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From the Federal Republican.

CONGRESS,
HOUSE OF REPRESENTATIVES.

MONDAY, DECEMBER 14.

The Report of the Committee relative to Re-
sist from the Penalties incurred by Sur-
vey Merchants, in the late Importation
of British Manufactures, being under
consideration.

MR. QUINCY'S SPEECH.

(Concluded)

When I speak of innocence and guilt, I mean always statute, innocence, or statute guilt. I have nothing to do with the money-dreams of the secretary of the treasury, nor with the day-dreams of the gentleman from Tennessee (Mr. Grundy.) He did not pretend, no man has pretended, no man can pretend, that there was any intention of fraud, or any wilful negligence in the merchants, whose case is now before the house. But he told us at one time, that their crime consisted "in purchasing in Great-Britain;" at another, that it consisted "in not co-operating with the policy of the American government."—Grant for argument sake, all the guilt those charges include: Is that wilful negligence, or intention of fraud? Free of this, are they not innocent? Innocent; are they not entitled to entire remission?

This construction for which I contend, I think I can safely state, is conformable to the practice of the treasury, antecedent to the accession of the present secretary. At least so it appears from the book of abstracts of the treasury, entirely to my satisfaction.—Yet upon this point, I would not be considered as expressing myself with absolute certainty, as I have not had an opportunity to examine the original records of the cases, nor yet to converse with the secretary of the treasury, although I have been twice at his office for that purpose. The abstracts of the treasury, antecedent to that period, do not indicate any thing like a compromise with innocence, for the sake of profit to the treasury.—The judgments stated are, "remission" or "mitigation," or payment of fees or duties, or costs, and sometimes of a sum certain; fifty or an hundred dollars to the revenue officers, or to porters other than the United States. Although I do not conceive the former practice of the treasury very material on the point, yet it is some satisfaction to state, that the early decisions to which I allude, seem to be guided by this principle: that the treasury should never gain any thing from fine, penalty or forfeiture, except in case of guilt. The first case I could find, although there may have been others antecedent, was that of Robert Gillespie, in June 1801. It was the case of an importation of porter in casks, of less capacity than those required by law. The judgment of the secretary of the treasury was:—No wilful negligence or fraud—claim of the United States released on payment of costs and one fourth net proceeds.

Another case was, that of Theodore Armistead, decided in February 1812. Brandy had been imported in casks of less capacity than required by law.—The judgment of the secretary of the treasury was: No wilful negligence or fraud—claim of the United States released on payment of costs and changes, and two cents per gallon for the use of the U. States. And this levy is expressly stated to be in addition to the duty established by law. Why Mr. Speaker, what a principle is this? A secretary of the treasury declares, in so many words, that the guilt specified in the statute, to which the penalty is annexed, does not exist, yet multiplies the individual at his discretion, as the condition on which innocence is not made subject to the penalty! If the secretary of the treasury can lay a tax of "two cents per gallon," why not of twenty: if he can take "one fourth of the proceeds," according to his arbitrary will, why not the half, or the whole? In these cases what has become of that essential principle of civil liberty, that innocence & guilt shall never be confounded? Both Gillespie and Armistead, though clear by the statute, have gone away from the legal tribunal taxed by the secretary. I dare

say it will be said, they were both satisfied. Doubtless, sir. The secretary had resolved himself into an arbitrary tribunal.—and what private individual dare question the opinion of the secretary? But it is the business of the legislature to consider subjects in their principles and consequences, and not by the convenience of this, or that individual.—The importance of withstanding the beginnings of oppressive encroachments could never be better illustrated than by the instances before us.—These, and cases like these, were the nest eggs of the treasury; and now we see what a monstrous brood is likely to be produced. The secretary has gone on year after year, exercising an arbitrary discretion in cases of small amount, and affecting individuals only, till at last he starts up a gigantic power, authorised to carve what he pleases out of twenty millions of dollars, and to settle the destinies of a whole class of citizens! If doctrines and constructions like these, are to receive the sanction of this legislature—some Bonaparte, as soon as thou wilt, and thou shalt find cabinet principles suited to all thy purposes.

I have hitherto considered the case of the merchants' bonds, as though it were strictly within the principle of the collection laws. And the bearing of my argument has been this; that if no such power, as is asserted by the secretary is truly vested in him, in the cases of the ordinary revenue, that much less ought he be permitted to exercise this most dangerous power, in cases of so much magnitude; and in all aspects so critical, as are those under consideration. But it is true that the fines, penalties and forfeitures, accruing under the restrictive system, have no other claims for relief, than those general ones, which arise under the collection laws. Alas! Sir. The nature of these laws are such, as to make those claims far higher and more impressive.

