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TERMS:

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UNITED STATES BANK.

REPORT OF THE MINORITY OF THE COMMITTEE.

[CONTINUED.]

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 Document 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 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 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 Committee of Investigation. This demand, and the answer to it, were then reduced to writing, and will be found among the papers (Nos. 35, 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 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 refusals 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 Directors had apprized 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 waving 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 appears 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:

May 7, 1834.

Resolved, That the Committee will proceed to examine into the truth of the statement made by the Government Directors to the President of the United States and to Congress, and for that purpose will 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 United 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 have any purpose at all, it must be to criminate 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 rightfully 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 the Committee, it would very much conduce to the purposes of justice, as well as to 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 twofold power, and to be competent, or rather required, by the order of the House, to act in a twofold capacity. They were a committee of visitation, appointed under the 23d section of the charter. As such, they were authorized to visit the Bank, to inspect 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 inquest 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 inquest 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 twofold 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 and 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 that 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 23d section of the charter, and one of general inquiry, under the power of the House to send for persons and papers, these two 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 a general inquisition, 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 a right of inspection would be illusory and worthless. In order to render the limitation efficient, the committee of Directors required 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 to 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 to 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 creation, 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 powers of inquisition, 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 objects 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 observations, 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. They examined the Teller of the Bank of North America, and perhaps other persons. This circumstance, and 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 the 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 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 and 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, as the event proved, felt that they could rely upon the National Legislature to do 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 latitude of inquiry which might be demanded by a House of Congress willing to grant a recharter, provided the result of the examination should be satisfactory. Accordingly, the resolution, as amended, was understood to extend, not merely to alleged violations of the charter, but to all alleged cases of official misconduct; and, on the arrival of the committee in Philadelphia, the directors of the Bank, instead of placing themselves upon their rights, ordered the President of the institution to submit all its books and papers to the unconditional inspection of the committee, and to yield himself to an unreserved examination. The inquiry was pushed into every matter of alleged abuse, where it was supposed the Bank was most vulnerable. Nothing was spared; nothing was held back: Books and papers were submitted, and personal examinations on oath endured, although avowedly for the purpose of finding out, if it existed, matter of inculpation against the directors. The materials thus collected were spread before Congress and the people, and a majority of both Houses of Congress united in the passage of a bill for rechartering the Bank.

The President declined giving effect to the will of Congress, and the bill failed to become a law. The whole influence of the Executive was exerted to the prejudice of the institution, and the voice of the Administration press was raised against it, with a concert and vehemence rarely equalled.

Doubts of the safety of the public deposites were now suggested, and these doubts received some sanction from the message of the President at the opening of the second session of the last Congress. An Executive agent was appointed to investigate that subject, and the Committee of Ways and Means, of which a majority was composed of members friendly to the administration, engaged in the same inquiry. The agent of the committee reported in favor of the solvency of the Bank, and the House of Representatives, by a majority unexampled on such a question, resolved that the public deposites could be safely continued in the Bank of the United States.

Notwithstanding this vote, the President took immediate measures to transfer the deposites to the State Banks. The character of these measures is known to the House. The undersigned think themselves safe in saying that it was such as to cause the directors of the Bank the greatest possible inconvenience and anxiety. They were regarded as men guilty of the most criminal malpractices, and justly obnoxious to the severest treatment which it was in the power of the Executive to inflict. To all that was officially done, was superadded an unbroken strain of denunciation from the Government press, and threats of a purpose to break those branches of the Bank which were supposed to be feeble. At length, without previous authentic notice, the deposites were removed, a short time before the assembling of Congress. A majority of members had been elected to the House of Representatives, in part previous to the adoption of this measure, who appeared disposed to sustain the President in the policy he has adopted. By this majority, resolutions were passed expressive of their opinion that the Bank ought not to be rechartered, and that the deposites ought not to be restored. These resolutions were adopted after a protracted debate on the general merits of the controversy, in which, on the part of those who sustained the President, the most unwarrantable designs and the most corrupt practices were frequently ascribed to those entrusted with the direction of the Bank.

