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OFFICE on the South side of Market Street, below the Court House.

**CORRESPONDENCE**  
**ON THE PROTESTED DRAFT.**  
*Bank of the United States,*  
Nov. 28th, 1834.

Sir: Your favor of the 13th July last, reached the bank during my absence and finding on my return, that my letters addressed to you at Washington, had been published in the newspapers of Nashville, it seemed useless to prolong a discussion which could only inflame the passions of the country in the midst of its elections. I have, therefore, forbore to answer your letter until the time had passed for the repetition of a similar appeal from the laws.

The whole case appears to be exceedingly simple. There is a difference of opinion between the Treasury and the Bank about the damages on a bill of exchange. This is a matter of account which depends on the existing laws, and the acts of Congress provide specifically before what tribunal and in what manner, the question must be tried. Thus by the act of the 3d of March, 1797, it is provided, that if any person, accountable for public money, fails to pay it, "it shall be the duty of the Comptroller, and he is hereby required to institute suit for the recovery of the same," and in such a suit "no claim for a credit shall be admitted upon trial, but such as shall appear to have been presented to the Accounting Officers of the Treasury for their examination, and by them disallowed in whole or in part." The Bank has accordingly presented its account for damages which has been disallowed. It has then, retained a sufficient amount of public money for the purpose, and invited a suit by the Treasury so as to bring the subject before the court. It did this and so stated it, "as the best if not the only mode" of settling the question. But as the money itself was an object of indifference to the Bank, which sought only to vindicate its own rights, and the retaining it was a mere form, to comply with the act of Congress, the Bank at the same time requested from the Secretary to know, whether there was "any other mode of submitting the rights of the respective parties to the judicial tribunals more acceptable" to him—and would instantly have released the money on any arrangement with the Treasury to bring the case before the courts.

There is a still more summary process of obtaining a decision. By the act of Congress of May 15th, 1820, if the public money be withheld, the first Comptroller of the Treasury can issue a warrant of distress against the party in default, who may then appeal to the Courts of the U. States.

Either of these courses is open to the Executive. If it chooses neither, the Bank, having done its duty, is content.—Before the proper tribunal, the Bank will always be ready to prove.

1. That the bill of exchange on the French Government was drawn without the slightest authority whatever from that Government to draw it.

2. That the Bank proposed to the Treasury to collect the money as its agent, and not to pay it until it was received from France, thus avoiding the very embarrassment which has occurred; but this the Treasury declined, and requested the immediate payment by the Bank as purchaser.

3. That of the money so paid by the Bank, the whole was immediately appropriated by the Treasury, and a part used in the current expenses of the Government.

4. That when the bill was protested in Paris, as was inevitable, and the money paid by the agents of the Bank, to save the credit of the Treasury, the claim of damages by the Bank was an indispensable act of duty, as that alone would enable the Treasury to claim damages from the French Government, which, if the Treasury had any right to draw at all, was as much due as the principal.

5. That the universal and inflexible rule of the Treasury is to make every one pay damages; and as it had required of the Stockholders of the Bank to pay damages, when their bills sold to the Treasury have been protested, so should it now pay damages to those Stockholders, when they in turn have bought a bill from the Treasury which becomes protested.

All this will be made manifest whenever the Treasury resorts to the proper tribunal. Until then, it seems unjust to prejudge the question, and quite fruitless to discuss it.

I have the honor to be,  
Very respectfully yours,  
(Signed) N. BIDDLE, Pres't.  
Hon. Levi Woodbury,  
Secretary of the Treasury, Washington, D. C.

Treasury Department,  
December, 11th, 1834.

Sir: Your communication of the 28th ult. acknowledging the receipt of my letter of the 13th of July last, relative to the detention of the public dividends by the Bank of the U. S. was duly received.

