ment should be permitted to have any influence on the disposition of Congress to legislate on this interesting subject. For, if the constitutional majority of the two houses should differ with the Executive department, the opinion of the latter, however respectable, must yield to such an expression of *their* will. On the other hand, if from deference to an opinion promulgated in an executive communication, Congress should refrain from entering upon the consideration of a question involving constitutional doctrine, it might happen that the opinion of the President would prevent the enaction of a law, even though there should be the constitutional majority of two-thirds of both houses in its favor. Thus, by the introduction of such a practice, the Presidential *veto* would acquire a force unknown to the constitution, and the Legislative body would be shorn of its powers from a want of confidence in its strength, or from indisposition to exert it. Whilst your committee are perfectly aware that nothing like this is contemplated by the Executive branch of the government, they presume the House of Representatives will scrupulously avoid a course, which may be construed into a dereliction of their privileges. They deem it, therefore, not improper to offer some considerations upon the question of the constitutional powers of the general government to pass laws for the improvement and construction of roads and canals, with the consent of the states.

As it is obvious, however, that these several subjects of legislation do not rest upon the same foundations, and that one of these may be within the sphere of the constitutional powers of Congress, whilst the others may belong exclusively to the states, it is proposed to treat them separately, and the subject of the improvement and construction of public roads, which appears to your committee most clearly to be reducible to the powers vested in the general government, will be first taken into consideration.

An accurate attention to the real points of difference on this subject will greatly contribute to free the controversy from unimportant and irrelevant considerations. To attain this, we have only to compare what is manifestly admitted on the one hand, with what is claimed and contended for on the other.

The laws of antecedent Congresses, approved by successive Executive magistrates, and the acts of the Executive magistrates themselves, will be resorted to, as affording evidence of what may be regarded as conceded to be within the powers of the general government. The commendable jealousy which they have manifested of all encroachments on state power, and their scrupulous adherence to the most rigid principles of construction, in the interpretation of the constitution, affords a sure guarantee, that more has not been admitted than may be fairly assumed to be within the provisions of that instrument. Taking, then, the acts of both of the Legislative and Executive branches of the government for our guide, we shall find it clearly admitted that there are *some cases at least*, in which the general government possesses the constitutional privilege of constructing and improving roads through the several states.

Thus, by the act of the 29th of March, 1806, confirmed, amended and enlarged by subsequent acts, a road was directed to be laid out and constructed from Cumberland, in the state of Maryland, to the state of Ohio, upon obtaining the consent of the states through which it should pass. The fund provided for this noble undertaking, was to consist of the proceeds of the sales of certain lands, the property of the United States, in the state of Ohio, so that this act furnishes the double admission, that "roads may be laid out by Congress through the several states, with their consent," and that the expenses of constructing such roads may constitutionally be defrayed out of the funds of the United States. The act was approved by the President in office, in 1806, and other acts confirming, amending, and enlarging it, were passed by subsequent legislatures, in the years 1810, 1811, and 1815, and approved by the President, in office, at those periods: nay, more, the three last acts contained appropriations to the amount of 210,000 dollars, payable out of any moneys in the Treasury, but reimbursable out of the Ohio fund—a fund which might or might not prove adequate, and which, in point of fact, is believed hitherto to have been insufficient.

Similar to this act in some of its provisions, and analogous in principle, are the acts of April 21st, 1806, and of the 3d of March, 1817, authorizing roads to be opened from Nashville and Reynoldsburg, in the state of Tennessee, to different points in the Mississippi territory. But these acts go still further than the former, in *omitting to require the previous consent of the state of Tennessee*, through whose territories a part of the roads was to pass, and in directing the expenses of making them to be defrayed out of the public treasury of the United States, without providing for its reimbursement, in any manner whatsoever.

But lest the influence to be derived from these admissions should be deemed to be weakened by the consideration that the collision of opinion on the constitutional question has arisen since the passage of those laws, your committee will beg leave to refer to the date of the last act above-mentioned, and to certain transactions of a date subsequent to the important and well remembered difference of opinion between the Executive and Legislature, at the last session of Congress. Since that period, they have satisfactory information that a road has been directed by the Executive of the United States to be improved, at the expense of the general government, and doubtless for military purposes. This road is laid out from Plattsburg, or its vicinity, in the state of N. York, to Sackett's Harbor, in the same state.

It is presumed, that it is to be constructed at the expense of the general government, and it is understood that the previous assent of the state has not been procured.

From this act, therefore, of the Executive branch of the government, emanating from that source at a late date, it would seem fair to infer, that the constitution is admitted to have conferred upon the general government a power, in *some cases*, to make roads, and to defray the expense of their construction out of the funds of the United States. And as the power is not denied *in all cases* your committee will attempt to show that Congress has the power,

1. To lay out, construct, and improve post roads through the several states, with the assent of the respective states. And,

2. To open, construct, and improve military roads, through the several states, with the assent of the respective states.

3. To cut canals through the several states, with their assent, for promoting and giving security to internal commerce, and for the more safe and economical transportation of military stores, &c. in time of war; leaving, in all these cases, the jurisdictional right over the soil in the respective states.

