

JANUARY, 1811.

Occupation of West Florida.

SENATE.

MONDAY, December 31.

JOHN TAYLOR, appointed a Senator by the Legislature of the State of South Carolina, in place of Thomas Sumter, resigned, produced his credentials, which were read; and the oath prescribed by law having been administered to him, he took his seat in the Senate.

MR. FRANKLIN, from the committee to whom was referred the bill, entitled "An act making an additional appropriation to supply the deficiency in the appropriation for the relief and protection of distressed American seamen during the year 1810," reported it without amendment.

MR. BRADLEY, from the committee to whom was referred the bill, entitled "An act to fix the compensation of the additional Assistant Postmaster General," reported the bill with an amendment; which was read.

The bill authorizing a subscription on the part of the United States to the stock of the Ohio Canal Company was read the second time.

The bill to incorporate the subscribers to the Farmers' Bank of Alexandria was read the second time.

The bill for the establishment of a quartermaster's department was read the second time, referred to a select committee, to consider and report thereon; and Messrs. LEIB, FRANKLIN, and PICKERING, were appointed the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act providing for the final adjustment of claims to lands, and for the sale of the public lands in the Territories of Orleans and Louisiana;" in which they desire the concurrence of the Senate.

OCCUPATION OF WEST FLORIDA.

The Senate resumed the consideration of the bill extending the laws now in force in Orleans Territory to the Perdido, &c.

MR. PICKERING commenced a speech, in which he proceeded about an hour; when he read, as an evidence in support of his argument against the title of the United States to Louisiana or Florida between the Mississippi and Perdido, a letter from Charles Maurice Talleyrand, the French Minister for Foreign Affairs, dated 21st December, 1804, to General Armstrong, our Minister at Paris, on the subject of certain overtures which had been made by our Ministers in Spain for the aid of France in procuring a cession to the United States of one or both Floridas. The purport of Talleyrand's letter appeared to be a denial that the United States had acquired, by the treaty of 1803, any title to Louisiana east of the Mississippi, or some statement to that effect.

When Mr. P. had concluded the reading of this letter—

MR. SMITH, of Maryland, said he wished to inquire whether the paper, which the gentleman had just read, had ever been publicly communicated to the Senate.

MR. PICKERING said it had been communicated, not indeed as a public paper, but for what reason had it been communicated confidentially? Be-

cause, by a publication of it at the time, injury might have been done to our Ministers or our affairs abroad. There was, however, now no reason why the whole truth should not be known. They were about taking a step which was one of peace or war, and it was important that everything in relation to the subject should be disclosed.

MR. SMITH said that whenever papers were communicated to the Senate confidentially, before they could be read publicly in this body or any other, it was necessary that the permission of the Senate should be obtained; which no doubt if asked in this case would have been granted. But if this proceeding were permitted to pass unnoticed, any individual might have the power to do the greatest injury to the nation, as his humor might move him. He apprehended the proceeding was wrong; but gentlemen older in the Senate than he was could perhaps better decide.

On the suggestion of a member, the galleries were cleared. The Senate sat with closed doors for an hour. When they were again opened, on motion of MR. ANDERSON, the further consideration of the bill last mentioned was postponed.

MR. CLAY submitted the following resolution, which lies on the table of course:

Resolved, That the public perusal in the Senate of certain papers with open galleries by the gentleman from Massachusetts, (MR. PICKERING,) in his seat, without a special order of the Senate removing the injunction of secrecy, which papers had been confidentially communicated to the Senate by the President of the United States, was a palpable violation of the rules of this body.

The Senate then adjourned to Wednesday.

WEDNESDAY, January 2, 1811.

ANDREW GREGG, from the State of Pennsylvania, took his seat in the Senate.

THE PRESIDENT laid before the Senate the report of the Secretary of the Treasury, made in conformity with the acts of March 26, 1804, and March 3, 1805, of rejected claims made by the Commissioners appointed for the purpose of examining the claims of persons claiming lands in the district of Kaskaskia; and the report was read, and ordered to lie for consideration.

On motion, by MR. LLOYD, it was agreed to suspend the order of the day for the purpose of considering the bill, entitled "An act making an additional appropriation to supply the deficiency in the appropriation for the relief and protection of distressed American seamen during the year 1810;" and the bill was read and considered as in Committee of the Whole, and passed to the third reading.

