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CONGRESS.

DEBATE

ON THE JOINT RESOLUTION Approving the conduct of the Executive in relation to the refusal to receive any further communication from Francis James Jackson.

DECEMBER 20.

In committee of the whole, Mr. BASSETT in the chair—

Mr. EMOTT said he rose with some reluctance to address the committee as the lateness of the hour and the discussion which had taken place led him to believe that gentlemen would not willingly attend to the detail which he had to wade through: but as he found no person ready to take the floor, he would occupy the time of the committee in submitting to them his view of the subject.

Sir (said he) the resolution on your table calls upon us to give our assent to two propositions. First, that Mr. Jackson has, in his correspondence with Mr. Smith insulted the government, by intimating that the Executive had a knowledge, that the arrangement entered into with Mr. Erskine was without authority on his part; and secondly, that in refusing to receive any further communications from the English minister, in consequence of this insult, the Executive has manifested a just regard to the character and interests of the American people. Now I can agree to neither of these propositions, inasmuch as I have not been able to discover the insult, and as I do not believe that the interest of the people has been consulted in the measure.

In making this declaration, I know I subject myself (not here I hope) to the imputation of being a British apologist and partizan, and of taking part against the government of my country. But if the President has his duty to perform, I also as a representative have mine, and although I might have remained silent if his friends had not called up this subject; yet when, I am thus pressed for an opinion it is my duty to give it fairly, and I will do it. It is not I trust necessary in order to evince my respect for the government to approbate every Executive measure, or to join with the administration in its plans and views. Our present Chief Magistrate will doubtless recollect the time when he did not deem a love of country and a due regard to its government incompatible with a marked disapprobation of Executive measures and an earnest opposition to the views of the persons in power. In all this there is nothing to blame when the opposition proceeds from good motives. I am not in the habit, sir, of making professions, but I will on this occasion say, that I have not a drop of blood running in my viens that is not purely American, and that I have not a wish but for the happiness, the prosperity, & the honor of my country and the preservation of its government.

As to the insult, it is said by Mr. Smith, in his letter of the 8th of Nov. to consist in the use of language on the part of Mr. Jackson "*implying a knowledge* in this government that the instructions of his predecessor did not authorise the arrangement formed by him." Had such language been used by the British minister in the commencement of the correspondence, it does not appear to me to follow that it would have been an insult, for it can be no offence for our government to enter into a *provisional* arrangement with a resident minister who has not full powers. Nay, had Mr. Erskine shewn his instructions of the 23d of January in extenso, declaring them to be the only instructions received by him from his government, and had the terms held out by them been negatived by our Executive, as they certainly ought; it would have been competent for the minister to receive & negociate on other propositions more just in themselves and to send the result to his government for its acceptance. Indeed this is the view which Mr. Smith himself appears to have taken of the subject. In his letters of the first and eighth of Nov. he intimates that Mr. Jackson's first letter contained the implications, as he speaks of the *repetition* of a language conveying the idea that our Executive had a knowledge that the arrangement with Mr. Erskine was without authority, and in both letters the offence is placed in the repetition after the declaration that there was no such knowledge. The same course is adopted by the resolutions, as they omit all mention of Mr. Jackson's first letter & find the insult in expressions, in the letters of the 23d of October and the 4th of November. It is not therefore strictly necessary to examine the first letter, but as it has in the debate of this day been much dwelt on by gentlemen who are in favor of the resolution, I shall claim your attention while I in a brief manner analyse the *entire correspondence.*

Before I commence this analysis, permit me, sir, (said Mr. Emott) to observe, that Mr. Jackson is not stated to have made any *direct* charge, but to have contented himself with insinuations, or in other words, the insult complained of is a constructive one. Now, as a rule of construction, I understand, that when an intent is to be made out, the whole paper is to be taken into consideration. A particular paragraph or phrase from its generality or its looseness may convey an impression which was not in the writer's mind. This is peculiarly the case with a correspondence where there is less caution used than in papers of more permanent use.