In examining the soundness of these positions, your committee will not find it necessary to resort to what is called a liberal construction of the constitution.—They might, indeed, contend, that as the powers here attributed to the United States are not in derogation of state rights, (since they can only be exercised by their assent) there is less reason for adhering to extreme rigor of construction. Where the authority claimed by the general government is oppressive in its character, or dangerous in its tendencies; where it is asserted without deference to state assent, and in derogation of state power: where it is calculated to aggrandize the union, and to depress its members, there may be some reason for holding the representatives of the nation to the 'letter of their authority.' But where the powers ought to be exercised is beneficent in its effects, and only felt in the blessing it confers: where it is not proposed to act, except with the assent of the party which is to be affected: where the measure is more calculated to increase the opulence and the power of the state, than to aggrandize the union at its expense, it might fairly be contended that a less rigorous construction of the constitution would be justifiable. It is neither unprecedented or improper to construe the same instrument, liberally, where the interests of the contracting parties will be thereby promoted, and to adhere to a greater strictness where injury may arise to either by an interpretation too latitudinous. That the powers in question are neither dangerous in their tendencies, or calculated to prove injurious to the states, would seem fairly inferable from the recommendation to amend the constitution, and from the importance so justly attached to these objects on all hands.

But your committee, nevertheless, do not conceive it necessary to call to their aid the liberal principles of construction which the occasion might justify. They disavow any use of the general phrase in the constitution to provide for the common defence and general welfare, as applicable to the enumeration of powers, or as extending the power of Congress beyond the specified powers; and they admit that to support their positions, it must appear that the powers contended for are expressly granted, or that they are both "necessary and proper" for carrying into execution some other express power.

That Congress, with the assent of the states, respectively, may construct and improve their post roads, under the power "to establish post offices and post roads," seems to be manifest both from the nature of things, and from analogous constructions of the constitution. It has been contended, indeed, that the word *establish*, in this clause of the instrument, comprehends nothing more than a mere designation of post roads. But if this be true, the important powers conferred on the general government, in relation to the post office, might be rendered in a great measure inefficient and impracticable. In some states a power is vested in the inferior tribunals or county courts, to discontinue roads at their discretion; a post road designated by Congress might thus be discontinued, to the great embarrassment of the post office establishment. If the power to *establish* confers only the authority to designate, Congress can have no right either to keep a ferry over a deep and rapid river, for the transportation of the mails, or to compel the owners of a ferry to perform that service; and yet our laws contain an act, acquiesced in for more than twenty years, imposing penalties on ferrymen for detaining the mail and on other persons for retarding or obstructing its passage. It would be difficult to discover how this power of imposing penalties can be supported, either as an original or accessary power except upon principles of more liberal construction than those now advanced. There are, therefore, not a few who believe that, under the authority to "*establish*" post roads, Congress have express power to lay out, construct, and improve roads for the transportation of the mails.

But, however this may be, the authority which is conferred by the constitution to make all laws which shall be "necessary and proper" for carrying into execution the enumerated powers, is believed to vest in the general government all the means, which are essential to the complete enjoyment of the privilege of "establishing post offices and post roads." Even without this clause of the constitution the same principle would have applied to its construction, since, according to common understanding the grant of a power implies a grant of whatever is necessary to its enjoyment.

Taking these principles for our guide, it may be asked if under the narrow rules of construction contended for, the right of transporting the mails would not be held entirely at the will of the states respectively; on the other hand, if the United States have the privilege of establishing post roads, and are under the corresponding obligation of transporting the mails, is it not essential to the performance of this duty and to the enjoyment of this power, that they should have the right (with the assent of the respective states) to throw bridges over deep and rapid streams, to remove embarrassing and dangerous obstructions in the roads which they have the privilege of using, to level mountains which impede the velocity of transportation, and to render passable the morasses which intersect the roads through various parts of the union? Can it be supposed, that the convention, in conferring the power and imposing the duty of transporting the mails, (in its nature a matter of national concern) intended to vest in Congress the mere authority to designate the roads over which it should be carried? Can it be denied, that the right to render a road passable is "necessary" to the enjoyment of the privilege of transporting the mails; or can it be denied that such improvement, with the assent of the states, is "proper?" And, if "necessary and proper," is it not justified as an incidental power?

It is indeed from the operation of these words, "necessary and proper," in the clause of the constitution, which grants necessary powers, that the "*assent of the respective states*" is conceived to be a prerequisite to the improvement even of post roads.—For, however "necessary" such improvement might be, it might be questioned how far an interference with the state jurisdiction over its soil, against its will, might be "proper." Nor is this instance of an imperfect right in the general government without an analogy in the constitution—the power of exercising jurisdiction over forts, magazines, arsenals, and dock yards depending upon a previous purchase by the United States, *with the consent of the state*.

Admitting, then, that the constitution confers only a *right of way*, and that the rights of soil and jurisdiction remain exclusively with the states respectively, yet there seems no sound objection to the improvement of roads *with their assent*. For, if by the 10th amendment, this right is reserved to the states, it is within the power of the state to grant it, unless the United States are incapable of receiving such a privilege. But by various acts of the government, whose validity has never been questioned, it appears to possess not merely the power of receiving so unimportant a privilege as this, but of acquiring territory *ad libitum*. The acquisition of Louisiana, one of the happiest events of our political history, evinces the power of this government to acquire territory by treaty from foreign nations. The cession of the northwest territory by Virginia, shows that, under the strict principles of the old confederation, which had so few features of nationality, the United States were deemed to have the power of acquiring lands even from the states of the confederacy. The Georgia cession, completed about the year 1802, is finally decisive of the practical and undisputed exercise of a power in the general government to receive a cession of territory from any member in the confederacy, under the present constitution. But if the general government have the power to aggrandize itself by the acquisition of territories, can the inferior privilege be denied them of receiving from a state the right of making or repairing the roads over which they are compelled to transport the mails through the union?