After a silence of more than four months, coupled with the hostile position the Bank had assumed, it was supposed that you did not contemplate entering into further correspondence in respect to this subject, and especially was it supposed that a correspondence would not be resumed, with an avowed view to any explanations or new arrangements, at so late a period, that your communication could not reach this Department till the day previous to that session of Congress to which you had been early apprized a report would be made on the whole of the proceedings of the Bank in this extraordinary transaction.

Presuming therefore that the Bank ought to have felt all the reluctance expressed in your letter, "to prolong a discussion" on that transaction, which it cannot but be admitted, from its unprecedented and unjustifiable character, was well calculated to "inflame the passions of the country," and that this circumstance might have led to the postponement of a reply till after "the elections," yet no reason is assigned in your explanation, whatever may be the reason conjectured by others, for the failure to forward that reply immediately after the popular elections had terminated, and in season for a suitable examination of its contents before Congress convened.

But it would be unjust to the Bank not to return thanks for the very considerate sentiment expressed in your apology for the first delay—a wish not "to prolong a discussion which would only inflame the passions of the country in the midst of its elections." This Department regrets that so powerful a corporation—though perhaps unable to restrain, and therefore not so responsible for the barterings of some of its advocates, on whatever days, places or occasions—had not, in its own resolutions, reports of committees, and essays and pamphlets published by its President, given a vote "to cause to be prepared and circulated such documents and papers as may communicate to the people information in regard to the nature and operations of the Bank"—earlier used a little more effort to practice the same forbearance from "attempting to inflame the passions of the country." How fitly the Bank can now become the censor of the President or this Department, for also communicating to "the people information on the nature and operations of the Bank," and that information consisting only of official correspondence on both sides—must be left to others to decide.

Your last letter having at length been received, and having, as appears, been already sent to the newspapers by the Bank, without waiting for a reply, and before, in the great pressure of business at this season, could be expected, its contents in some particulars are found to be so very extraordinary in their tone, in their allusions and assertions, that unpleasant as the task is, this Department has, under all the circumstances, felt constrained to submit such remarks in relation to them as are deemed appropriate, and as seem imperatively to be required. The Bank may therefore, sir, rest assured, that though your letter arrived so late as to prevent the submission of it to the President before preparing his annual message, or to the Attorney General before his opinion was requested on the case, and as to deprive the undersigned from offering any due comment on it in his report to Congress concerning this subject, yet, in relation to the affairs of which it treats, an "appeal from the laws" has never, as you appear to intimate, been made by this Department, nor is one in contemplation.—Any such "appeal" is left to those who, without the sanction of an appropriation by Congress, or without a legal precept, seize upon the public property, and convert it to their private emolument. But, after a violation of the rights of the U. States, and a diversion of its revenue from the Treasury and the public service, into the vaults of the Bank, if the latter expects that the Chief Executive Magistrate of the Union, or the Secretary of the Treasury, will be silent, and not communicate early and full information concerning the outrage; to the People and their Representatives—and that those public officers are to be deterred from this discharge of a solemn duty, because the Bank entertains an opinion, that such a course is an "appeal from the laws," you have yet to learn that both the character of that Chief Magistrate, and the obligations of duty entertained by this Department, have been greatly misapprehended.

In proceeding to the other contents of your letter, it is conceded with you, "that the whole case appears exceedingly simple." The Bank sets up a claim against the United States. It is presented and disallowed by the accounting officers, because considered as itself neither equitable nor legal, because it had never received the sanction of the U. States by an appropriation; and because, if just, no branch of the Government except Congress, had any constitutional power to authorize its payment. Thereupon, the Bank, instead of resorting to Congress for that sanction, proceeded without any legal precept, to seize on the dividends belonging to the U. States, and to convert them to its private use.—The vital error of the Bank on this subject, appears to have been in supposing that the Treasury and its accounting officers were any thing but mere agents of Congress to superintend the settlement of what has been appropriated. If on the solicitation of the Bank, or any individual however powerful, they allowed or set aside any thing else than what had been sanctioned by an appropriation, it would manifestly be converting an appropriation, or misapplication of the public money. It must be well known to the Bank, that the first and proper inquiry at the Treasury to every applicant is, where is the appropriation to pay the claim? And next, where is the evidence of its correctness under the appropriation? It seems rather unreasonable to insist, that the Treasury possesses almost unlimited power, when the Bank wants favors—but to deny it almost all power when apprehending dangers from it.

