



CONGRESS.

REMARKS OF MR. SMITH,

Made in committee, on the report of the Committee of Claims, unfavorable to the memorial of the Legislature of Tennessee, claiming payment for horses lost in the Seminole War—on Mr. Jones's motion to reverse the report:

Mr. Wm. Smith, of Va. asked the indulgence of the committee, while he submitted to its consideration a very brief view of the reasons which had determined him to vote for this claim. He remarked, that the standing committee of the House, to whom this subject was referred, having resolved "that the claim of the volunteers engaged in the Seminole campaign, presented in the memorial of the general assembly of the State of Tennessee, ought not to be granted," and having in their report furnished us with the principles and reasoning upon which that resolution is founded, it now becomes our duty to say, whether that committee is right or wrong in the view it has taken of this subject. While, sir, I entertain a proper respect for the committee of claims, and have great confidence in its intelligence, I must be permitted to say, that the reasoning employed by them in the case before us, is not at all satisfactory to my mind. I will now attempt, in as concise a manner as possible, to shew its fallacy. The second section of Congress, passed on the 2d of January, 1795, gives to the soldier 40 cents per day for the use and risk of his horse, arms, accoutrements, &c. Before we pronounce upon the merits of this claim, it seems to me to be important to ascertain, with as much precision as practicable, what was intended by the term risk, as used in the section to which I have just adverted. In the prosecution of a war, the soldier is liable to lose his horse by a variety of accidents; he may die from excessive fatigue, from unusually severe service, rendered necessary, perhaps, by the peculiar exigencies of the country, or he may escape from the possession of the owner and fall into the hands of the enemy, &c. For accidents of this character, which may happen 40 cents per day is provided. But, say the Committee of Claims, this law is susceptible of more enlarged construction, and they tell us that the per diem compensation of 40 cents, was intended to embrace all losses of horses occasioned by the want of sufficient forage, and that such was the understanding of the soldier. With due deference to the opinion of that committee, this I do not and cannot believe. Such certainly could not have been the understanding of the soldier, because he knew the government was bound to provide his horse with forage, he knew the pecuniary ability of the government to make this provision, and he also knew that if it could not be had in one part of the country, it might be obtained in another, though perhaps at considerable expense. The express assurance of the government, that sufficient forage should be regularly furnished, seems to me necessarily to exclude the idea of a loss proceeding from the want of it. In this promise of the government, the soldier reposed implicit confidence, and therefore in agreeing to accept 40 cents per day, for the use and risk of his horse, did not at all look to a loss of the character we are now considering. The correct interpretation to be given to this law appears to me to be this. For all losses occasioned by the act of the government, or rather a failure on its part to do that which it had engaged to do, it was intended the government should be responsible, and the soldier agreed to encounter such casualties, and sustain such losses (horses killed in action excepted) as might happen, without any omission of duty or failure on the part of the government—give to the law this construction, and you will give it its full force and effect. I cannot, Mr. Chairman, agree with the committee, in the opinion that the difficulty experienced by the government in providing sufficient forage, legally excuses the non-performance of its stipulation. The promise to feed the soldier's horse was general and subject to no condition or qualification whatsoever. Suppose this to be a case between two individuals, would or could it be pretended, that the difficulty of executing the promise or contract, would form any legal apology for the party who had failed to comply. Surely not. In illustration of this position, I beg leave to put the following case. A for a valuable consideration, promises B to build him a house within a given period. Shortly after the contract, A experiences a sudden and unexpected change in his pecuniary circumstances; he is unable to provide workmen or to furnish the materials; the house is not built—B is injured by this violation of the contract, and brings his action to be compensated in damages equivalent to the injury sustained. Would it be competent for A to plead in bar of this action that he was unable to provide workmen or to furnish materials, and that therefore the house was not built? Surely not. The inadmissibility of such a defence must be conceded by every one who is at all conversant with legal principles. If then such a plea be inadmissible upon the violation of an individual contract, is it not, or ought it not, to be equally so in a case

in which the government is concerned.—If it cannot protect an individual member of the community, why shall it shield the government? And here, sir, permit me to remark, that in my legislative capacity, the same rules and principles which I apply to individuals I will make applicable to the government under like circumstances. Justice is inflexible, and is equally stern in her demands upon the government and upon the private citizen, however humble his condition in society may be.

