understood between the contracting parties, and while a proper consideration was given, ought upon no terms whatever to be violated, it became the committee to try the question by this standard;—and it sometimes happens that we are so blinded by exiting circumstances, that by reversing the scene in our minds, we are more likely to detect an erroneous sentiment than by any other argument. Let us suppose for a moment, that the late war had been prolonged to a degree, that the debt contracted in its prosecution, became so enormously large, that the abilities of the United States would enable them to pay but 5 shillings in the pound, and a number of persons, who had purchased securities at ten shillings should come forward and pray they might be authorised to call upon the original proprietors, to refund five shillings of the purchase money—can any body doubt what the answer would be? Would they not be told, from all quarters, that they purchased upon the contingency of the publick ability: That it might have happened, that they would have got twenty shillings for what cost them but ten, it has turned out otherwise, they took the risque upon themselves, and therefore must abide the loss? This has been the understanding, which has universally prevailed, and every transaction of the United States, relative to assigned securities, as well as the security itself, in its very face, establishes such an understanding.

Mr. GOODHUE further observed, that agreeably to his idea, public credit became a desirable object chiefly for this reason, that in times when great exertions became necessary, the public might avail themselves of services and supplies, beyond what they may have on hand sufficiently to command—this was to be done only by promissory obligations, and in order to have any effect answer the purpose, they must be made assignable—he then asked, if the principle of a discrimination, contended for, had existed during the late war, or if it had been understood, any advantage was afterwards to be taken of an assigned security, which assignment was legalized in the very security itself, what would have been the consequences? Would it not have put a period to our credit and exertions? Would not such a principle now established, be an effectual bar to our future credit?

Mr. GOODHUE acknowledged, that the case of many soldiers and others, who from necessity were obliged to part with the pledges of their publick service for a small consideration, was peculiarly hard, and they were entitled to our compassion and generosity, but not at the expence of our national honour and solemn engagements.

WEDNESDAY, FEB. 17.

Mr. MADDISON's motion under consideration.

Mr. PAGE said that he thought it proper to express some ideas to the committee upon the question, lest it should be said that either a blind attachment to the mover on the one hand or pusillanimity on the other, influenced his vote—It has been said by some persons that this motion is infamous, by others it is supposed to be founded on strict justice, I hope a fair and temperate discussion will take place. The enquiry is whether we did not owe the officers and soldiers of the late army—and whether we have ever paid them. If we have not, is it not justice that they should be paid? This is bringing the matter to a point; & I cannot but agree with my colleague, that we are as a Court of Equity, from whom these people have a right to expect justice; and we may remember, that however we may decide, there is a judge who will do justice.

The time is now arrived when justice should be done. This time has been impatiently waited for; and I don't see how we can avoid doing full justice to the utmost of our power.

He then observed that it appeared to him, much greater injustice would be done in paying the speculators the full sum—it was more than they ever expected, for they had often expressed their doubts of government's ever paying off the securities. Upon the plan proposed they will gain a profit in general, besides the interest of their money. It has been said, the securities are a contract between the holders and the government—This is strictly true as it respects the original holders. The measure it is said will operate as an *ex post facto* law: He had recurred, he said, to the Constitution, and found the clause had reference to Bills of Attainder:—On this idea government may not interfere in any case of fraud, for that unfair representations were used with the unsuspicious and needy soldier, cannot be doubted. He hoped that gentlemen would not be taxed for want of candor, for addressing their arguments to the heart as well as the head. When a case is doubtful the heart is often the surest director. It is happy when they both concur in our decisions.

Mr. BOUDINOT: I consider the right determination of this question, as the key stone of the fabric of the public credit: As we lay this, will be the weakness or stability of the structure. He had thought differently at periods on the present subject. He rejoiced that it had been brought forward, and hoped it would be discussed with candour and deliberation. He wished that the House should consider themselves as acting in the character of a *National Legislature*. If we lose sight, said he, of this idea, we shall do great injury to the subject, and every step we take, we shall plunge ourselves into still further difficulties. He observed that there appeared to be a coincidence in one particular sentiment, & that is, that the debt is just, honourable and meritorious. It is also agreed that great part of this debt has been liquidated, and stipulated terms of payment given.