I shall touch this subject of the restrictive system, with as much delicacy as possible. I wish not to offend any prejudices. I know that the zeal and ardent affection, which some gentlemen show for this restrictive system, very much resemble themselves of those, who according to ancient legends, had taken philtres and love-powders. The ecstasy of desire is just in proportion to the deformity of the object. I shall not, however, meddle with that topic, any further than it is connected with the subject before the house.

A great deal is said about the policy of the restrictive system, and the necessity of a rigorous enforcement of it. Now it appears to me, that the desire to make this system effectual, ought to induce the release of these bonds, and not their enforcement. The object of the restrictive system is avowed to be, to produce a change in the measures of the British cabinet, by the suffering which the loss of our commerce occasions to her citizens. If this be the policy, then those measures are beyond all question, the best calculated to insure its success, whose tendency is to diminish the suffering as far as possible of the citizens of your own country. The best chance for success must necessarily be by convincing the thinking part of the community in G. Britain, that while they suffer much, we suffer little or nothing. Were such the case, then indeed the system might have some hope of a prosperous result. But when suffering there, is found to be attended with suffering here—then the whole potency of the restrictive system results in this question, which can suffer the most, or which can bear suffering the best.—And what judgment will the people of that country be likely to form, in relation to the degree this people suffer, or their capacity to endure when a sweep of twenty millions of dollars is seriously advocated by some; and when a majority seem inclined to turn the penalties of the restrictive system, not into a means of punishment of fraudulent or wilful violations, but into an instrument of wags and means of the treasury? Does it need any ghost from the dead, or seer from the skies, to tell the people of Great-Britain, that, in a free country, such a system of oppression must be short-lived, and that its supporters must soon become detested? So that if the policy of the system be consulted, it requires that its rigor should be softened as it respects your own citizens.

But, are there not other considerations materially distinguishing the character of the restrictive system, from that of your collection laws, and requiring a correspon-

dent mildness in the construction of the laws, relative to the former, which the latter cannot claim? Concerning the constitutional power of the national legislature to pass the laws of collection, there never was any question. But, concerning its powers under the constitution, to pass such a body of laws as those, which compose the restrictive system; there always has been, there is, and ever will be a question. A very great majority in all the commercial states, always have denied that the power of regulating commerce, included the power of annihilating it altogether. They believe nothing in the project; and they believe as little in your right, to convert their only means of prosperity to the purposes of hostility.—They ever will deny that any power is vested in this, or any other body of men, to bring down direct and certain ruin on the whole commercial section of the country, under pretence of producing an indirect and uncertain pressure upon a foreign nation. Surely this is a reason for a mild exercise of the power arising under these restrictive laws. If a right be dubious, the exercise of it ought not be made more obnoxious by oppression.

Not only the authority is dubious, but the provisions of the law outrage every received notion of legislative prudence and foresight. They "out herod, Herod." In six years congress have passed twenty laws, creating at least ONE HUNDRED OFFENCES. These offences are constituted of acts, previously not only innocent, but laudable; not only laudable, but they were the most common and necessary acts of whole sections of country, and whole classes of men. These new offences subject the offenders to the most grievous penalties, fines and forfeitures, known to the revenue laws; and are involved in such a complexity of enactments, re-enactments, provisions, proclamations, whole revocations and half revocations, that no man under heaven can tell when he is safe, or how or where to steer his course, without being meshed in the web spread for him by your statutes. Some idea may be had of the degree of oppression added to these penal laws, by the restrictive system, from comparing the applications for remission antecedent to that period, with those subsequent to it.—Antecedent to the 19th April, 1806, when your restrictive system commenced, all the applications for remission in the fifteen previous years, amounted to somewhat short of thirteen hundred. In the six years, the restrictive system has been in operation, there have been nine hundred and fifty four, and if to these be added, those known at the department and not yet acted upon, the whole number exceeds one thousand. So that the annual average of application for remission, since the restrictive system, is double the annual average, of applications antecedent to that period. In other words you have doubled the number of the snares of the law, and the cries of its victims are heard in a double proportion. Do you think, that when the web of the law is thus extended beyond all reason and precedent that you can strain its penalties to the extreme rigor of the statute, without public sentiment revolting against you? Is it in human nature, to see its fellow struggling innocently, in the coils of unnatural laws, without coming to its aid, and taking vengeance on its persecutors?