MR. DANA asked and obtained leave to bring in a bill for the benefit of seamen of the United States; which was read, and passed to the second reading.

THE PRESIDENT communicated the report of the Secretary for the Department of War, made in obedience to the first section of the act "further to amend the several acts for the establish-

ment of the Treasury, War, and Navy Departments," passed the 3d day of March, 1809; which was read, and ordered to lie for consideration.

The bill brought up from the House of Representatives for concurrence, entitled "An act providing for the final adjustment of claims to lands, and for the sale of the public lands in the Territories of Orleans and Louisiana," was read, and passed to the second reading.

The bill authorizing the sale and grant of a certain quantity of public land to the Chesapeake and Delaware Canal Company, was read the second time.

QUESTION OF ORDER.

Mr. CLAY called up the motion made the 31st of December, on the subject of order; and, on his motion, it was agreed that the original motion be amended as follows:

Resolved, That Timothy Pickering, a Senator from the State of Massachusetts, having, on this day, whilst the Senate was in session with open doors, read from his place certain documents confidentially communicated by the President of the United States to the Senate, the injunction of secrecy not having been removed, has, in so doing, committed a palpable violation of the rules of this body.

Mr. CLAY said he wished it was consistent with his duty to forbear pressing it; but from the best consideration he could give the subject, he was obliged to ask a decision on it. With respect to the act having been a violation of the rule, there could be but one opinion. The rule seemed to have been made for the precise occasion. If the Senate did not express their disapprobation, it would be inferred from their silence that they had given their approbation, of the gentleman's conduct; and any individual would hereafter, if inclined, follow his example without hesitation. Again—if the President could not have some degree of security that the documents confidentially communicated to Congress, and on the preserving which in confidence perhaps the safety of the nation depended, would not be disclosed; must not all reliance on the Senate be lost? These considerations induced him to press a decision.

Mr. LLOYD said he had been in hopes that the resolution would have been withdrawn, as it was admitted that the facts disclosed were of no great consequence, as indeed they had been already circulated in the newspapers, and their disclosure could prove of no detriment to the public service. However much gentlemen wished to show their respect for the rules of the Senate, he had hoped that the resolution would have been withdrawn; and that the Senate would not have passed a censure of this sort on so slight an offence as this, if it be an offence at all. He therefore moved to postpone the resolution.

The motion to postpone was lost—yeas 9.

Mr. DANA apprehended the true question in this case to be, what course it became the Senate of the United States to adopt.

The resolution, then, in the first place, proposing to establish an important precedent as to the propriety of proceeding, should be strictly accurate; and if they were to give a rule, which was

to be to members a monitor of their duty, and to the House a guardian of its honor and dignity, the whole case should be accurately stated.

My objection to the resolution (said Mr. D.) is, that it does not present the circumstances which led to the result, as they occurred, and which ought to be taken into account in giving it a fair estimate. I ask the question, whether it be possible for the members of the Senate, consistently with any principle of justice, fairness, and public decorum, to pass this resolution? On this ground I submit myself with confidence to the Senate; not that I object to its phraseology merely, but that the conduct of the gentleman from Massachusetts, compared with that of others, whether strictly regular or not, was not more exceptionable than theirs. What we have acquiesced in when done by others, should be tolerated in him.

When the bill relative to jurisdiction eastward of the Mississippi to the Perdido was first under discussion, sir, if I do not mistake, more than a week since, a gentleman from Vermont, one of the committee that reported the bill, went into a consideration of what had passed when the Louisiana convention was before the Senate for ratification, and into a statement of the correspondence of the Ministers of the United States, which was officially communicated by the President of the United States to the Senate, and undertook to state what he recollected to have been stated by them as to the representations of the French Minister. I did understand an honorable member of the committee to state this as one of the reasons why the bill should be passed; and this too without any question whatever. Afterwards, the gentleman from Massachusetts rose to state what was his apprehension; and said that he did not understand our Ministers to have stated that the French Government so represented the thing, and referred to a letter, the effect of which, he told the Senate, was such at the time it was received, as to have produced a perfect silence in the Senate on the subject of the claim of the United States. This all took place about a week since, and the question was really a question respecting fact. Although no member could entertain the opinion that it was the intention of any gentleman to represent the facts inaccurately, yet, that facts might be stated with precision, the very document referred to by the gentleman was read, without anything bearing the resemblance of surprise, and without anything like an intention to take advantage of the House. If I understood the letter, it was one calculated very powerfully to attract the attention of the House. It had been partly read and commented on; and after having thus read the remarks of Messrs Monroe and Livingston on the treaty respecting Louisiana, the gentleman next came to the letter of Mr. Talleyrand; and prefaced it by an account of an application by our Ministers to the French Government for their aid with the Court of Spain on this subject. After some observations of this kind, the gentleman took up the volume of correspondence, gave the date of the paper and its address, and, after having

JANUARY, 1811.

