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From the Federal Republican.

CONGRESS,

HOUSE OF REPRESENTATIVES

MONDAY, DECEMBER 14.

The Report of the Committee relative to Relief from the Penalties incurred by Sundry Merchants, in the late Importation of British Manufactures, being under consideration.

MR. QUINCY (of Massachusetts) said, that in listening to the debate, what had impressed his mind, the most forcibly was the simplicity of the question. He was less surprised at the arguments which were urged, than that any argument was necessary. A mere statement of the case, he should have thought would have settled the question. Twenty millions of dollars were said to be forfeited to the United States. An amount equal to one third of the whole national debt. This sum was alledged to be due, from comparatively a small class of men, in particular sections of the country—in the cities and on the sea-board. It was distributed among the individuals of that class, in various proportions. To every one of them, the amount demanded is material. The greater part of the fortunes of some, is at stake. To others it is a simple question of prosperity or ruin. The principles arising out of the case and connected with the decision, are in their nature, so complicated and delicate, that scarcely two men can be found on the floor of congress, who can agree by what scale remission shall be graduated: if remitted at all. A case of this magnitude, so important to the public, so critical to the individuals, so dubious in point of principle, and so consequential in sectional claim and interest it is seriously contended, should be referred to the decision of a single individual—that one man should be invested with the power to decide the fates of multitudes of his fellow citizens—and decree riches or poverty, not by any known rule or standard, but according to his absolute will and discretion! Such is the power seriously contended for, in a country calling itself free, by men who pretend to understand the nature of civil liberty, and to venerate its principles!!

Mr. Q. said, that the nature of the proposition was not more astonishing, than the main reason urged in its support. And this was, that the secretary of the treasury possessed this power already; that the law now placed it in its hands. As if the greatness of a power, and its exceeding the trust, which every one man ought to profess and its irreconcileableness with the settled principles, on which public safety, in a free country depends, were not conclusive, either that no such power even was invested, or that the possessor ought to be deprived of it.

Mr Q. then proceeded to investigate the general powers vested in the secretary of the treasury, for the mitigation, or remission of fines, penalties and forfeitures. He contended that no such power was invested in the head of that department, as the secretary had asserted in his letter to the committe of ways and means. In this letter, the secretary asserts that—*"The power to remit the share of the United States and of all other persons, in whole or in part, and on such terms and conditions as may be deemed reasonable and just, is by law vested in the secretary of the treasury."* Mr. Q. said, that this was nothing less than the assertion of an absolute discretion in relation to the subject matter. A discretion without limit, or principle, or measure of controul, or rule of decision, except the sovereign will and pleasure of the individual possessing it. For he who can do in relation to any matter, or thing, in the whole or in the part, and fix such terms and conditions, as may deem responsible and just, has as absolute an authority, in that matter or thing as heart can desire. And if by any general law, such power be invested in any person whatsoever, we have not much to boast in this respect, either of the wisdom, or of the freedom of our land.

The question then is, whether this power, thus asserted to exist in himself, by the secretary of the treasury, be vested in him by law. Mr. Q said that he confessed, that on the first reading of the statute, being under the influence of the opinion thus unequivocally expressed by the secretary, and not at once perceiving how the terms of law had been wrested to the purposes of official construction, he yielded a momentary and reluctant assent to the claim of the secretary. Recollecting, however, what a fascinating thing absolute power is, and how little implicit faith any man has a right to claim, in a case where the degree of his party is dependent upon his own construction; recollecting also, the character of the men, who, in the year seventeen hundred and ninety-seven, when the law in question was passed, had the reins of power, he began to doubt of the construction, and set himself carefully to investigate on what grounds this arbitrary discretion thus obtrusively asserted by the secretary as existing in himself, was founded. He said, what men, who at the time, when the law in question was passed presided over the construction of our laws, were, not only learned and able men, and true lovers of their country, but they were men, also deeply versed in the principles of civil liberty; they were natives of the soil, and had not been educated in the arbitrary doctrines of the civil law, but had drank in the essential principles of the ancient Saxon common law, as it were with their mother's milk.—Such men were not likely to grant so enormous a power, by any general term, even in an unguarded moment. For had reason failed them, in a case of this nature, instinct would have come to their aid. He determined, therefore, to investigate this question, aloof from the prejudices which the assertion of the secretary of the treasury, and the corroborative opinion of the committee of ways and means had created, and set himself to examine, what were those essential principles of civil liberty, which lay, as it were, at the base of all statutes of this kind, and which were in their nature so predominant and inherent, that no friend of freedom could possibly forget them, when framing such a statute.