The incapacity of the U. States was the only cause of that species of evidences of the debt's being given, which have from the same cause depreciated. [Here he read the Ordinance of Congress, empowering the original holders of certificates to transfer them;—in which the transferrees are considered as persons discovering "the most confidence" in the government.] He then observed that the proposition offered by the gentleman from Virginia, was brought forward in such manner, as to demand the most fair, candid and decent investigation. [Here he read the several classes into which the creditors are divided by Mr. MADDISON.] With respect to the first class, those who have retained the securities, he agreed with the gentleman. In regard to the second, those who alienated, he said he could mention many persons in this predicament, as meritorious as any description of sufferers that can be named—but as the gentleman had not held them up, as objects of future indemnification, he should say nothing more respecting them. He then adverted to subsequent parts of Mr. MADDISON's speech, and observed, that gentlemen had used particular terms in such manner as to induce some confusion. He instanced Publick Faith, Publick Credit, and Publick Justice, &c. With respect to the original creditors, he presumed that gentlemen would not contend that the persons, in whose names the securities are issued are only to be considered as such; as it is demonstrable by incontestible facts, that far the greatest part of the original holders' names do not appear in the certificates. He then defined the term justice, and observed, that Publick Justice is distributive justice, and is often a different thing from private justice: the latter may operate partially, the former always generally—& in this way equally.—He pointed out the precise ideas on which the publick paper was issued—that the contracts were formed upon the idea of the transferable quality of the payment to be made—the transferree is therefore *ipso facto* the original creditor. He then adverted to the doctrine of insurance, and from a variety of deductions, shewed that the probable value of the securities had been paid in all the stages of negociation. He quoted D'Avenant and the Secretary of the Treasury, to shew, that stock, on interest, agreeable to all the rules of calculation is always less valuable than cash. Sir William Davenans says, that a capital of 10s. is worth only 7s. cash. He reversed the present situation of the country, and placed the purchaser of the public paper in the circumstances it would probably have been in had the country lost its independence—and asked whether the sufferer who had confided in the final success of the country, would conceive that the seller was bound to indemnify him for his loss? He further insisted on the existence of the contract—and instanced the common and universal practice of merchants, and others, in all transferable and negociable business—and from all inferred, and insisted that the assignee stands precisely in the shoes of the assignor. From this he adverted to the objection, arising from its being an *ex post facto* business—and as we are expressly precluded from passing any such law, the propositions involved a most palpable violation of the Constitution. The gentleman last speaking in reply to this objection, says, that on recurring to the Constitution he found that the clause referred only to passing bills of attainder.

Mr. BOUDINOT then read the clause, and remarked that he conceived the gentleman had given the clause but a cursory reading—the passage runs thus, "Congress shall pass no *expost facto* law—or any bill of attainder." He then pointed out the particular operation of the measure—as being retrospective to the fullest degree.

He combated the idea that Congress has a right to fet as judges on this question—and infisted that this would prove such a violation of the constitution as must make every man shudder at the consequences—Congress are not competent to determining questions of justice and equity between citizen and citizen—this is such a question—and our judicial courts are alone competent to determining the matter.—Mr. BOUDINOT dilated largely on this sentiment in this part of his speech—and represented the evil effects that would result, from Congress forming itself into a confideration of the effects which such a measure would have on the public credit—he said in his opinion it would be a fatal stroke to its very existence—all public confidence would be destroyed—the public securities would immediately sink below any price they have ever been at. He exhibited in striking colours the wretched predicament that all this property would be placed in a situation that would totally frustrate all our hopes under the constitution—He repeated the observation respecting the imbecility of the late confederation—and shewed tho' the individuals who composed that body were persons of the strictest honor and probity—yet in the public character which they held as legislators, judges and executioners, they were constantly discovering by their decisions that personal property and rights could not be protected in such an assembly—a full conviction of this, brought about a revolution in the government—with respect to public opinion—he observed that what was said in a private circle, or by eighteen or 20 persons in a neighbourhood, could not with any propriety be considered as the public opinion—there is in my opinion said he, a better mode of ascertaining it—and that is by turning to the acts and doings of the people in the several state assemblies—several of them have been recently in session, and in consequence of the idea being circulated that their respective debts would be assumed by the general government—they have voted to provide for the payment of the interest on their debts, without saying one word about discrimination, from whence it was fairly deducible that the public opinion is not in favour of the measure.

He enlarged on this article by saying, that no evidence of any kind whatever has been offered to the committee, to shew that the public opinion is in favor of this idea—on the other hand, the total silence observed on the part of the persons who are to be benefited, is a negative proof to the contrary—he replied to the reasons which had been assigned for this silence—and thought the dispersed state and poverty of the holders could not be considered as a sufficient reason.