I have, sir, read with some attention the memorial of the Legislature of Tennessee upon this subject, and it does seem to me that this claim is placed upon its true and proper basis by that memorial. The legislature enforce it with very great propriety and much ability, upon the ground of a contract between the volunteer and the government. They tell us that "service and fidelity was the engagement on the part of the volunteer; remuneration and maintenance of himself and horse for the period of his engagement, the contract subsisting on the part of the government." Has the volunteer performed his part of the contract? Yes, sir, most faithfully and honorably. His country's call was promptly obeyed. He was told his services were needed and unhesitatingly surrendered all the endearments of social & domestic life, exchanged the comforts of a home and fireside for the dangers and difficulties of an Indian campaign, and intrepidly marched to the frontiers of your country to protect your defenceless wives and children against the tomahawk and scalping knife of a savage enemy. I will not, Mr. Chairman, attempt a description of his toils, his privations, and sufferings—suffice it to say, in the language of the memorial, "he met the enemy and subdued them." Thus, sir, has the volunteer performed his part of the contract, and performed it too, with distinguished credit to himself and honor to that country to which he now appeals for justice—yes, sir, for sheer justice. I hope the appeal will not be made in vain. How is it with the government? Has it performed its part of the contract? No, sir. Look to the evidence of Quartermaster Gibson and Doctor Bronaugh. What do they tell you? They say, they verily believe the great loss of horses, during the Seminole campaign, was occasioned by the want of sufficient forage. Whose duty was it to provide this forage? The duty of the government. Was it provided? No. Has the loss sustained in consequence of this failure been repaired? No. If then this claim can be properly regarded, (as I think it may) in the light of a contract between the government and the volunteer—if the volunteer has performed his part of the contract; and if a failure on the part of the government, to do that which it stipulated to do, is sufficiently established, I would ask upon what principle can it be successfully resisted? Others, indeed, may see that principle, but I confess I am totally at a loss to imagine the ground upon which it can be even plausibly contended that this claim ought to be rejected. The memorial alleges that, after the close of the campaign, under the order of General Jackson, a number of horses were recovered from the swamp of Florida, sold, and the proceeds of the sale, amounting to the sum of \$2,142 45 applied to the credit of government.

The Committee of Claims, after admitting the fact as stated, which, however is abundantly proven without this admission, make this remark: "Heretofore this claim has been urged, on the ground that the United States failed to supply forage; but now, it seems that the owners negligently and imprudently abandoned their horses." Is this so, sir? Is it true, that the volunteers either negligently or imprudently abandoned their horses? If so, they are not entitled to relief. Is there however, a tittle of evidence in support of this opinion of the committee? Is there a single fact which renders it even probable, that the horses were negligently or imprudently abandoned by their owners? No sir. The true cause of their abandonment is to be distinctly traced, not to any supposed negligence on the part of their owners, but to an actual failure on the part of the government to supply them with sufficient forage. The government, having thus, by this omission of duty, compelled the volunteers of Tennessee to abandon their horses, and having subsequently obtained possession of them, sold them, and passed the proceeds of the sale to the Treasury of the United States, cannot now refuse to pay this demand without subjecting itself to the charge of taking advantage of its failure to do that which it had pledged itself to do. But, say the Committee of Claims, the most urgent reason for the rejection of this claim is to be found in the fact, that the paymaster, contrary to law, furnished the troops with clothing, or money in lieu of clothing, and this by way of offset. Unfortunately, however, for this very urgent reason, the paragraph which introduces it, discloses the information, that this item has been stricken from the account of the paymaster, upon a settlement with the proper officer of the government. The government, therefore, will not lose one dollar, no, not one cent, on this account. The paymaster is liable to the

government for a faithful and correct discharge of his duties, and he, by a resort to legal process, may compel the volunteers to refund all moneys received without proper authority.

Upon advertng, Mr. Chairman, to the Claims' Law of 1816, I find the following provision made by its first section: "That any volunteer, or drafted militiaman, whether of cavalry, mounted riflemen, or infantry, who, in the late war between the United States and Great Britain, has sustained damage by the loss of any horse which has been killed in battle, or which has died in consequence of a wound therein received, or in consequence of failure on the part of the United States to furnish such horse with sufficient forage, while in the military service of the United States, shall be allowed and paid the value thereof."

The committee will observe, that this law is confined, in its operation, to the late war with Great-Britain; but, sir, the same steady and impartial justice which dictated this provision in favor of the soldier of that army, requires a like provision for him who fought your battles in 1818. Why make a distinction? Why make an odious, invidious distinction? Why give to the one and withhold from the other? They have both served you faithfully and honorably. They have both defended your rights in the hour of danger. They are both citizens of one common country, and they both live under a constitution which guarantees to all equal rights. Will not the rejection of this claim afford just cause of complaint to the volunteers of Tennessee? Will it not furnish them with some reason to say, that this government is not in practice what it professes to be in theory? I trust, sir, this cause of complaint will not be given by the decision of the committee upon the proposition now submitted to its consideration. Much more might be said in support of this claim, but so much time has been already consumed in its discussion, that I forbear to make further remark, or to trespass longer upon the patience of the committee.