How unfair it is to play upon words in a correspondence, may be seen by adverting to Mr. Smith letters which certainly are drawn with ability, and we are to presume with great care. I take a single paragraph in the letter of the 19th of October as it relates more immediately to the present discussion—"The *declaration* that the despatch from Mr. Canning to Mr. Erskine of the 23d of January is the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it relates, is now for the time made to *this government.* And I need hardly add that if that despatch had been communicated at the *time of the arrangement or* if it had been *known* that the propositions contained in it and which were at first presented by Mr. Erskine were the only ones on which he was authorised to make an arrangement, the arrangement would not have been made."

Now the *knowledge* of the thing might have been gained in a variety of ways without a *declaration.* Thus our Secretary might have had a view of the instructions of Mr. Erskine—there might have been an understanding between them on the subject, or Mr. Smith might have the knowledge of circumstances (without an open avowal by the minister) which would necessarily have led to the same conclusion. Again, as the Secretary is not the government, but a mere agent who until directed by the President could not move in the business, the declaration might have been made to Mr. Smith individually before the negociation, or he might have had full knowledge of the fact and yet this letter would be true in its terms.

The Secretary declares that if the despatch had been communicated at the time, or if it had been known that Mr. Erskine had no other authority, the arrangement would not have been entered into. Now does he mean to say that the mere communication of the despatch, although accompanied by farther instructions, and better terms would have broken up the treaty, and yet this is in the terms of the sentence. Was it necessary that the communication to have had its effect, must have been made at the very time of the arrangement? What, if made before, would this have varied the result? Again, suppose that in point of fact our government did not absolutely know, but had the strongest possible reason to believe and think, and did in truth believe and think, when the arrangement was made with Mr. Erskine that he was not authorised, would this form an excuse on their part?

In these criticisms, violence I admit is done to the intent of the writer, and they are made only to shew the unfairness of seizing on a word to make out the intent against the intent as collectable from the whole paper. And yet, sir, the British Senate may say that our Secretary is a man of wit, a maker of puns, a sender of conundrums, and a master of equivoque, and that therefore the intent lies in the terms, and is there to be sought. If they do so reason, however highly I may think of their ingenuity, I shall think little of their [illegible].

One word more before I take up the communications. I wish not to be understood as standing here the apologist of Mr. Jackson, for the manner in which he conducted his part of the correspondence, nay, I am ready to admit that there is in some of his letters a harshness of expression and a want of courtesy which is not justifiable. But on this I am not called to judge. The Executive has placed the dismissal on a different ground, and by the resolutions we are to pronounce whether the ground taken by him is defensible.

The correspondence on your table was commenced by this government with a letter from Mr. Smith to Mr Jackson, in which the Secretary after stating the arrangement with Mr. Erskine, the disavowal of that arrangement by his Britannic Majesty, and the expectation of this government that an explanation of the grounds of refusal would have been given by Mr Jackson; goes on to state that the President understood that the British minister had no instructions from his government authorising him to make any explanation as to the reasons of the disavowal, and calls upon Mr. Jackson to correct this statement if he had been misunderstood.

The letter of Mr. Jackson of the 11th of October, in answer to this call, states that he is not altogether certain whether Mr. Smith meant to complain of the disavowal itself, of a total want of explanation of it, or that the explanation had not been made through him, and under the influence of this doubt, the letter is continued with a reference to each of these particulars. Speaking of the disavowal Mr. Jackson remarks, that he had found no trace of complaint on the part of this government in the records of his predecessor, and that Mr. Smith had not in their conferences distinctly announced any such complaint. He adds, "that he had seen with pleasure in this forbearance on the part of Mr. Smith, an instance of that candor which he did not doubt would prevail in all their communications, inasmuch as Mr. Smith could not but have thought it unreasonable to complain of the disavowal of an act done under such circumstances, as could only lead to the consequences that had actually followed."