He entered into a full consideration of the influence of the South Sea bubble, which had been adduced in this question—and said that the circumstance did not apply, but on the other hand was directly opposed to the present proposition. Mr. BOUDINOT here shewed, that the interference of the government on this memorable occasion was altogether in favour of the public creditors, and to oblige the company to make good their contracts.

He took notice of the Mississippi scheme—on which he said, he could not dilate so fully—but from the light of that business, as exemplified in the conduct of the commissioners employed on that occasion, who plundered the public of millions—he deduced the pernicious effects to be apprehended from appointing commissioners, as must be the case, to settle the business on this plan.

Mr. SEDGE, after an introduction which we did not hear—observed, that the members appeared to be set exceedingly in their opinions upon the most essential principles—on public justice said he, we appear to differ very widely, the object therefore must be to produce as great a union of sentiment as possible—went into a consideration of the constituent parts of a contract—and insisted that their validity depended altogether on the equivalent—where no such equivalent can be adduced, contracts even in England, have never been enforced—He applied this idea to the present evidences of debt received by the officers and soldiers of the late army—no man will say that they have received in an equivalent for their services—he supposed that no credit was due to the speculator for his conduct in the public faith—as to the risk—between buyer and seller, there was perhaps more than one penny difference.—Mr. STONE observed that if the speculator purchased a security of 6 100, for 6 10, on the idea of assurance of obtaining the full payment, he was guilty of a fraud—therefore as this is not supposed to be the case, the speculator will have full justice done him, by being paid his own money, with interest—it surely would be as much against the feelings of the speculator to receive 10 for 1 for his money as 100 for those of the soldier to be reimbursed what he had been so long deprived of—the inability to do full justice is not to be admitted—as he observed, that if the securities were purchasers for 100, the property of the United States would sell for 600 millions, and we have but 80 millions to provide for. He enlarged upon the merits of the soldiers—and asserted that they had years suffered as persons who had been guilty of some crime—and this is the situation of men to whom America is indebted for her independence—if we do justice to those men we shall establish our character for honesty, & we shall always be able to command the service of such persons—but if not the defence of the country will devolve on mercenaries, who *will be paid*.

On the subject of discrimination, he laid it down as a principle, that the country could not stand the shock of a governmental interference in altering the nature of the debt, by paying a less sum than the security specified—it would so contravene their habitual ideas on the subject, that he was of opinion the most fatal consequences were to be apprehended, should the measure be attempted—still it is a proper subject of enquiry, to whom this amount is justly due—this appears to devolve upon the national Legislature as the only authority competent to doing justice.

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CONGRESS.

HOUSE OF REPRESENTATIVES.
MONDAY, FEBRUARY 16, 1790.
IN COMMITTEE OF THE WHOLE.
On the REPORT of the SECRETARY of the TREASURY.

Mr. Maddison's motion for a discrimination under consideration.

Mr. SMITH's (S. C.) Speech Continued.

THE gentleman from Virginia had said, that giving the present holders, by alienation the highest market price, would be doing them ample justice; but did the public mean to defraud them of the money they actually advanced? No—they were to receive this ample justice by a bit of paper nominally for 10s. but which this very measure would instantly depreciate to 8 or 6s. They would have this consolation, that according to the gentleman's reasoning they would still have a claim against the government for the balance: for if the original holder, by selling his certificate for 4s. has now a just claim against the government for the balance of 16s. which it is asserted he has, of course the alience, to whom the public should now acknowledge a debt of 10s. which he should sell for only 6s. would hereafter have a just demand against the public for 4s. This reasoning might be carried further, for it would follow that whe ever the public should pay in paper which shall depreciate, the seller will have a demand against the government for the difference.

From the distance of time at which these securities were issued, it may be reasonably supposed that many of the original holders are now dead: the average life of man is estimated at seven years, according to the most accurate calculation on insurance of lives. Some of them are dispersed in foreign countries, or settled in the western territory; and it would be right before the House took such a step as this, to understand clearly what amount these alienations had been made; at present they were uninformed on the subject, and had no documents before them. If their alienations were inconsiderable, this project would be dangerous, even admitting its justice. History affords no precedent for the measure.—The gentleman from Virginia, whose industry was equal to his ability, would have produced some similar case, had any existed. The South-Sea scheme was totally inapplicable: there the directors of the company having been guilty of the most enormous frauds, and villainous practices, the government confiscated their estates and bestowed them on the company which they had been the means of ruining, instead of promoting their interest of which they had been appointed the guardians. Were the purchasers of securities chargeable with any crime for which they merited confiscation? Were they appointed by law the guardians of the property of the original holders? Nor was the other instance, respecting the depreciation of pay made good to the officers during the war, to the point, for there the public paid them with the public money, and not with that of individuals.