Moreover, it seems to be admitted that the United States have, since the Georgia cession, a constitutional right to make and repair roads in the ceded territory. It then, by the transfer of the territory, Georgia could give, and the United States receive, the right to make roads within it, it is difficult to imagine a substantial objection to the validity of a grant to make a road, without a transfer of the territory.

2. Your committee conceive that the general government has the power of making and opening *military roads with the assent of the respective states*, with a view to the common defence of the nation.

The power of opening a road during actual hostilities, for the purpose of transporting military stores, and marching troops to points that are menaced, has never yet been called in question. In truth, without such a power the United States must fall a prey to foreign enemies; so it seems fair to assume, that, whenever a military road becomes necessary for the national safety, it is in the power of the general government to construct it. Of this necessity, that government can be the only judge; and if the power of *judging* of this necessity be in them, the constitutional power to *act* must of course be conceded. In the exercise of this discretion, a very general sentiment at present prevails in favor of preparations during peace for a state of war. And if the power of judging *when* it is necessary be admitted, the constitutional right to do it at any time must be allowed.

It is not proposed to enter upon the delicate inquiry whether this right can be exercised by the general government *without* the assent of the respective states through whose territories a road is constructed, in time of peace, with a view to military operations in any future wars. Leaving this question for discussion whenever the occasion may call it forth, your committee are content, in this report, to assert the right to exercise this "necessary" power *with the assent of the states.*

Having taken this cursory view of the principles of the constitution, in relation to the construction of roads by the United States, it may not be unimportant to examine what has been the practice under its provisions. The laws of the union and the acts of the executive branch of the government, though they cannot be relied on to support acknowledged error, may safely be referred to in aid of our inquiries as to the proper construction of the constitution.

Amongst the most conspicuous of the analogies afforded by the acts of Congress in the establishment of the Cumberland road already mentioned. This road has been constructed under the authority of the United States, with their funds, and through several of the states, with their assent. It has received the sanction of several distinct representative bodies, and of two presidents of the United States. In short, if precedent alone were wanting, this act would furnish it.

Passing over the road from Nashville to Natchez, and the road from Reynoldsburg to a part of the late territory of Mississippi, directed by an act of the last session of Congress, both of which afford precedents no less strong, we come to the military road lately directed by the executive authority to be constructed, from Plattsburgh or its vicinity to Sackett's Harbor. This road is not to be constructed with any express assent of the state, through which it passes, nor by the authority of Congress, but the president has deemed it necessary as a military road, and has ordered it to be made accordingly; a measure, the advantages of which are understood to be so palpable, as to have given great satisfaction in the country where the road is made. Hence, however, the question results, whether the exercise of this power by the president is not an express admission of the right of the general government to open military roads even in time of profound peace, when they are believed to be necessary; and, if the power of judging of this necessity is possessed by the executive, it cannot, it is presumed, be denied to the yet more important organ of the nation's will—the legislature of the nation.

3. As to canals. It will not be necessary to recapitulate the arguments already used on the subject of roads, some of which will be found strongly applicable to canals. It may suffice to add, that the power to make canals and roads, for the promotion and safety of internal commerce between the several states, may justly be considered as not less incidental to the regulation of internal commerce than many of the powers exercised under the authority to regulate foreign commerce are accessary to that power. The embarrassments of the nation during war, from the want of good roads and canals, both in relation to trade and the transportation of cannon and military stores, have been too recently and sensibly felt to be forgotten. Vested with the power of making war, the constitution could never have intended the general government should make it under such disadvantages. If there be any part of that instrument which demands a liberal construction, it is that which confers on the federal government the power of making war, and the duty of protecting the union from foreign hostility. With a navy yet insufficient to ensure the safe conveyance, coastwise, of troops, of implements of war, and military stores, and destined to contend with an enemy whose command of the sea, enables them to assail, in rapid succession, the most distant positions, we have been compelled, from the want of an internal water communication, to encounter the most wasteful extravagance in the transportation of the means of defence. From the same cause, the internal trade between the states has been, during war, trammelled and embarrassed, and even cut off; and the productions of one portion of the community have rotted on their hands, while distant parts of the United States were suffering for the want of them.

It is true that the wants of the union cannot confer power under the constitution; but they may justly be touched upon as affording aid in its construction.—They must have been clearly foreseen, and must have been supposed to be provided for. If the power to carry on war implies the "necessary and proper" means of conducting it to a safe and prosperous issue, and if, without the use of these means, the burdens, and the privations, and the miseries of war, are to be indefinitely increased, and its issue (always doubtful) rendered yet more precarious and unprosperous, are we not justified in presuming these means to have been contemplated as being vested in the general government? are we not justified in asserting this "necessary" power—the power of constructing roads and canals at least *with the assent of the states.*

If your committee have not erred in attributing to Congress a constitutional power to make roads and canals either as an original or accessary power, it would seem that no doubt could remain of the right of applying our revenues to those purposes. If indeed the power was denied to the general government of constructing roads and canals themselves, a question might still arise, whether it had not power to appropriate part of the revenue "to aid in the construction of roads and canals by the states."