It is to this part of the letter that we have been referred for the insult, and very properly, for if it is not to be found here, we shall in vain seek for it elsewhere. It has been urged that when Mr. Jackson declares that the arrangement was made under such circumstances as could only lead to a disavowal, he is to be understood as charging the Executive not only with a knowledge of the instructions of Mr. Erskine, but with dishonorable conduct in procuring with such knowledge his assent to an act which his instructions did not authorise. Now, sir, is this the charitable or fair construction of this sentence? Are there not other circumstances which would equally warrant the disavowal? If the fact is so, that Mr. Erskine not only acted without authority but against his instructions, who can reasonably question the right in his government to refuse to recognise his agreement? To solve this point we need not refer ourselves to writers on the laws of nations. The every day doctrine of the rights and duties of principle and agent is sufficient for our purpose. Why then will the Executive insist upon an insinuation which he considers so odious, when the sentence will bear another and a better construction? A construction too, which will be found necessary to give force to the conclusion, as it is not the circumstance that the instructions were known, but that they were disregarded by the minister, on which the right to disavow is founded. I like not the feverish apprehension which can so readily discover insult in disguised and veiled insinuations.

I am sensible that another part of the sentence has been enlisted in the cause of the insinuation. Mr. Jackson states, that in the forbearance of complaint on the part of Mr. Smith, he had witnessed that candor which he did not doubt would prevail in their correspondence, as Mr. Smith could not *but have thought* it unreasonable to complain of the disavowal. It is material here in the first place, to ascertain the time to which Mr. Jackson alludes when he refers to Mr. Smith's thoughts. Is the period at which the arrangement was made intended. Not so surely, because then there was no disavowal of which to complain. The sentence in this point at least is sufficiently clear. Mr. Jackson very distinctly says, that during their conferences Mr. Smith could not but have thought it unreasonable to complain of the disavowal of an act done under such circumstances as could only lead to a disavowal. You will bear it in mind that the conferences were had a short time before the writing of the letter, as Mr. Jackson in it declares, that but a very few days had elapsed since his introduction to the President. Now what were the materials for thinking which Mr. Smith had at the period of the conferences.

From the papers on your table, sir, (said Mr. E) you will find that our minister at London, on the 28th of May, gave our Secretary an account of a conference with Mr. Canning, in which the English Secretary declared that Mr. Erskine had acted not only without authority, but in direct opposition to his instructions, and read the despatch of the 23d of January, the substance of which is contained in Mr. Pinkney's letter. By Mr. Pinkney's letter of the 9th June, it appears that the instructions of Mr. Erskine had been laid before the House of Commons, and a copy of them were then enclosed to our Secretary. In the letter of the 23d June, Mr. Pinkney gives to our Secretary the reasons which Mr. Canning had stated to him for the disavowal. Mr. Smith in his letter to Mr. Erskine of the 9th August, declares that he had just received from Mr. Pinkney the printed copy of the despatch of Mr. Canning of the 23d of January, and it appears from the letter of Mr. Jackson, which I am now testing, that this despatch had been a subject of conversation between him and Mr. Smith.

We have now in review some things which might in the conception of the British minister have found materials for thinking for our Secretary. He knew the pretensions of the British government that its minister had violated his instructions. He had seen the despatch in its whole extent and might have compared it with the arrangement. Mr. Jackson tho't there was a substantial difference between the instructions and arrangement; and perhaps he had a right therefore to conclude that Mr. Smith did not complain, because after what had come to his knowledge he found that the act was done under such circumstances as justified the disavowal—Nay, sir, he must at this very time have had in mind the latter part of the letter of Mr. Smith to Mr. Erskine which I have just alluded to, in which after the conditions in the despatch of the 23d of January are mentioned, our Secretary says—"I forbear to express to you, sir, the surprize that is felt at the extraordinary pretensions set forth in this letter of instructions and especially at the expectation that this government would as a preliminary recognise conditions two of which are so manifestly irreconcilable to the dignity and interest of the United States." The Secretary had thus officially volunteered his opinion respecting the difference between the instruction of the 23d January and the arrangement to the English legation itself.