Besides all the decisive reasons against the reprehensible conduct of the Bank in this transaction, which are contained in the late message of the President, and in the opinion of the Attorney General, the Bank, if it possesses, as has been intimated, another controverted claim against the United States, for the removal of the public deposits, might, on this principle, in order to discharge it, or atone for any other pretended wrong, not only refuse to pay over the dividends, but refuse, to the amount claimed, the payment of its notes or bills received by the Treasury for the public revenue, and when this consideration is weighed, it will readily be seen that the whole operations of the Government, in war and in peace, while by law, the notes of the Bank must be received for the public revenue, are liable, at the pleasure of the Bank, to be paralyzed, and the public faith, thereby violated.

After these objections, and when the common, the equitable, and constitutional tribunal of Congress was, and still is, for the Bank, as for all other claims against the Government, similarly situated, open for a resort to obtain damages—it is lamented that the Bank was so inconsiderately advised as to appeal to this other course, so novel, dangerous, and unnecessary, of seizing upon the public revenue, as being in your opinion "the best, if not the only course of settling the question."

You state further, that this has been done by the Bank only "to vindicate its own rights," when no case is believed to exist where a person not receiving money as an officer or contractor of the Government, or money not previously granted by Congress under some special or general appropriation, (in which mode the Bank did not receive these dividends) has ever been able to "vindicate" his supposed "rights," by retaining the money to meet any claims, however well founded, against the Government; and when application by the Bank for relief in this case, had never been presented to Congress, and refused, so as to furnish the slightest apology for being obliged, in order to procure redress, to resort to this unusual remedy.

But if the views of the Department on this preceding be erroneous, much gratification would be derived from having the particular act and clause quoted by the Bank, on which it relies in making the assertion, that "the retaining of this money was a mere form to comply with the act of Congress." This Department has not been so fortunate as to discover any statute, and much less the one cited of March 3d, 1797, which requires of a claimant against the Government, that he should, in a controverted case, seize its property in order "to comply with the act of Congress;" nor any statute which authorizes, recognises, or palliates such a seizure in order to force the Government into a law suit, and thus, through the agency of the judiciary, attempt to effect the payment of doubtful claims, to which no money has been appropriated, nor legislative sanction given. The proposition of the Bank to make some arrangement to have this question brought before the Courts, and the assurance now given, that, in such event, it "would immediately have released the money," would have deserved much more attention and stronger confidence, had this assurance been more promptly given, and that amicable disposition, now manifested, been earlier evinced by the Bank, in having at least requested such an arrangement before the dividends were withheld. Before committing that aggression, the Bank was not pleased even to notify the Treasury, that it wished the question of damages settled by litigation, and it communicated not the slightest intimation of a desire to make any arrangement with the Treasury to bring the case before the Courts.

But the Bank having on these points, preserved perfect silence, and the Department and Congress having thus been lulled into security, till after the adjournment of the latter, then suddenly, and without previous notice, a portion of the accruing revenue estimated and expected to aid in meeting the large appropriations which had just been made, and to pay

the residue of the public debt, was withheld by the Bank, and was not offered to be restored till after the termination of a suit, probably protracted for many years. After committing that aggression, and still withholding in its possession the money of the United States, the Bank then, and not till then, "invited" this Department to bring the subject of the damages in some way before the courts, and thus indirectly to sanction the appeal of the Bank from the authority of Congress over this matter, and to acquiesce, till adjusted by litigation in the Bank's unprecedented and ruinous course as to the public revenue—a course involving a principle which, under all the circumstances of this case, if once adopted might organize our whole collections; by the seizure of them, without legal precept, under one pretence or another, and as previously explained, place even our disbursements, so far as the public funds consist of United States Bank notes, at the sole mercy of an irritated and unscrupulous corporation. But this the Department could not sanction, however urgently "invited," without proving faithless to every principle of public duty and public safety.