The constitution itself, he said, was opposed to the measure, for it was an expost facto law, which was prohibited in express terms. The transference of public securities was lawful at the time the alienations were made; in an attempt therefore to punish the transferrees, is an attempt to make an ex post facto law, by making that now unlawful, which was lawful at the time it was done; it alters the nature of the transaction, and annexes the idea of guilt to that which, at the moment of commission, was not only perfectly innocent, but was explicitly authorised and encouraged by a public act of Congress. By that act, those who had money were invited to purchase of those who held securities; and now they were called upon to punish the purchasers who bought under that invitation. The constitution forbids the states from passing any laws impairing the force of contracts: *a fortiori*, is the legislature of the union restrained. What an example to hold up to the judiciary of the United States! How could they annul such law; when the state would be able to plead a precedent on the part of Congress: The right of property was a sacred right! no tribunal on earth, nor even legislative body, could deprive a citizen of his property, unless for a fair equivalent, for the public welfare. The purchaser was vested, by the sale, with an absolute right to the full amount of the security, and it was beyond their authority to divest him of it. They might, indeed, by an act of power, declare that he should be paid only half: but a right to the other moiety would not be extinguished. It had been said that the original holder still had a claim against the public, because he had received only 2s. 6d. for services worth 20s. On the same principle, and with more justice, the present holders would still have a claim for 10s. because he has the public bonds for 20s. No ingenuity can overcome those stubborn principles of law and justice; they are immutable and must ultimately prevail. The house had been told, that if the government had defrauded the original holders out of their dues, it was for the public should rectify the fraud: the former government was not deficient in inclination to do them ample justice, but from the imbecility of the confederation had not the means. In those days of democratic enthusiasm, the people were afraid of an energetic government: having so recently experienced the severity of their former one, the citizens of those states were cautious in trusting any government with power: and it is not improbable, that some of the original holders, who suffered these embarrassments from the want of a government competent to the payment of its debts, would themselves have opposed the vesting Congress with powers adequate to this object. Even the present constitution, which is a mild one, met with considerable opposition: had it been rejected, the public securities would have never been paid.

Public opinion had been mentioned, as favoring the plan: nothing was so difficult to attain as a knowledge of public opinion, but as far as he had been able to collect the public opinion, it was against the measure. Publications in the newspapers appeared indeed on both sides, but a great number against it. The legislature of his state strongly expressed their sentiments, by rejecting almost unanimously a similar project; and in society he had met with but few advocates for it.

That it had been admitted that no instance of similar nature had ever existed in other countries, yet it was asserted that this was because the depreciation of public securities in Europe bore no comparison with those in the United States. The securities in England had fallen to 50 per cent. without occasioning an interposition of the government, and there was no reason to assert, that a greater depreciation would have induced an interference; if the measure was unjust in the one case it was equally so in the other; the increased rate of depreciation could not justify it; for where would it cease to be unjust and begin to be just? What is the precise point of depreciation at which the government could be warranted in stepping in and depriving the holders of their rights? Right and wrong cannot depend on the amendment of depreciation; they are fixed principles which cannot fluctuate.

The hardship of requiring those who lost four sixths of their due to contribute to the payment of taxes has been noticed. When they sold their certificate they thought that the person to whom they sold, would one day or other receive something for it; and they knew that he could receive nothing, unless the debt were funded, and that in such case they would be compelled to contribute their proportion of taxes. If they, on the other hand, were impressed with the idea that the purchaser would never be paid, thea the bargin was not a fair one on their part, for they took the purchaser's money and gave him what in their belief was not equivalent.

The impolicy of the measure is evident, because it will check the negociability of public securities; will enhance terms of future loans, and injure the public credit. Public debts were said by some to be public benefit; doubtful as this doctrine may be, it is acknowledged universally that without a negociable quality, instead of being of any utility, they would be a most grievous burden to the community. Who would purchase when he had before his eyes the terror of a discrimination? A future occasion may arise when, from the exigences of a war or other emergency, a similar attack might well be apprehended. Purchasers therefore will be rare, and the risk they run restrain them from giving the full value of the public securities. This will operate then as a considerable injury to the original holders, who never alienated their certificates, and who ought not to be involved in the pernicious consequences of this measure. With respect to impracticability it was not the strongest objection with him, because if he were persuaded that it was both just and positive, he would go every length in endeavouring to accomplish it; but even on this head, difficulties innumerable appeared. Some which were unanswerable had been mentioned, and it had been clearly shewn, that it was absolutely impossible to trace the original holders. He had chosen to combat the measure on its principles, because he thought it was not a just one, and the establishment of it might lead hereafter to future interferences and unhappy consequences.