Mr. Q said that on turning this subject in his mind, he had formed two principles of the nature which he sought. The first was.—THAT THE INNOCENT SHOULD NEVER BE CONFOUNDED WITH THE GUILTY. Of consequence, that the law must have been intended to be so constructed as that as far as possible, the former should always escape, and the latter should always be punished. The second was—THAT THE OBJECT OF THE PENALTY WAS ONLY THE ENFORCEMENT OF THE PROVISIONS OF THE LAW. Of consequence, that when this object was attained, there ought to be an end of the penalty; which was ever to be considered as the sanction, or vindicatory branch of the law, and never be perverted to the purposes of the ways and means of the treasury. When the terms of the statute, under consideration, were considered in reference to these principles, all doubt as to its true construction vanished. The character of the framers of the law was vindicated. No such power as that asserted by the secretary of the treasury, in relation to the subject of the penalties, was vested in him. On the contrary the real grant of power was precise, limited, and perfectly consistent with the principles of civil liberty.

The law contained two clauses which comprehended all the powers relative to this subject, vested in the secretary of the treasury. The words are these. After prescribing the modes by which testimony concerning the circumstances of the case shall be collected and transmitted to the secretary of the treasury, the statute proceeds—*"Who shall thereupon, have power to mitigate, or remit such fine, forfeiture or penalty, or remove such disability, or any part thereof, if in his opinion, the same shall have been incurred without wilful negligence, or any intention of fraud in the person or persons incurring the same—and to direct the prosecution if any shall have been instituted for the recovery thereof to cease and be discontinued, upon such terms or conditions, as he may deem reasonable and just."*

From these clauses in the statute if from any, the secretary of the treasury derives that unlimited discretion which he asserts in his letter to the committee of ways and means, to be vested in his department. Now these clauses are distinct and substantive, having relation to two objects also distinct and substantive. The first clause relates to the penalty incurred. The second to the prosecution commenced.

As to the first clause, relative to the penalty, fine or forfeiture incurred, so far from vesting an unlimited discretionary power, it vests, strictly speaking, no discretion whatever. It is in truth a power to mitigate, remit, or remove, according to a stated and specified statute standard. This authority is to exercise his judgement upon the circumstances of the case, touching the existence or non existence of either of two particulars stated in the statute:—wilful negligence, or fraud. If neither exist, he has the power to remit. If either exist, but in a partial degree, he has the power to graduate the penalty, fine or forfeiture to the degree of guilt. And this is his whole power resulting from this clause. The head of the treasury is a mere tribunal to decide, whether the statute guilt has been incurred, or any part of it, and according that judgment to graduate the fine penalty or forfeiture. If there be no guilt, his power of mitigation, that is of gradation is at an end. In such case it cannot be exercised. The single authority he has, is to remit altogether. He has no more right to talk of *"profits"* or *"extra profits,"* or *"equivalents,"* or to intimate bonds or "loans," as the grounds of remission than he has to decree the whole penalty in his own pocket for his private use. The plain purpose of the law is, that guilt should suffer, and that innocence should escape. And by guilt and innocence, is only meant statute guilt, or statute innocence. Whatever is either wilful negligence or fraud, is statute guilt. Whatever is neither one nor the other is innocence. It is easy to see how perfectly reconcileable this is to the established principles of civil liberty. Instead of a sharp sented statesman, invested with the powers to hunt among fines, penalties and forfeitures for the ways and means of the treasury, we find only a benignant and wisely constituted tribunal, with power to judge upon the circumstances of the case, how far any statute guilt has been incurred, and to graduate suffering according to the degree which shall appear.