Late as even that invitation, it is remarkable that your letters expressed nothing about the money itself "being an object of indifference to the Bank," or that it "would instantly have released the money in any arrangement with the Treasury to bring the case before the courts." On the contrary, though some persons may for some time have apprehended from certain circumstances, that money was "an object of indifference to the Bank" in comparison with some other objects, yet it is difficult to discover, "what rights" the Bank then sought to "vindicate," except its rights to the money, and why it should be so tenacious of its rights to the money, and so indifferent to the money itself. By your correspondence at that time, the money appears to have been withheld with the express view to force the Department into a consent to pay the controverted damages claimed, without any sanction by Congress, or into some arrangement to submit to the judiciary for decision, a question which, under the constitution and the circumstances of the case, belongs to Congress alone, and after that decision, and not till then, if unfavorable, to make a restoration of the dividends the Bank had so unexpectedly seized in derogation of the laws. It was not "until the time had passed for the repetition of a similar appeal from the laws" by the Bank, to cover its other intimated claim for damages, on account of the removal of the deposits, with any probable hope of public approbation in favor of its new mode of aiding the fiscal operations of the Government, and not till after those "reflections" to which you refer, may, in your opinion, have permeated so disastrously to its hopes, that the Bank professed a perfect "indifference" about the money, and a willingness to release it, in case an arrangement was effected for a suit at law.

How a suit could still proceed, and the money be first released or repaid, must be left to the Bank for further explanation, as it is incomprehensible to this Department, unless effected through some fictitious case, to be agreed on, in order to deprive Congress of its constitutional power over appropriations to settle controverted claims against the United States, and which agreement you may rest assured, that this Department has as little inclination as it has legitimate power to make.

It may be proper then to state further and distinctly, that the submission of the whole case to the wisdom and authority of Congress, appears to the Treasury to be the only suitable course, and that it cannot enter into any arrangement in relation to the subject, except to receive, as requested in its communication to the Bank in July last, the dividends due to the United States, and to pay the Bank, as is done with other claimants in similar cases, to the justice of Congress for any damages demanded on the bill of exchange beyond the actual expenses and costs incurred. The acknowledgments of this Department should not be omitted for your kindness in pointing out more than one mode that might be pursued in the Courts of law against the Bank, but as the advice of an opposing party is not always safest, and as Congress is competent to give directions upon the claim of the United States, and is considered the proper tribunal for adjusting the claim of the Bank, your benevolent suggestions will, it is feared, prove unavailing; especially, since the summary process to which you now allude, beside being open to other objections, is in express terms and by a decision of the Courts applicable to the case only of debtors, who unlike the Bank in this instance, obtain possession of the public money, in their capacity of officers. What may be the design now in making, "for obtaining a decision," a proposition, which would doubtless fall if accepted, is best known to yourself and such "distinguished" counsel of the Bank as you cite to this Department, in your other published letter of the 26th ult. It must be admitted, that the Bank, in the next place, evinces a great frankness in proceeding to disclose, under five separate specifications, what it expects to prove on trial. Whether there is much likelihood that this

expectation will ever be realized, others must decide; but the ingenuousness in stating beforehand to the opposite party what is to be proved against him, should not pass without due commendation, tho' it is regretted, that under all the circumstances, a suspicion—it may be an unjust one—has arisen, that the statement was made rather with a view to be immediately laid before the community by the Bank, either to "inflame the passions" or to forestall public opinion on those points before a reply was received from this Department.