There is perhaps no part of the constitution more unlimited than that which relates to the application of the revenues which are to be raised under its authority. The power is given "to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States," and though it be readily admitted that this clause is only intended to designate the objects for which revenue is to be raised, it cannot be construed to extend the specified powers of Congress, yet it would be difficult to reconcile either the generality of the expression, or the course of administration under it, with the idea that Congress has not a discretionary power over its expenditures, limited only by their application "to the common defence and general welfare."

A few of the very great variety of instances, in which the revenues of the United States have been applied to the objects not falling within the specified powers of Congress, or those which may be regarded as incidental to them, will best illustrate this remark.

Thus, it can scarcely be conceived, that, if construed with rigor, the constitution has conferred the power to purchase a library, either specifically, or as a "necessary" incident to legislation. Still less, perhaps, can the pious services of a chaplain, or the purchase of expensive paintings, for ornamenting the hall of session, or various other expenditures of similar character, be considered as "necessary" incidents to the power of making laws. Yet, to these and to similar objects have the funds of the United States been freely applied, at every successive session of Congress, without a question as to the constitutionality of the application.

It would be yet more difficult to reduce under the specific or accessary powers of Congress, the liberal donation to the wretched sufferers of Venezuela, or the employment of our revenues in the useful and interesting enterprise to the Pacific.

The bounties allowed for the encouragement of the fisheries form another expenditure, that does not fall under any of the powers granted by the constitution. Nor could it be fairly considered as inferrable from the powers granted upon the strict principles sometimes contended for. The same objections would apply to actual bounties, paid to manufacturers for their encouragement and to the indirect encouragement given to them, and which operates as a bounty to one class of the community, and as a *tax* upon the rest. These and a variety of other appropriations can only be justified upon the principle, that the general clause in question has vested in Congress a discretionary power to use for the "general welfare" the funds which they are authorized to raise.

Nor is there any danger that such a power will be abused, while the vigor of representative responsibility remains unimpaired. It is on this principle that the framers of the constitution mainly relied for the protection of the public purse. It was a safe reliance. It was manifest that there was no other subject on which representative responsibility would be so great. On the other hand, while this principle was calculated to prevent abuses of the appropriations of public money, it was equally necessary to give it extensive discretion to the legislative body in the disposition of the revenues, since no human foresight could discern, nor human industry enumerate, the infinite variety of purposes to which the public money might advantageously and legitimately be applied. The attempt would have been to *legislate*, not to frame a *constitution*, to foresee and provide specifically for the wants of future generations, not to frame a rule of conduct for the legislative body. Hence proceeds the use of this general phrase in relation to the purposes to which the revenues may be applied; whilst the framers of the instrument, in the clause which concludes the *enumeration of powers*, scrupulously avoid the use of so comprehensive an expression, and confine themselves to the grant of such incidental power as might be both "necessary and proper" to the exercise of the specified powers.

Nor is it conceived, that this construction of the constitution is calculated to give that unlimited extent to the powers of the federal government, which by some seems to have been appropriated.—There is a distinction between the power to appropriate money for a purpose, and a power to do the act for which it is appropriated: and if so, the authority to appropriate money "for the general welfare" does not by fair construction extend the specified or incidental powers of government. Thus, in the case under consideration, if the power to make a road or dig a canal is not given, the power of appropriating money cannot confer it, however generally it may be expressed. If there were no other limitation, the rights of the respective States, over their soil and territory, would operate as a restriction.

While this appears to be a safe as well as fair construction of the constitution, it is also that which has been practically given to it since the origin of the government. Of this, the instances already mentioned, furnish some evidence, and it is apprehended that, upon the rigid principles of construction, asserted both in regard to the enumeration of powers and the appropriation of revenue, the acts of the federal government, including all its branches, will exhibit a continued series of violations of the constitution, from the first session after its adoption, to the present day.

It would behove us to turn over the statute book and deliberately examine, how, upon these principles, the laws giving bounties to fishermen, encouraging manufactures, establishing trading houses with the Indians, erecting and constructing beacons, piers, and light-houses, purchasing libraries, adorning with paintings the chamber of Congress, giving charity to suffering foreigners, constructing roads through the different States, and establishing banks, can be reconciled to the provisions of the constitution. If as has been remarked by high authority,* the constitutional question can be "precluded by repeated recognitions, under varied circumstances of the validity" of the exercise of the power by Congress, "in acts of the legislative, executive and judicial branches of the government, accompanied by indications, in different modes, of a concurrence of the general will of the nation," the advocates for these powers in the general government can find little difficulty in supporting the pretension.

From all these considerations, your committee submit as their opinion, that Congress has the constitutional power to construct roads and canals through the several States, *with the assent of the States*, on such terms as may be agreed on, *leaving the jurisdictional* rights in the States respectively. To these and other national improvements, which may be found to be within the constitutional powers of the government, they think it adviseable that the interest of the government in the Bank of the U. S. should be appropriated. They forbear to give greater length to this report, by enlarging on the important advantages to be derived from these internal improvements. They also forbear at this time to offer the details of any plan upon the subject, presuming it most proper to obtain the sense of the House of Representatives, in the first instance, on the general proposition. For this purpose they respectfully submit the following resolution:

"*Resolved*, That in order to promote and give security to the internal commerce among the several States; to facilitate the safe and expeditious transportation of the mails, by the improvement of post roads, with the assent of the respective States, to render more easy and less expensive, the means and provisions necessary, for the common defence, by the construction of military roads, with the like assent of the respective States, and for such other internal improvements as may be within the constitutional powers of the general government, it is expedient that the sum to be paid to the United States, by the 20th section of the act to incorporate the subscribers to the Bank of the United States and the dividends which shall arise from their shares in its capital stock, be constituted as a fund for internal improvement.