I know it will be said, that it is not proposed to confiscate the whole, but only a part. In other words, you will take not all that you want, but all that you dare. To this I reply, you have no right to a single dollar—not to a cent. The merchants are free of all legal taint. They are free from all statute guilt. There is in the case, neither "wilful negligence nor fraud." The secretary of the treasury does not pretend either. But this is his situation, and this is the secret of his application to congress, for their sanction to his exercise of this great discretionary power—confiscate the whole of this immense amount, ruin hundreds and thousands, on account to a breach of the letter of a penal statute—he dare not. Mitigate upon any principle, which would aid the treasury in its necessities—he could not. He therefore transfers the whole matter to the broad shoulders of the legislature; talks about "the magnitude and unforeseen nature of the case;" asserts roundly an unlimited discretion existing in his department; tells of "profits and extra-profits" made by the merchants; of the "tax levied" by them on the consum-

er; and sums up the whole matter with a hint that "it was thought proper not to exercise his authority until congress had taken the subject into consideration, and prescribed, if they thought proper, the course to be pursued."—Well, sir, and what do we witness now, that the subject is before congress?—Why, we see every friend of the secretary, every man who is supposed to be in his particular confidence, advocating that congress "should think proper to prescribe no course whatever to be pursued"—but refer the whole to the absolute discretion of the secretary. Can any man witness all this and not understand the meaning. To my ear it is as plain, as though he uttered it in so many words on this floor. "The poverty of the treasury and not my will consents. If congress will take the odium and the risk, I will take the knife and the flesh. And I will cut where, and just as much as you shall authorise."

I shall not be able to speak upon this subject, I fear, without offending the nice sensibilities of some gentlemen in the house. Of late, an opinion seems to be gaining ground upon this floor, that a member cannot denigrate a doctrine, or principle to be base or wicked, without attributing those qualities to those, who may have happened to advocate such doctrine or principle. And this, too, notwithstanding he expressly declares, that he has no intention of applying attributes to such persons, nor even intimating that their view is the same with his own upon the subject. I protest, sir, against such a restriction of the rights of debate, as totally inconsistent with the necessary freedom of public investigation. It is not only the right, but it is the duty, of every man to whose moral perception any thing proposed or asserted seems base or wicked, to brand such proposition, or assertion, with its appropriate epithet. He owes this duty, not only to the public, but to the individual who has been unfortunate or mistaken enough to advocate such an opinion, or make such assertion. And provided he does this, as the state of his own perception on the subject, and without attributing motives or similar perceptions of the thing to others, not only there is no reasonable ground of offence—but on the contrary, such a course is the only one-reconcilable with duty. How else shall the misguided or mistaken be roused from their moral lethargy, or blindness, to a sense of the great condition or nature of things! What mortal has an intellect so clear, as not sometimes to have his view of things doubtful or obscure? Whose mortal standard is so fixed and perfect as that it never fails him at the moment of need? If, after those explanations, any person takes an exception at the statement of my perceptions on this subject, and any hot humor should fly out into vapor, upon the occasion—it has its liberty—I shall regard it no more than "the snapping of a chesnut in a farmer's fire."

I say, then, Mr. Speaker, that to my view—let it be understood, sir, I do not assert that it is even the true view—much less, that it is the view of any gentleman who advocates an opposite doctrine;—I say, that to my view, and for my single self, I would as soon be concerned in a highway robbery as in this treasury attempt. Sir, I think a highway robbery a little higher, in point of courage, and a little less, in point of iniquity. In point of courage there is obviously no comparison. In point of the quality of the moral purpose, the robber, who puts his pistol to your breast, only uses his power to get your property. He attacks nothing but your person. But, in this treasury attempt, the reputation of the victim is to be attacked to make an apology for confiscating his property. Guilt is alleged. Guilt, of which he is clear by the terms of the law, for the purpose of making him though innocent, compound, for escaping the penalty.—What is this but making calumny the basis of plunder?

This is not the view of a solitary individual. I have letters on this subject, from men, not merchants, nor as I am apprised particularly connected with the mercantile class, whose language is perfectly similar to that I have expressed. Indeed, sir, some exceed even these expressions in bitterness & indignation. Men look very differently at a question of his kind, when they are removed a thousand miles from the sufferers, and see the principle through the fascinating medium of treasury relief, than when they stand by the side of the victims, and see distress and ruin entailed upon innocence. Or what, in a moral view, is worse, witness innocence com-