It was under these circumstances that the commission of inquiry into the affairs of the Bank was instituted. As far as that inquiry was of a character in which the Bank was, by the charter, bound to co-operate, by submitting its books for inspection, the directors have fully recognised their obligation to do so; but the undersigned confess they perceive nothing in the circumstances that preceded the inquiry which could furnish an inducement to the Bank to go further than the law requires of them. By the Executive Government, and the majority of the House of Congress, their case had been adjudged. The laws which the wisdom of two former Congresses enacted for erecting United States Banks, and of which every department of the Government, under every administration but the present, has recognized the validity, have been declared unconstitutional. The present inquiry was not needed to ascertain if the deposites should be removed; they were removed many months before. It was not needed to ascertain whether they could be safely restored; the House that instituted it has resolved that they ought not to be restored. The Secretary of the Treasury is left without the instruction of the House, to deposite the public funds in any other Bank he may please to select, but the House of Representatives has resolved that they ought not to be deposited in the Bank of the United States. Although the last Congress, by majorities of both Houses, decided that the Bank ought to be rechartered, and the next Congress may be of the same opinion, the present House of Representatives has resolved to the contrary, and, therefore, the inquiry was not needed to guide its judgment in the recharter of the Bank. Various misdemeanors are imputed to those who direct the Bank; but supposing their detection the object of the investigation, every principle of justice forbids a mode of inquiry, beginning and proceeding in self-crimination. The only other legitimate object which the undersigned can think of, is that of collecting information to guide the judgment of the House in the question of a new Bank, to be established on the ruins of the present institution. The directors of the Bank, in the opinion of the subscribers, may be safely expected, on all occasions, to do the duty of public spirited men to their country: but no principle of public duty fairly calls upon them to go further than the law requires them, in making themselves the subjects of a criminatory inquisition, with a view to build up an institution to discharge that public trust to which they have been declared unfaithful, by those instituting the inquiry.

It is also to be recollected that two years had scarcely elapsed since the former inquiry, on which the Directors of the Bank had not attempted to impose any limitations; and that inquiry had resulted so entirely to the satisfaction of the two Houses, that they passed a bill for renewing the charter of the Bank. It requires no words to show that such an examination must be highly inconvenient to the officers of the Bank, and incommode them in the orderly discharge of their duties. Still graver inconvenience may be expected to result from the effect on the public mind, in reference to the Bank, which may be produced by the recurrence of such visitations. In the progress of the controversy waged with the Bank, a few new matters of detail may perhaps have been alleged against it since the report of the former committee, but many of the matters of general inculpation now brought forward, are those sifted to the bottom by that committee, and none of them possesses a novelty and importance, furnishing, in the judgment of the undersigned, an equitable ground for a new investigation. Is there to be no end to visitations? The House has the undoubted right to institute them as often as it pleases—every year, and every month; but if they are multiplied unreasonably, the Directors of the Bank, as it seems to the undersigned, are not to be blamed if at length they put themselves upon their rights, decline to become voluntary parties to these investigations, and submit to them only as far as the charter requires.

These considerations led the undersigned to the opinion that the Committee of the Directors of the Bank were justified in the course adopted by them on this occasion. If, on a question of law so grave and delicate, the Committee of the Directors should have come to an erroneous conclusion, (which the undersigned, however, do not admit to be the case,) it would seem an undue severity to consider and to treat such error in judgment as a contempt of the authority of the House.

6. This reflection leads the undersigned to a few observations on the various calls for copies or portions of the books, statements, documents, abstracts, and other papers, which, at different times, were made on the Bank by resolutions of the Committee. These resolutions were numerous, and covered a wide range of inquiry of the most miscellaneous character. A portion of them are believed to call for documents, in whole or in part, already communicated to Congress and published, another portion relating to matters which could not be stated without great labor of compilation, and a resort to sources of knowledge not necessarily nor officially in the possession of the Bank. Some of the calls referred to matters with respect to which no desire of concealment could, on any hypothesis, be imputed to the Bank; others related to concerns (as the undersigned will presently show) involving the highest confidence of individuals, and not to be divulged, except under legal compulsion, without the grossest breach of faith.

The answer of the committee of the Directors to these requisitions was in the following terms:

Resolved, That the Board do not feel themselves at liberty to comply with the requirement of the resolutions of the Committee of Investigation of the 29th ultimo and the first instant, and do not think they are bound to do so, inasmuch as, in respect to a part of the papers called for the effect would be the same as the surrender of their books and papers to a secret and *ex parte* examination, which they have already refused to consent to; and as to the other part, they