* The message of the president, in 1814, returning the bank bill of that year.

MR. MADISON'S VETO.

To the House of Representatives of the United States:

Having considered the bill this day presented to me, entitled "an act to set apart and pledge certain funds for internal improvements;" and which sets apart and pledges funds, "for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote and give security to internal commerce among the several states, and to render more easy and less expensive the means and provisions for the common defence," I am constrained, by the insuperable difficulty I feel in reconciling the bill with the constitution of the United States, to return it, with that objection, to the House of Representatives, in which it originated.

The Legislative powers, vested in Congress, are specified and enumerated in the 8th section of the first article of the Constitution; and it does not appear that the power, proposed to be exercised by the bill, is among the enumerated powers; or that it falls, by any just interpretation, within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the government of the United States.

"The power to regulate commerce among the several states," cannot include a power to construct roads and canals, and to improve the navigation of water courses, in order to facilitate, promote and secure, such a commerce, without a latitude of construction, departing from the ordinary import of the terms, strengthened by the known inconveniences which, doubtless, led to the grant of this remedial power to Congress. To refer the power, in question, to the clause, "to provide for the common defence and general welfare," would be contrary to the established and consistent rules of interpretation; as rendering the special and careful enumeration of powers, which follow the clause, nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of Legislation, instead of the defined and limited one hitherto understood to belong to them; the terms "common defence and general welfare," embracing every object and act within the purview of a Legislative trust. It would have the effect of subjecting, both the Constitution and laws of the several states, in all cases not specifically exempted, to be superseded by laws of Congress; it being expressly declared, "that the Constitution of the United States, and laws made in pursuance thereof shall be the supreme law of the land, and the judges of every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." Such a view of the Constitution, finally, would have the effect of excluding the Judical authority of the United States from its participation in guarding the boundary between the Legislative powers of the general and of the state governments; inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of Judical cognizance and decision.

A restriction of the power "to provide for the common defence and general welfare," to cases which are to be provided for by the expenditure of money, would still leave within the Legislative power of Congress all the great and most important measures of government; money being the ordinary and necessary means of carrying them into execution.

If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the states, in the mode provided by the bill, cannot confer the power. The only cases in which the consent and cession of particular states can extend the power of Congress are those specified and provided for in the constitution.

I am not unaware of the great importance of roads and canals, and the improved navigation of water courses; and that a power in the National Legislature to provide for them, might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution; and believing it cannot be deduced from any part of it, without an inadmissable latitude of construction, and a reliance on insufficient precedents; believing, also, that the permanent success of the Constitution depends on a definite partition of powers between the general and the state governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress, as proposed in the bill, I have no option but to withhold my signature from it; cherishing the hope, that its beneficial objects may be attained, by a resort for the necessary powers, to the same wisdom and virtue in the nation, which established the Constitution in its actual form, and providently marked out, in the instrument itself, a safe and practicable mode of improving it, as experience might suggest.

JAMES MADISON.

March 3, 1817.

TWENTY-FIFTH CONGRESS.
THIRD SESSION.

HOUSE OF REPRESENTATIVES.
Tuesday, Jan. 23, 1839.

On motion of Mr. FLETCHER, of Mass., the bill for the relief of Winslow Lewis was taken up, read a third time and passed.

On leave given, Mr. BRIGGS offered the following resolution:

Resolved, That the Postmaster General be directed to communicate to this House, on the earliest convenient day of the next session, the distance of mail routes established by law in the whole United States, and the distance in each State and Territory, the number of miles the mails may have been transported in the United States, and in each of said States and Territories, during the current year, the average cost per mile, and the aggregate cost on the same; the amount received for postage in each State and Territory, and the whole amount paid to postmasters for their services during the same period.

That he be also directed to report the whole number of letters carried in the mail during said period charged with postage, designating the number under each denomination of postage, and the amount of postage on each class, the amount charged on newspapers, pamphlets, and periodicals, and the number of free letters carried during said period.

That said Postmaster General be farther directed to state what, in his opinion, would be the effect upon the resources of the Department of establishing the following tariff of postages on letters, viz:

On letters carried 80 miles and under, 5 cents; over 80, and not exceeding 200 miles, 10 cents; over 200, and not exceeding 400 miles, 15 cents; over 400 miles, 20 cents. And to state whatever other tariff fixing the rates in federal money, having in view the greatest reduction consistent with the necessary means of the Department, if any, would, in his opinion, be more just than the above.

That he also state what alteration, if any, may be made in the present rates of postage on newspapers, pamphlets, and periodicals, so as to promote the circulation of information without detriment to the revenue of the Department.

That he report a plan for putting up and regulating boxes in post offices in large towns.

And that he also be directed to submit a plan for regulating the transmission of letters between this and foreign countries.

Which resolution, after some conversation between Mr. CONNOR and Mr. BRIGGS, was agreed to.

REPORTS OF COMMITTEES.