Question of Order.

SENATE.

done so, made a comment which must have called the attention of gentlemen of the Senate, who had not, at least, within a few years past, heard the gentleman from Massachusetts express an opinion more favorable to the French Government. After which he read the letter—and an inquiry was then made, whether it was confidential or not.

Now, I ask, sir, is it the stating of the specific words of a communication, or stating the sense and import of it, which constitutes a violation of any injunction of secrecy. I ask the question, not because gentlemen can doubt much on the subject—the substance is undoubtedly all that is material. What was the date of the letter is not of as much consequence as to whom it was addressed, from whom it came, and what it contained. If I do not mistake, sir, there was some other allusion to the subject; the discussion had gone on without being checked, till, unfortunately it seems for the Senate of the United States, the gentleman from Massachusetts, instead of trusting to memory, and exposing himself and the Senate to error, undertook to state what were the very words.

If it be proper, sir, for the Senate to tolerate debate on a fact, which fact depends on diplomatic communications, it is proper to ascertain the fact which was alluded to. Gentlemen may state the question as strongly as they please—it is not whether the proceeding was strictly regular or irregular—but I contend that, if the gentleman from Massachusetts has offended, he was not the first. Some of the other members set the example. It was acquiesced in by the whole Senate; I will not say from ignorance, certainly not from inattention. I refer it to the Senate, therefore, as the matter has gone on without any intention to gain advantage or design to take any one by surprise, but with a view to attain accuracy, whether it can become this body to pronounce censure on the gentleman from Massachusetts.

Gentlemen, sir, may say whatever they choose about the importance of the power of the President to lock our lips in eternal silence; but I do not acknowledge the authority of any mortal to bind us to such secrecy without our assent. All the President can properly do is to refer to us as men of discernment, as men worthy of the public confidence, as men of honorable principles, capable of judging on public concerns, to judge of the propriety of acting confidentially on any subject. Shall the Senate of the United States, sir, adopt a rule to authorize the President to say, that we are unworthy to judge whether a matter ought to be kept secret or not? The Senate is a body of men selected in a manner to hold them forth as worthy of confidence; and I had really thought that such a body of men might be trusted, without the passage of such a resolution, to show a proper respect to the Executive Magistrate.

No one gentleman, however sensitive he might be as to what would tarnish the lustre of the Senatorial character, thought the proceeding improper in discussing the substance of those documents

called confidential. About the expiration of a week thereafter, when resort is had to the accuracy of written communication instead of the uncertainty of recollection, then the offence commences. It consisted not in disclosing the matter itself but in testing its accuracy. Ought that to be deemed an offence, which was merely telling the truth, guarding against inaccuracy, providing against the uncertainty of recollection?

Perhaps, sir, our general rules of proceeding are not sufficiently exact. Instead of deciding on this resolution, perhaps we ought to refer it to a committee for examining our rules and amending them if requisite. Right or wrong, we have all participated in the course of proceeding by general acquiescence. I have countenanced the thing in this manner, and were I now to accuse the gentleman from Massachusetts, I should act as a man who himself practises with impunity that for which he would punish another.

I am not, sir, for a moment to suspect that any particular disrespect to the gentleman from Massachusetts has given rise to this motion; but I submit for consideration, whether it would not be more consistent with that justice which we ourselves would have established to mete to the gentleman from Massachusetts as we should wish it to be meted unto us. If other gentlemen can say that they have, on this occasion, been completely blameless; if you yourself, Mr. President, could say so, not having arrested the gentleman's progress in reading these documents; let those who are without fault, and none other, give this resolution their support.