As to the second clause, relative to the prosecution commenced, there is, indeed, a discretion invested in the head of the treasury. But it is a discretion extremely limited in its nature, arising out of the necessity of the case, extending only to very subordinate considerations, and in the exercise of which there is little or no temptation to abuse. It relates only to the *terms and conditions* on which he may direct the prosecution to cease. These he is permitted to fix *"as he may deem reasonable and just."* That such a power is necessary is obvious, because although the innocent has a right to be free from the imputation and penalty of guilt, yet the costs and expences which have been incurred is a loss which must fall somewhere. The nature of things has thrown it upon him, and no principle of justice can transfer it to another. But the discretionary power here given is, in the nature of things, extremely limited, and extends only *to those particulars, which are incident to the prosecution*—to costs, expences, and sometimes compensation to custom house officers for services rendered, either in their seizure, or in the care of the property.—It is obvious also, that in exercising such a discretion the danger of abuse is limited, not only from the circumscribed nature of the sphere, but from the circumstances in which it is exercised. He has no official inducement to abuse his power. The particulars which are incident to a prosecution are distinct, notorious, and easily to be ascertained; and as to compensation due to the custom-house officer, the secretary having, by no possibility, any interest, personal or official, in the decision, may safely be entrusted with it; and ought to be, out of regard to the indemnification of the officer.—Here, again, there is no interference with the established principles of civil liberty. The question relative to causing the prosecution to cease, has no connection with guilt or innocence. It is merely ascertaining the inevitable loss, which he must bear, on whom the bolt of Heaven has fallen. If a compensation is decreed, it is for the custom house-officer, and not the treasury. It is decreed not as a part of the penalty, for that is incurred only in consequence of guilt, which is in this case out of the question; but is decreed only as a part of that inevitable loss, which some one must bear, and of course he on whom the loss is cast.

When the statute is considered, it will easily be seen what are the means by which the secretary of the treasury grasps at this unlimited and arbitrary discretion, which he asserts in his letter to the committee. It is by confounding what is distinct, and associating what are separate. By a sort of treasury amalgam, he consolidates both clauses of the statute into one, and attaches the power of annexing "terms and conditions which he shall deem reasonable and just," to the clause which has relation to the penalty, instead of restricting it to the clause which has relation to the prosecution. This may be a very happy construction for the treasury, but it is a very ruinous one for the citizen. At least so it is likely to prove, judging by the proposition now under consideration.

If any one asks why these powers are to be construed as though distinct and substantive, instead of amalgamated and consolidated, I answer, on four plain and solid grounds:—The terms of the law—the policy of the law—the nature of the thing—and the established principles of civil liberty.

The terms of the law are select and appropriate. Those connected with the remission or mitigation in whole or in part, not only give the power, but limit the exercise of it, by an express statute standard: He is to do the one or the other, according to the nonexistence, or the degree of existence, of *"wilful negligence, or intention of fraud."* Those connected with the causing the prosecution to cease, are equally precise. The power of annexing terms and conditions, such as he may deem reasonable and just, relates to that object (the causing of the prosecution to cease) and nothing else.

The policy of the law is not less corroborative of this construction. It is a remedial statue—as such it must be construed liberally. Its policy is, to suffer all the innocent, and none of the guilty, to escape. For this purpose it has set up a statute standard, by which the secretary is to decide who is innocent, and the degree of innocence, and graduate the penalty accordingly.—Therefore it is, that the power of affixing conditions, is not annexed by the terms of the law to the power of mitigating and remitting. To the degree of statute guilt which a man has incurred, the secretary is morally bound to punish. But when of this degree there is none, he is then morally bound to acquit. Of "terms and conditions" here, there is no use. For guilt must be punished according to its degree, and innocence must escape. Now the law permits no "terms or conditions" to be made with the innocent; no "equivalent" is asked for not confounding them with the guilty. It is the policy, it is the delight of the law, that they should go free and unspotted, according to their innate purity.

The nature of the thing shows also, that the power of annexing such "terms and "conditions as he may deem reasonable "and just," exclusively belongs to the power of causing the prosecution to cease. For, from the nature of the thing, the question concerning causing the prosecution to cease, is subordinate, in point of importance, and secondary in point of time, to the question concerning mitigating or remitting the penalty. For whether the decision of the secretary be guilty of a part, or not guilty at all, the secretary's power is in the same state. It has thus far done its work. The degree of guilt or innocence is ascertained. The penalty is remitted, or graduated. The only remaining prerogative of the secretary relates to the prosecution. Here he possesses the discretion before noticed. But it is a power which, from the nature of the thing, cannot retro-act, and bring again innocence or guilt into view. That is already settled, at least in principle, and must be, before the question concerning the prosecution can be agitated.

But there is a stronger argument than all these, resulting from the established principles of civil liberty—What is the nature of that proud consciousness, which freemen feel and delight to acknowledge; and of what stuff is it composed? What is it, but the certainty with which each individual is inspired, that he holds life, liberty and property subject only to known laws, and aloof from the will of any individual. So long as he is innocent, he has no compromise to make, no equivalent to offer, no truckling to assume. He on whom any fine, penalty, or forfeiture of the collection law has fallen, by any mis-