Mr. CAMBRELENG, from the Committee of Ways and Means, reported a bill making appropriations for preventing and suppressing Indian hostilities for the year 1839.

Also, a bill to repeal the proviso to the second section of an act, approved March 3, 1837, which authorized the Secretary of the Treasury to compromise the claims of the United States against certain banks.

Also, Senate bill, supplementary to the act entitled "An act to establish branches of the Mint of the United States," approved March 3, 1835, with amendments.

Mr. EVERETT, from the Committee on Indian Affairs, reported a bill to provide for the location and temporary support of the Seminole Indians removed from Florida.

Mr. CAMBRELENG, from the Committee of Ways and Means, moved to correct an error in the report heretofore made from that committee on the state of the Treasury.

Mr. MERCER moved to lay the motion on the table, but, after some desultory consultation, withdrew that motion.

Mr. EVERETT, of Vermont, said that he did not consider the subject of much consequence to himself. He wished, however, to stand right before the country. The statement, proposed to be stricken out, was incorrect in two respects: 1st. It implied that he submitted a motion to the consideration of the House for an appropriation. On a previous day he laid on the table an amendment containing an appropriation which he gave notice of an intention to offer; but which he did not offer in committee or in the House. It was not, therefore, correct to say that any proposition was not adopted. In the second place, his amendment was not for an appropriation in addition to the $1,147,000; that sum was *subsequently* reported to the Committee on Indian Affairs. He had assented to it, and after it was reported he neither made nor advocated any *additional* appropriation.

Mr. BIDDLE moved to recommit the motion to correct the said report, together with the report itself, to the said Committee of Ways and Means, with instructions to correct errors which may exist in the said report.

A debate followed, in which Messrs. BIDDLE CAMBRELENG, and PICKENS participated.—When, the hour having elapsed, the Chair announced the Orders of the Day.

APPROPRIATION BILLS.

On motion of Mr. CAMBRELENG, the House resolved itself into Committee of the Whole on the state of the Union, (Mr. Banks, of Virginia, in the Chair,) on the appropriation bills generally.

The committee took up the bill making appropriations for the payment of revolutionary and other pensioners of the United States for the year 1839.

And no amendment having been offered, the bill was laid aside to be reported.

The committee then took up the bill making appropriations for the protection of the Northern frontier of the United States.

Mr. BELL did not rise to make any objection, but simply to inquire of the chairman of the Committee of Ways and Means how much money had heretofore been appropriated for this purpose.

Mr. CAMBRELENG was understood to say something over six hundred and twenty-nine thousand dollars.

Mr. C. presented a letter from the Secretary of War in reference to this appropriation, and explained its contents to the House.

And, subsequently, on motion of Mr. BRONSON, the letter was read.

Mr. FILLMORE inquired of the Chairman of the Committee of Ways and Means (Mr. Cambreleng) by whom the appropriation in this bill, for secret-service money, as it was commonly called, was to be expended? Who was to have the disposal of it?

Mr. CAMBRELENG said it would be expended under the direction of the President and Secretary of War. Gen. Scott, he presumed, was the officer to whom the disbursement would be intrusted.

Mr. FILLMORE said, if it was to be intrusted to any subordinate officer, he should oppose it.

Mr. CAMBRELENG said that nothing of the kind was contemplated.

Mr. R. GARLAND inquired whether the amount intended to be appropriated in this bill was to be found in the estimates furnished by the Secretary of the Treasury at the opening of the session?

Mr. CAMBRELENG replied in the negative.

Mr. R. GARLAND said he had made this inquiry with a view to call the attention of the House to the manner in which appropriations were got up in this House.

Mr. G. then alluded to certain remarks contained in the Message of the President and in the report of the Secretary of the Treasury, in relation to the excess of appropriations over the estimates, and to the attempt which was made to draw a justification from that fact for the extravagance of the appropriations. Appropriations (Mr. G. said) were got up by means of letters addressed from the various Departments to the chairman of the Committee of Ways and Means; and then, when the appropriations were made, the House of Representatives was reproached for having appropriated the public money to an amount exceeding the estimates. In this manner the Administration endeavored to shift from its own shoulders the charges of extravagance which were made against it.

Mr. CAMBRELENG explained that the estimates furnished at the commencement of the session were made out in pursuance of existing laws; but that the estimates for extraordinary service (as in the present instance) were not then prepared, because the Department had not received the information necessary to their preparation; and thus it was that they were not included in the ordinary estimates.

Mr. C. hoped the gentleman was not opposed to appropriations for the suppression of Indian hostilities in Florida, for the prevention of a war with Great Britain, or for the fulfilment of Indian treaties.

Mr. R. GARLAND said the chairman of the Committee of Ways and Means had fallen into his old plan of justifying the expenditures of the Administration. He expresses a hope (continued Mr. G.) that I do not intend to oppose appropriations for the several objects he has mentioned. I never have done so, and I never expect to do so, and the gentleman very well knows that I have never done so.—But that is his course of policy. So soon as a member attempts to show that the Administration is trying to shift the responsibility of the extravagant expenditures of the Government on this House, then the gentleman rises and tells us of the necessity of the appropriation, and endeavors to cast upon all those who dare to question the infallibility and the economy of the Administration the odium of being opposed to necessary and proper appropiations.—But this will not excuse him and the Administration, whose organ he is.