In laying down the first position which the Bank asserts it "will always be ready to prove," viz: "that the Bill of Exchange on the French Government, was drawn without the slightest authority whatever from that Government," it is feared that the zeal of the Bank to vindicate a foreign Government, has led you to overlook the treaty, in which that Government expressly stipulates to pay "the sum of twenty-five millions of francs, at Paris, in six annual instalments, of four millions one hundred and sixty-six thousand six hundred and sixty-six francs and sixty-six centimes each" into the hand of such person or persons as shall be authorized by the Government of the United States to receive it." The Bank appears, moreover, to have forgotten the written authority, under seal from the President of the United States, which accompanied the bill, and empowered the holder, as the person designated under the treaty and in pursuance of it, to receive the money, which had then become honestly due from the French Government, and should notwithstanding your apology, have been promptly paid, according to every principle of national good faith. In your ardent defence of a foreign country, for a neglect to fulfill its treaties, and attack upon a Department of your own, for acting without the slightest authority whatever, it also seems to have escaped notice, that the Treasury acted, not only under the authority before-named, from France, of a solemn stipulation to make the payment to "any persons" authorized by the Government of the United States—and that the holders of this bill were so specially authorized by this Department and the President; but that Congress had previously empowered and required the Secretary of the Treasury, by the act of July 13th, 1832, "to cause this money to be received from the French Government, and transferred to the United States, in such manner as he may deem best." If notwithstanding all this, unfortunately for your own country, the Bank should be able to support the position, that "the bill was drawn without the slightest authority" from France, you certainly will deserve her acknowledgments for the aid thus rendered to get rid probably of the whole of a claim which she has appeared very eager to discharge; because, if France was not liable, under all the circumstances, to pay it in that form, it is difficult to discover how she is liable to pay it in any form.

It is to be regretted, that in your professions of regard for "the credit of the Treasury," knowing then as now what its authority was for drawing the bill, you did not refuse entirely to take it, as the Bank must have foreseen and believed, that the money would not probably be paid on an instrument, if drawn "without the slightest authority," and that the affair would probably end in a claim by it for large damages. Were it not for the solicitude, since expressed by the Bank, to accommodate the Treasury, and the "indifference" the Bank, now professes "as to the money," it might be inferred by some, that possessing the before mentioned opinions, and pursuing the before mentioned course, it must have meditated originally a speculation as to the protest and expected damages.

What seems at first rather inexplicable, is that the Bank, knowing, and being ready to prove that this Department drew the bill without the slightest authority, and hence could not require France to pay any damages, if the bill was protested—should yet insist, that the claim of damages by the Bank, was "an indispensable act of duty, to enable the Treasury to claim damages of the French Government." This great kindness towards the Government of your own country, uninvited and voluntarily to seize on its revenue, and attempt to plunge it into a law suit at home, and a controversy abroad, to enable it to obtain large damages of another country, which it must, if obtained immediately pay over to the Bank, certainly deserves all due acknowledgment. In fine, while the Bank is professing to give all this friendly advice for the benefit of the Treasury, and to feel itself "a great indifference about the money," its regard for the Treasury, upon this particular subject seems, when stripped of all blandishments, to consist in urging the Government to demand, and to hazard a new quarrel with France to obtain large and vindictive damages, by asserting that they are as much due "as the principal," when in fact the United States are entitled from France to only the reasonable and actual damages sustained, and when large and vindictive ones are to be sought in behalf, not of the Treasury, but of the disinterested institution which is urging this indefensible measure; and when, if such aggravated damages are obtained, they are expected to go at once, and exclusively, not into the

Treasury, but into the vaults of the Bank, or, which is virtually the same, are to supply the place of the great amount of public revenue the Bank has already on this account seized and withheld.