If however there is yet room for a jaundiced or a jealous mind to suspect an insinuation in the sentence before us it must be obviated by what immediately follows in the same letter.

"It was not known when I left England, whether Mr. Erskine had, according to the liberty allowed him communicated to you *in extenso* his original instructions. It now appears that he did not. But, in reverting to his official correspondence, and particularly to a despatch addressed on the 20th of April to His Majesty's secretary of state for foreign affairs, I find that he had submitted to your consideration, in these instructions, as the groundwork of an arrangement, which according to information received from this country, it was thought in England might be made, with a prospect of great mutual advantage. Mr. Erskine then reports *verbatim et seriatim* your observations upon each of the three conditions, and the reasons which induced you to think that others might be substituted in lieu of them. It may have been concluded between you that the latter were an equivalent for the original conditions; but the very act of substitution evidently shews that those original conditions were, in fact, very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions and those contained in the arrangement of the 18th and 19th April is sufficiently obvious to require no elucidation; and need I draw the conclusion, which I consider as admitted by all absence of complaint, on the part of the American government, viz. that under such circumstances, His Majesty had an undoubted and incontrovertible right to disavow the act of his Minister. I must here allude to a supposition which you have more than once mentioned to me, and by which if it had any the slightest foundation, this right might perhaps in some degree have been affected. You have informed me that you understood that Mr. Erskine had two sets of instructions, by which to regulate his conduct; and that upon one of them, which had not been communicated either to you or to the public, was to be rested the justification of the terms finally agreed upon between you and him. It is my duty, Sir, solemnly to declare to you, and, through you, to the President, that the despatch from Mr Canning to Mr. Erskine, which you have made the basis of an official correspondence with the latter Minister, and which was read by the former to the American Minister in London, is the only despatch, by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement with this country on the matter to which it relates."

Here we find that Mr. Jackson expressly places the disavowal on the difference in the conditions contained in the instruction and the terms of the arrangement, and again draws his conclusion that under such circumstances the King had a right to disavow the act of his minister. When speaking of the instruction he not only intimates that Mr. Erskine had not communicated it in extenso, but deems it necessary in answer to a suggestion made by Mr. Smith in their conferences, that Mr. Erskine had more than one set of instructions solemnly to assure our secretary, and through him the President, that such was not the case. This declaration is to me utterly irreconcilable with the notion of an insinuation that the executive of this country knew at the time of the arrangement that the British agent was acting without authority. If Mr. Jackson had intended a charge of this kind, he certainly would not thus notice a mere conversation for the sole purpose of giving an official negative to it.

There is one part of the paragraph which I have last read to you which requires a moment's attention as it has been the subject of some cavil; I allude to that part of the specification of the letter of Mr. Canning to which Mr. Jackson says that Secretary Smith had made it the basis of a correspondence with Mr. Erskine. This is sufficiently explained by a referance to the letter from Mr. Smith to Mr. Erskine of the 9th of August. In that letter the despatch is indeed made the basis of a correspondence. It was not so anterior to the arrangement. One observation more, sir, in relation to this letter. It has been urged that in a fair and critical construction of the terms used by Mr. Jackson, it not only does not appear that Mr. Erskine had no authority to conclude the arrangement, but it is justly to be inferred that he had authority. This I confess is not my construction of the letter, but it is surely strange for those who make and profess to believe it, to urge at the same time that Mr. Jackson in the same letter has charged the government with the knowledge of a matter which he admits to be untrue, that Mr. Erskine acted without authority.

I shall now, for the present, leave the first letter of Mr. Jackson, remarking, that in the part of it which [illegible] have had before us, I under[illegible] is proceeding on the hypoth[illegible] our government asked [illegible] explanation of the [illegible] he attempts to answer [illegible] ferring to the despatch of [illegible] January as containing the [illegible] ity of his predecessor [illegible] the disavowal was occa[illegible] was regarded on the [illegible] vernment a departure from [illegible] duction. As to the insin[illegible] buted to Mr. Jackson [illegible]