I make no opposition to this particular appropriation. On the contrary, I think it necessary and proper, and shall vote for it. I only wished to call the attention of the House to the manner in which appropriations are got up in this House.

And the bill was then laid aside to be reported.

INDIAN APPROPRIATION BILL.

The committee took up the bill making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year 1839.

Some conversation ensued between Messrs. MENEFEE and CAMBRELENG as to whether any discrepancy existed between the estimates and the actual amounts appropriated in the bill.

Mr. CAMBRELENG was understood to say that he had not the report of the Secretary of the Treasury before him, but that the amounts were nearly the same.

Mr. MENEFEE expressed his determination hereafter to see that the responsibility which belonged properly to the Executive in relation to appropriations should be duly insisted upon, and that the amounts appropriated should correspond with the estimates.

Mr. CAMBRELENG moved sundry additional items of appropriation; which, after some conversation between that gentleman and Mr. FILLMORE, were agreed to.

On motion of Mr. EVERETT, the bill was amended, by striking out the item of $10,000 appropriated for the survey of lands assigned to the Chocktaw and Creek Indians west of the Mississippi, (Mr. E. having explained that the Committee on Indian Affairs had reported a bill on that subject.

Mr. GARLAND moved to strike out the following items:

"For the salary of one clerk in the office of the Governor of Wisconsin Territory, who is ex-officio superintendent of Indian affairs, eight hundred dollars;

"For the salary of one clerk in the office of the acting superintendent of the Western Territory, one thousand dollars."

The motion was sustained by Messrs. POPE, BRONSON, and CAMBRELENG.

And, the question having been taken, the amendment was agreed to.

And the bill was then laid aside to be reported.

THE NAVAL APPROPRIATION BILL

Next came up, and, on motion of Mr. CAMBRELENG, was amended by increasing the appropriation for miscellaneous items from $360,000 to $460,000. The bill was then laid aside, and the committee proceeded to consider the

ARMY APPROPRIATION BILL.

Several small amendments were proposed and agreed to; when

Mr. CALHOUN, of Massachusetts, inquired of the Chairman of the Committee of Ways and Means why the item "for the national armories," had been reduced to $300,000, instead of being kept at $360,000, as heretofore?

Mr. CAMBRELENG replied that reductions had been made in every item not fixed by law, to meet the exigencies of the Treasury, and this among the rest. If, however, the gentleman from Massachusetts would consent to make a corresponding reduction in the permanent annual appropriation of $200,000 for arming the militia, he had no objection to restoring the amount for arsenals to what it had been heretofore.

Mr. CALHOUN said he had found, on inquiry at the Department, that the arms for the militia were all manufactured under private contracts. If any reduction was to be made in this appropriation, it must be effected in a separate bill; for a permanent law could not be repealed by an appropriation bill. The armories were now well supplied with skilful hands, long trained to the business, and who had acquired great skill in their employment. The reduction proposed by the committee would cut off one-sixth of their number, and turn them and their families on the world. It was the worst and most short-sighted policy to throw away a mass of trained skill in a difficult branch of art to meet a merely temporary pressure on the Treasury. He forbore to make any specific motion, hoping the chairman would himself see the propriety of keeping up the appropriation to its former standard.

Mr. CAMBRELENG not signifying assent to this suggestion.

Mr. MASON, of Virginia, moved to amend the item by adding $60,000. He supported the motion by a speech, in which, after urging similar reasons to those stated by the gentleman from Massachusetts, he quoted a letter from the Secretary of War, in which that officer said, that if any reduction should be made in the appropriation for armories, it would curtail the operations of those institutions, and greatly retard the supply of necessary arms, &c. He also suggested that the skill thus banished from our own establishments might seek employment abroad.

Mr. LINCOLN warmly protested against the idea of reducing the appropriation for the arming of the militia. He stated that the militia were not, as matters now stood, one-twentieth part supplied with necessary arms, and the amount ought rather to be augmented than diminished. The arming of the militia was a trust confided by the Constitution exclusively to Congress. And though the arms were furnished from private factories, that was no reason it would be politic to reduce the appropriation, for skill in those establishments was as valuable to the country at large as if it existed in the public armories. All the mechanics of the country acquainted with this branch of work could not, in case of an emergency, supply the militia with arms for a single month.

Mr. PETRIKEN opposed the amendment, but his remarks were not heard by the reporter.

Mr. PRATT was understood to advocate it, but he was still more imperfectly heard.

Mr. W. C. JOHNSON advocated the amendment, dwelt on the flourishing state of the public armories, the unequalled excellence of the arms they furnished, the system pursued, the admission by foreigners that our muskets were the best in the world, &c., and expressed his regret at the idea of turning off workmen who had been taught and trained in these institutions from their boyhood.

Mr. WILLIAMS, of North Carolina, strongly opposed the amendment, and was glad the committee thought it proper to retrench in any department of the public expenditure. Their good intentions ought to be met, and not thwarted.

Mr. MERCER adverted to the origin of the provision for arming the militia by the General Government as having first been contained in a bill introduced by Mr. Randolph, of Virginia. He referred to the great want of arms in the last war, and to the fact that a detachment of 4,000 Virginia troops were forced to march without any muskets. He scouted the idea of reducing, in this branch of expenditure. The appropriation, instead of standing at two hundred thousand dollars annually, ought rather to be augmented to a million. No nation in the world was so niggardly on the subject of furnishing arms for the national defence.