[The motion for reversing the Report was carried. The subject was then referred to a select committee, who has reported a bill in favor of the petitioners, which will probably pass into a law.]

From the Charleston Courier.

SPIRIT OF FRANCE.

As the garb of a Woman was inadequate to conceal the character of Achilles, so the forms and drapery of Despotism strive in vain to cover the love of liberty and of truth, which grew out of the revolutionary dissensions of France, and which were the best legacy of the revolution. If there be any advocate of the servility of the Press in this country, let him read his rebuke in the bold avowal by many of the members of the French Parliament, of the uses, the necessity, and the honor of a free press. Where truth has so many defenders, error cannot long triumph; where Liberty has such able advocates, Despotism is insecure.

The debates recently received, and which relate to the decision of the question of the Censorship of the Press and the Arts, display no little eloquence, while they are marked with fewer of those personalities which have too often interrupted the decorum of parliamentary discussion in France. We have selected for translation certain sentiments of the speakers, which will be grateful to our readers.

We would first allude, however, to a debate on the 31st January, when a motion was made to expunge from the journal of the day previous certain scandals which had been uttered against the King of France, by M. Manuel, lest history should suspect that Louis XVIII. was not universally beloved in France.

This was strenuously opposed, as it would violate the fidelity of the record, which should be complete and entire, and, if mutilated or altered, would necessarily be false.

The motion was carried, the whole of the opposition refusing to vote,—which shews that this suppression of the truth was regarded as it ought to be by men who are not wedded to despotism, and do not consent to merge liberty in politeness.

"The liberty of the Press," said M. B. Constant, "is of universal interest. It is not, as we are told, the cause of authors only—it is the cause of universal liberty—it is the cause of universal man. Every question is involved in it. Is it astonishing, then, that every passion rises in its defence? Is it astonishing that our grief should be poignant, seeing the materials which compose this Assembly?"

"On the one hand, the past, frightful in shadows of arbitrary power; on the

other, the present, shining in fresh radiance, and glowing with indignation, when you attack its noble achievement, the glory and the liberty of France.

"France, improved as she is by her arts, her commerce, and her intelligence, can with difficulty be made to retrograde. When a whole generation is brave, enlightened, industrious, and familiar with all vicissitudes of fortune, glory, and power, you cannot brutally propose to it to descend from the elevation which it has attained.

"It is proposed to give certain classes peculiar exemption from the cognizance of the press. One of these is the clergy—the other, the nobles.

"Now the clergy, as a body, have no peculiar interest: they are ministers paid by the government for important services, having no interest but that of religion, which is the interest of all mankind. It would be a misfortune for themselves, for the state, and for religion, if they had any other interest than this.

"As to the ignobles—the ancient nobility had ceased to exist before the promulgation of the Charter, in consequence of Louis XVI sanctioning the decrees of the National Assembly. And remember, that, although in the will of that unfortunate monarch, he expresses his regret for certain decrees of that Assembly, which he had sanctioned, he never alludes to that which abolished the corps of nobility in France. Your charter itself states that the ancient nobility shall resume their titles. They must, therefore, have lost them. Your charter does not say that the King resumes his throne—because the doctrine is, that he had never ceased to reign. But the old nobility recovered a portion of what the act of Louis XVI. had taken from them. Their honors are subsequent to the charter. The new nobility preserved what it had; it is for the old to reclaim what it had lost.

"What is the value of a title which exempts a man from the common duties and responsibilities of mankind? What are these special appurtenances of nobility? Not those guaranteed by the charter—because they are common to all Frenchmen. If they are not the same, they must be incompatible; and if they be incompatible, they must be supported by force—and opposed, if unhappily they should be, what can the nobility avail against the people?—For the good even of those whom you would invest with dangerous and deceitful immunities, I would oppose your proposition. How to be pitied would be the nobility, if separated in idea, in feeling, in interest, from the rival classes which fertilize and enrich France by their agriculture, their industry and their commerce, and those who adorn it with the lights of genius, of science, and of letters! In a society which desires and deserves a perfect equality, there may be some below, but there can be none above.

"When too you guard the nobility with peculiar sanctions, do you not convey impressions of their weakness? Is the public voice against them, that it should be bound in fetters?"

"There was in France, in 1788, an absolute monarchy. It had its lists de justice, its lettres de cachet, its police, and its censorship. These were the signals of the revolution, which made France a Republic; and the folly, the rashness, the precipitancy of the Directory—weak, and therefore violent—brought the Republic into odium, and restored the Monarchy.

"When a Republic oppresses its citizens, it tends to monarchy. When a Monarchy oppresses its subjects, it tends to a Republic. Choose which of these tendencies you will encourage.

"For the interest of religion, protect your priests in the exercise of their pious offices. Do not make of them a separate privileged class, against the spirit of the age, and the spirit of the Gospel.