If was the wisest policy of governments to adhere strictly to their plighted faith, when it was in their power to do so, even should such strict adherence work an injury to some part of the community: This was the practice with nations in case of a treaty, which, when made by competent authority, they considered themselves bound to observe, although they deemed it disadvantageous to them, at least a refusal should deter other nations from treating with them in future; It is by this line of conduct that public credit can alone be supported. Whatever may be the merits of the alienators, or the speculations of the aliences of public securities, it was not the business of government to interpose; there are the contracts—they must be paid as far as the public resources will extend. The claim of those unfortunate creditors who distress drove them to the necessity of sacrificing their certificates, was a claim on the humanity of Congress; and he should not be opposed to giving them relief, provided the funds were taken out of the public treasury, and not in the manner proposed.

In whatever light he viewed the project under consideration, he felt a strong conviction that it was such a one as ought to be rejected.

Mr. AMES agreed with Mr MADDISON in regard to the validity of the debt. There was propriety in saying the nation is the same, tho' the government is changed. The debt is the price of our liberties, and cannot be demished a farthing, the gentleman says—and why—because the government, as one of the contracting parties cannot annul, or vary the bargan, without the consent of the other. If the measure proposed by that gentleman corresponds with that sound principle, he should have the pleasure of agreeing with him on the ultimate decision—but if the measure should be found on a fair discussion, to be subversive of that principle, it would not merit the countenance of the committee.

A claim upon our justice is made on behalf of the original holders of securities who have transferred them. There is a benevolent prejudice in their favour. Does the plighted faith of their country stand charged to pay the difference between the price their securities sold for in the market and the nominal sum? In order to make the affirmative appear, the worthy gentleman has said, that the paper is the only evidence of a prior debt—and while the paper was sold, the residuary right to the debt still remained in the seller. Supposing this novel doctrine to be true, which cannot be conceded, it will not warrantany conclusion in prejudice of any purchaser of the loan office debt—for the paper was given when the loan was made. As no prior debt existed, the paper is the very debt. The gentleman ought therefore to confine his motion to the army debt, as his principle seems inapplicable to any other. And even on liquidating the army debt, the certificate extinguished the prior debt—otherwise the public would be twice charged—As when one man owes another on account, and gives his bond for the balance, the account is no longer of force. By the terms of the certificate, the person transferring has left his claim against the public. He has freely transferred—for if violence or fraud were practised, the law will afford him redress. In society, as well as in state of nature, property is changed by the consent of the last occupant. He may dispose of it by gift, or at half price—and give a complete title. Nor will the pretence that this transfer was free only in appearance, avail—for the motive, which disposed the owner to sell, cannot affect the right of purchase. Every such creditor risked something—either that government would not pay him at all, or not in due season. The risk computed in free & open market will be near right. It is a kind of insurance against these risks, and the insurers and insured will calculate the rate of insurance better than government can do it. If there is a new risk of governments interposing, it seems that the purchaser, who may be called the insurer, did not rate his risk high enough. It seems pretty clear, therefore, that there is no claim on the stipulated justice of the country.

Another sort of justice is set up—a different sort from that which we were taught in the schools and churches. It is called abstract justice, and is said to demand allowance for the loss sustained by the failure of public payments. No man respects more than I do the merit of the army. But the soldiers, at least, had something towards justice by their bounty.

Stock has sold in England at 56 pr. cent. discount, and yet no restitution has been made.—Where then does this new fine of justice begin? It can scarcely be denied that their claim, if they have any, is not a debt. The arguments alledged by the gentleman are addressed merely to the compassion and generosity of the government.—Nor do I know that there is any ground for saying that public opinion is in their favor. It will be allowed that if justice is to be done, it should be impartial justice. Partiality would be more cruel than total neglect.—Will you refuse to make amends for paper money, for property taken by our army in Canada, for losses sustained during the war, for towns burned? In this last case, it is to be observed, that government has promised protection—and inability to protect it as much a debt as the case in question. The intermediate holder who bought at 6/8, and despairing of government sold out at 3/6, have an equal claim. Are all these to be excluded?—Let us not break contracts