Mr. CALHOUN briefly replied: when the question being put on the amendment, the ayes were 55, the noes 42; and, on repeated trials, the committee was found to be without a quorum.

They thereupon rose and reported that fact to the House, which, after an ineffectual motion for a call, adjourned.

IN SENATE,
Wednesday, Jan. 30.

Mr. BENTON'S resolutions, calling for information as to the *deficit* there would have been in the Treasury, provided Mr. Clay's land bill had passed, at the time the bill was vetoed by General Jackson. The yeas and nays were ordered upon the resolution, and the result was: Ayes 29, noes 1, as follows:

YEAS—Allen, Benton, Buchanan, Clay, of Ala., Clayton, Davis, Fulton, Hubbard, King, Knight, Linn, Lumpkin, Lyon, Merrick, Morris, Nicholas, Niles, Norvell, Pierce, Rives, Roane, Robbins, Robinson, Ruggles, Sevier, Smith, of Conn., Southard, Spence, Strange, Swift, Tallmadge, Tipton, Webster, White, Williams, of Me., Williams, of Mi., Wright, Young—29.

NAY—Smith, of Indiana—1.

Mr. BENTON submitted an account of the number of lives lost in the military service of Florida. The papers were ordered to be printed.

The Senate went into Executive session during the morning hour. The session was short, and the business was resumed after a few moments.

At one o'clock, the Senate having considered some private business, took up the bill for repealing the duties on salt, and for abolishing the fishing bounties.

Mr. RUGGLES, of Maine, spoke at some length upon the merits of the Bill, and in reply to Mr. Benton. He thought that the Senator from Missouri had some secret motive in pressing forward this Bill, at this late period of the session. He considered the time ill-timed, and the object bad.

Mr. RUGGLES spoke for an hour or more, when Mr. SOUTHARD spoke in opposition to the Bill, and carefully went into the merits of the question.

HOUSE OF REPRESENTATIVES.
Wednesday, Jan. 30.

The SPEAKER laid before the House the following letter, which was laid on the table and ordered to be printed.

House of Representatives,
January 30, 1839.

Dear Sir: I have this day forwarded to the Govenor of Pennsylvania, my resignation as one of the Representatives from that State in the present Congress of the United States, which I respectfully request you to communicate to the House.

I have the honor to remain,
With great respect,
Your obe'nt ser'vt,
EDW. B. HUBLEY.

To the Honorable James K. Polk,
Speaker of the House of Representatives.

On motion of Mr. HAYNES, the House resolved itself into a Committee of the Whole on the state of the Union, and resumed the consideration of the President's Annual Message. The question pending, was on the resolution of Mr. Haynes; referring the various topics in the message, to appropriate Committees.

The subject immediately before the committee, was that part of the message which relates to the decision of the Supreme Court in the case of Stockton and Stokes, *versus* the Postmaster General.

Mr. CRARY, being entitled to the floor, resumed his remarks, in reply to the speeches of Messrs. Mason and Bell, on a former day.

Mr. CLARK, of N. Y., replied, and in the course of his remarks, made some very severe allusions to the slanders uttered by the Administration party against the Conservatives.

IN SENATE,
Thursday, Jan. 31.

Mr. SMITH, of Indiana, presented a petition, numerously signed by citizens of Evansville, Indiana, praying Congress to establish a hospital at that place.

The petition shows the fitness of Evansville as a point for a hospital, for the benefit of the commerce of the States of Illinois and Indiana, in a striking light. It states that over 20,000 persons annually land at that point, from the Ohio river, who reside in those States; that at least 2,000 flat-boats go out of the Wabash and White rivers, laden with produce for the lower markets, annually: that the number is rapidly increasing; that two-thirds of the hands from these boats land, on their return, at that place, many of them bringing diseases from New Orleans, and other places, which render them unable to proceed to their homes.

Mr. S. said, on his motion, Evansville had been inserted in the resolution of inquiry on this subject.—He was well satisfied of the necessity of a hospital at that point. He asked that the petition might be referred to the committee to which that resolution was directed. The petition was so referred.

Mr. Smith also presented a joint resolution of the General Assembly of Indiana, praying aid in the construction of the New Albany and Mount Carmel Railroad; which, on his motion, was ordered to be printed.

Memorials and petitions wore further presented, viz.:

By Mr. SEVIER: Resolutions of the Legislature of Arkansas, in relation to the establishment of the line between Texas and our Government. Also, for an appropriation for completing the improvement of the river Arkansas. Also, for completing the road from Memphis to Little Rock, in said State.

By Mr. STRANGE: From citizens of Wilmington, North Carolina, asking a light-house between Cape Fear and Campbell Island.

By Mr. MERRICK: From the Friendship Fire Company of Alexandria, asking Congress to furnish apparatus for the use of said company.

By Mr. PRESTON: From William Stalker.

By Mr. DAVIS: From William B. Adams and others, citizens of Marblehead, Mass., asking for the erection of piers.

By Mr. CLAY: From Doctor E. Theller.

Mr. CLAY, having briefly stated the import of the petition, remarked, in effect, that he would not now call in question the right of Great Britain to condemn and punish for treason any individual found in rebellion against her authority within her territory; but this petitioner stated that he had been condemned on the express ground that he was only a naturalized citizen of the United States, and was a native of the British dominions; and he further stated that he would have been executed under this sentence, if he had not escaped from his prison in Quebec.

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