But notwithstanding this, if now, or at any other period, the Bank shall, as alleged, be ready to prove that "the money was paid by the agents of the Bank to save the credit of the Treasury," the favor will be cheerfully acknowledged by this Department, as in that event no right in the Bank to the aggravated damages claimed against the Treasury, and which has led to the outrage of seizing on the public dividends, could well be pretended to exist. It is hoped, as you profess to consider that "the claim of damages by the Bank was an indispensable act of duty," you will also not hesitate to perform another equally "indispensable act of duty," by furnishing as early as practicable, the evidence to prove the point just mentioned; since, if such evidence is furnished, not only should the aggravated damages be relinquished, but the conduct of those agents and of the Bank in that particular, be duly appreciated.

In that event, they of course did not pay the money for the credit of the Treasury for the purpose of exacting from it, on account of the professed favor, the large constructive damages of \$150,000 or 170,000, but it must be presumed they paid it with a view to save the Treasury from exposure to such a claim by some foreigner who might be heartless or sordid, and whose pecuniary profit being alone concerned, might be so destitute of patriotic feeling for this country as to permit the bill not only to be protested abroad, and the credit of the Treasury to suffer, so as to have it returned home protested, but who might thereupon immediately make a demand on the Treasury beyond the actual damages and costs sustained, and even for great, and it may be properly added, penal damages, and to pursue this demand in so inexorable a spirit as not to wait for the decision of Congress upon it, but without legal precedent or any previous notice of his design, to seize upon a large amount of the public revenue, for the purpose of discharging it.

In relation to your third head of proof, "that of the money so paid by the Bank, the whole was immediately appropriated by the Treasury, and a part used in the current expenses of the Government," it gives me pleasure to attempt a correction of this early of these misapprehensions. This Department has, in the reports sent here monthly by the direction of the President of the Bank, statements which show that the amount standing to the credit of the public in the Bank, which of course includes its branches, was at no time after the purchase of the French Bill on the 11th of February, 1833, until the formal return of the money to the Bank on the 18th of May, 1833, less than \$ millions of dollars. That of this, at no time, was less than four millions left in the Bank and its branches, to the credit of the Treasurer, subject to draft for any purpose, and that the residue was deposited on account of the public debt, and of the public collecting and disbursing offices. So that whatever sum of money may have been "appropriated" or "used" by the Treasury as to be carried into it by warrant; or it could not until Congress should have passed a new law, have refunded, as it did, the whole amount, the moment notice was given of the protest of the bill.

In regard to the practice which you cite of this Department in charging damages on ordinary bills of exchange bought of individuals who sustain no official relations with the Government, and who neglect to provide funds abroad to meet those bills and to pay punctually our creditors and officers in a foreign country, it is hardly necessary here to show the difference between the two cases, in both form and substance, after the preceding remarks, and after the views contained in the first opinion of the Attorney General, published with the late annual report from this Department. Still less is it necessary to show further that in none of those cases probably did the idea ever enter into the imagination of the officers of the Government, that they ought, in order to obtain the damages due and often actually accruing to the full amount received on protested bills, to resort without either notice, lawful process, or a previous adjudication, to a seizure of the property or dues of the individuals who drew and sold them. As in conclusion you give assurance that "all" your allegations "will be made manifest whenever the Treasury resorts to the proper tribunals," this Department takes the liberty to renew the expressions of its opinions, that it has resorted already to the proper tribunal, in the first instance, by submitting this whole transaction to the consideration of Congress, where you will doubtless be indulged with an opportunity, if desired, to make all your charges manifest.

But notwithstanding this, if now, or at any other period, the Bank shall, as alleged, be ready to prove that "the money was paid by the agents of the Bank to save the credit of the Treasury," the favor will be cheerfully acknowledged by this Department, as in that event no right in the Bank to the aggravated damages claimed against the Treasury, and which has led to the outrage of seizing on the public dividends, could well be pretended to exist. It is hoped, as you profess to consider that "the claim of damages by the Bank was an indispensable act of duty," you will also not hesitate to perform another equally "indispensable act of duty," by furnishing as early as practicable, the evidence to prove the point just mentioned; since, if such evidence is furnished, not only should the aggravated damages be relinquished, but the conduct of those agents and of the Bank in that particular, be duly appreciated.

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