"For the interest of the nobility, allow them to mingle with the nation. Let them deserve to be adopted by it. It is a good and illustrious family. It is known in history. But to obtain this favor, let not the nobles be distinguished from the nation.

"I am not aware that I can arrest your progress. Retrace your steps. You have already alarmed the friends of religious liberty by severe and undefined penalties. You have astonished the friends of the Constitution by attributing to the King an authority independent of the Charter.—Instead of securing the responsibility of Ministers, you surround them with a dangerous security. You are about to revive obsolete distinctions, and array against you the deep and universal sense of Political Equality."

The author of such sentiments as these would grace any assembly on the face of the earth.

Laws of the United States.

An act concerning the commerce and navigation of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any ship or vessel possessed of, and sailing under, a Spanish register, on the 10th day of July, one thousand eight hundred and twenty-one, and continuing to belong wholly to a citizen or citizens of the Uni-

ted States then residing within the territories ceded to the United States by the treaty of the twenty-second of February, one thousand eight hundred and nineteen, between the United States and the King of Spain, the ratifications of which were exchanged on the twenty-second of February, one thousand eight hundred and twenty-one, or to any person or persons being, on the said twenty-second day of February, an inhabitant, or inhabitants, of the said ceded territory, and who continue to reside therein, and of which the master is a citizen of the United States, or an inhabitant as aforesaid, may be registered, enrolled, and licensed, in the manner prescribed by law; and being so registered, enrolled, and licensed, shall be denominated and deemed a ship or vessel of the United States, and entitled to the same privileges and benefits: *Provided*, That it shall be lawful for the collector to whom application shall be made for a certificate of registry, enrolment or license, by any citizen or inhabitant, as aforesaid, to make such variations in the forms of the oaths, certificates, and licenses, as shall render them applicable to the cases herein intended to be provided for: *And provided, also*, That every such inhabitant, applying as aforesaid, shall, prior to his being entitled to receive such certificate of registry, enrolment, or license, deposit, with the collector, the register and other papers under which such ship or vessel had been navigated; and also take and subscribe, before the collector, (who is hereby authorised to administer the same) the following oath: "I, A. B. do swear (or affirm) that I will be faithful and bear true allegiance to the United States of America, and that I do entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to the King of Spain."

Sec. 2. *And be it further enacted*, That the inhabitants of said ceded territory, who were residents thereof on the said twenty-second day of February, and who shall take the said oath, and who continue to reside therein, or citizens of the United States resident therein, shall be entitled to all the benefits and privileges of owning ships and vessels of the United States, to all intents and purposes, as if they were resident citizens of the United States.

Sec. 3. *And be it further enacted*, That during the term of twelve years, to commence three months after the twenty second day of February, one thousand eight hundred and twenty-one, being the day of the exchange of the ratifications of said treaty, Spanish ships or vessels, coming laden only with the productions of Spanish growth or manufacture, directly from the ports of Spain, or her colonies, shall be admitted into the ports of Pensacola and St. Augustine, in the said ceded territory, in the same manner as ships and vessels of the United States, and without paying any other or higher duties on their cargoes than by law now are, or shall at the time be made, payable by citizens of the United States on similar articles imported into said Pensacola or St. Augustine, in ships or vessels of the United States, from any of the ports or places of Spain or her colonies, and without paying any higher tonnage duty than by law now is, or at the time shall be laid, on any ship or vessel of the United States, coming from any port or place of Spain, or any of her colonies, to said ports of Pensacola or St. Augustine.

Approved—March 30, 1822.

Resolution, directing the classification and printing of the accounts of the several manufacturing establishments and their manufactures, collected in obedience to the tenth section of the act to provide for taking the Fourth Census.

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of State be directed to cause to be classified and reduced to such form as he may deem most conducive to the diffusion of information, the accounts of the several manufacturing establishments and their manufactures, taken in pursuance of the tenth section of the act, entitled "An act to provide for taking the Fourth Census or enumeration of the inhabitants of the United States, and for other purposes," approved the fourteenth of March, one thousand eight hundred and twenty, and that he cause fifteen hundred copies of the digest, so to be made, to be printed, subject to the disposition of Congress.

Approved—March 30, 1822.

NOTICE.

AT Franklin December Court last, the undersigned qualified as Executor to the last will and testament of Robert Freeman dec. This is therefore to notify all persons having claims against the said Robert Freeman, dec. to bring them forward for settlement, duly authenticated as required by act of Assembly, and within the time required by law; otherwise this notice will be plead in bar to their recovery. All persons indebted to the same, are requested to make immediate payment, as no indulgence can or will be given.

GEO. W. FREEMAN, Ex'r.
Jan. 1, 1822. 62—3m