clothed with the functions of a committee of general inquiry, and, having got the books into their hands for one purpose authorized by the law, may use them for another purpose not authorized by law? It is plain that if this could be done, the limitation of the right of inspection would be illusory and worthless. In order to render the limitation efficient, the committee of directors required of the committee of investigation to specify the objects for which they demanded the books. For some objects the demand of the books was according to law; for other objects, not being bound by law to yield them, the directors were at liberty to withhold them or submit them according to their discretion. They therefore needed a specification to enable them to discharge their duty under the charter, as well as to protect them in their rights, to enable them to distinguish in the requisitions of the committee of investigation, how much was authoritative, under the statute commanding obedience, and how much, not being authoritative, they were at liberty to concede or withhold.

There was the more reason in insisting on this right to make the limitation on the inspection of their books available, because, as has heretofore been observed, the inspection itself is in derogation of the natural rights of the citizen, who ought not, under any circumstances, to be obliged to criminate himself. It pleased the Legislature, regarding the corporation as their own legal person, to require them, when accused of violating the fundamental laws of their existence—the provisions of the charter—to submit their books to a committee authorized to report on that fact alone. But to transfer this limited right of inspection to other committees for general purposes of inquiry, and for a general purpose of enforcing self-crimination, is illegal and inequitable. To do this by indirection—to clothe a committee of inquiry with the powers of a committee of visitation, and thus to acquire a right to open the books for one object, and then to inspect them for another, would be to attempt to accomplish an end, in itself unauthorized, by means peculiarly unwarrantable.

For these considerations the undersigned regarded the directors as justified in requiring of the committee of the House a specification of the subjects of their inquiry. The ground taken by the committee of the board is, as the House perceives, a ground of legal right, assumed by the directors, under the circumstances of the case. This is the third occasion on which the Bank has been visited by committees of the House. In the year 1818, a committee was appointed to examine the affairs of the Bank then in disorder. The committee thus appointed was, by the terms of the resolution, directed to report whether the charter had been violated, and the resolution consisted mainly of a specification of alleged violations. In executing their trust, however, the committee extended their inquiries to the general management of the Bank, and examined its president, other officers and directors on oath. To this course of inquiry the Bank deemed it for its interest to submit. The undersigned are not aware that any resistance was made to the demands of the committee. On the contrary, their report closes with the observation, that "it is due to the officers of the Bank at Philadelphia to state that every facility in their power was rendered in explaining the books and assisting the researches of the committee." In one instance, in which an individual, a director of one of the offices charged with malpractices, refused to testify, the committee observe, that they did not insist on his answering, and that they examined him chiefly to enable him if he pleased to exculpate himself. This committee did not confine their examinations to the officers of the Bank of North America, and perhaps other persons. This circumstance, and the others mentioned, sufficiently show that no question as to the extent of the powers of the committee was raised during the visitation; that the witnesses appeared voluntarily; that the Bank deemed it for its interest to submit to the examination of the committee, in any form in which the committee thought proper to conduct it, and that consequently the whole investigation assumed the form of a parliamentary inquiry, conducted by the assent of the parties, and without any appeal to their rights.

The examination of 1832, assumed substantially the same character. The resolution, under which the committee was raised, consisted, as originally moved, of a large detail of alleged abuses, several of which imported no violation of the charter. The House adopted an amendment proposed to this resolution by a member from Massachusetts, (Mr. Adams,) in the following terms: "Resolved, That a select committee be appointed to inspect the books and examine into the proceedings of the Bank, and report thereon, and to report whether the provisions of the charter have been violated or not." This phraseology appears to have been derived from the commencing words of the report of the committee of 1818, which is in the same terms, and not from the resolution by which that committee was created, and which provides that a select committee be appointed, "to inspect the books and examine into the proceedings of the Bank, and report whether the provisions of its charter have been violated or not, and particularly to report" as to several matters, all, or nearly all, of which were alleged violations of the charter. The amendment offered by the member from Massachusetts, (Mr. Adams,) and adopted by the House, was offered on the ground that "the original resolution presented objects of inquiry not authorized by the charter of the Bank, nor within the legitimate powers of the House." But as it directed the committee to report generally on the proceedings of the Bank as well as on violations of the charter, it was considered by its mover, and by many of those who supported the amendment, as authorizing an inquiry extending beyond violations of the charter. The right to constitute an inquiry of this kind was put upon the ground that the Bank was applying for a recharter, and could not reasonably decline it. At that time, as in 1818, neither House of Congress had assumed a hostile position to the Bank. Its directors, at the event proved, felt that they could rely upon the National Legislature to them justice, against any efforts which might be made to impeach their character or arraign their conduct. Applicants for a recharter, they felt that they could not with propriety object to any inquiry which might be conducted by a House of Congress willing to grant a recharter, provided the result of the examination should be satisfactory. Accordingly, the resolution was amended, was understood to extend, not amended, (Continued on fourth page.)