But if, in this case, there has been a general acquiescence in the practice of referring to diplomatic transactions, which have been past for years; if, from a Senatorial courtesy, or the exercise of a liberal indulgence towards each other in the course of debate, an unanimous consent has been fairly understood for introducing the evidence of diplomatic correspondence in the public discussion of the particular bill before the Senate; or, if in this respect we have not maintained the strict regularity which we might think proper in the abstract in preparing a body of rules for such fallible beings as ourselves; will the recollection of our own proceedings permit us to adopt such a resolution as is now proposed? If by our conduct, in relation to the particular bill, we have without a single exception consented to the course followed by the gentleman from Massachusetts, how does it become us to adjudge him? On reflection, if it be thought that we all have been not sufficiently attentive to rule during the discussion of a bill peculiarly interesting, let us admit the infirmity of our common nature, and dismiss the resolution, as we know within ourselves, and feel, that to err is human.

Mr. SMITH, of Maryland, said that the Senate must doubtless have been much gratified at the lecture it had received from so young a member; at being told by the gentleman from Connecticut (Mr. DANA) that it was a common custom to disclose messages of a secret nature, and there-

fore justifiable. Mr. S. said he meant to take no part in this discussion, but he felt himself called upon to say that nothing fell from him that had the most distant allusion to the documents read, (by Mr. PICKERING.) He would say further, that those documents had not been within his recollection, and therefore the gentleman from Connecticut must go further for his proofs than to him. Allusion had also been made by the gentleman in order to substantiate his argument, to the gentleman from Vermont. In this allusion, also, in the opinion of Mr. S., the gentleman was inaccurate.

But the Senate had been told that their rule was very improper. Even that was not now a question for consideration. So long as the rule existed, it ought to be adhered to. The gentleman had boasted of his independence, and declared, whatever the President might say, he would exercise his judgment whether he would reveal it or not.

Mr. DANA explained. Did I, said he, as an individual, say that I would communicate confidential matters without the leave of the Senate? I certainly was misapprehended. I say that this body is the judge of what is proper to be kept in confidence. It was not for me to say what has been the usage before; but, as a witness of what had passed under my own eye, whatever be the diversity of years between myself and others, however young I am in the Senate, I had a right at least to apply the eternal principles of justice, and to say, let him that is without sin throw the first stone.

Mr. SMITH, of Maryland, continued. I know very well, sir, said he, that I am myself so unfortunate, in the warmth of debate, as to be misapprehended by others; but, surely, the gentleman could not have been misapprehended in this case. There was no occasion for him to say that the Senate could take off the injunction of secrecy. Every member was convinced of that.

Mr. DANA said, in explanation, that the mover of the resolution had gone into some argument on the general question; and when the gentleman thought proper to do so, it seemed but a decent respect to allude to his argument.

Mr. SMITH, of Maryland, resumed. There can be no doubt whatever, sir, that there are certain things of a confidential nature which are extremely advantageous to us in making up our opinions; and that the President, when he communicates such things, acts with a strong reliance on the honor of those to whom he communicates, and with a strong impression that no man will feel at liberty to divulge any part of it. If we depart from our usual line of conduct in this respect, it cannot be expected that the President will hereafter place so much reliance on us as to give us confidential communications on any subject. We have, indeed, latterly received no confidential communications; not that it ever happened in this House before that anything of a confidential nature was made public. My chief object in rising, however, was to state that when I spoke on the subject on a former occasion, I

said I would not give my consent to call on the Executive for papers to substantiate a title which we have already substantiated by law.

Mr. DANA said, that as to the gentleman's allusion to the confidential papers, he had not expressed himself with decision. The gentleman's remarks, however, had left a faint trace of that kind on his mind.

Mr. SMITH, of Maryland, said it was a very unfortunate trace. He had been already sufficiently slandered in the newspapers of the country; and the gentleman's idea going into the public prints, his name would be traduced in the Federal prints from one end of the continent to the other, from the gentleman's *faint trace*.

Mr. BRENT said, from the remarks which had been made by the gentleman from Connecticut; it was indispensably necessary that this resolution should be adopted. If it was a common practice to divulge secret proceedings, it was necessary to put a stop to a course so disgraceful and ruinous to the country. The gentleman had wished that he who was innocent of it should cast the first stone.

Mr. DANA said, he only alluded to the transaction which was now the subject of debate.

Mr. BRENT observed, he had then misapprehended the gentleman.

Mr. POPE said, that not having had it in his power to attend the Senate since Friday, and some observations having been made, calculated to produce an impression that he had alluded to the confidential documents, he thought it due to himself to state that he did not before know of the existence of such documents, as they had been communicated long before he had a seat here.

Mr. FRANKLIN said there could be no doubt that the conduct of the gentleman from Massachusetts was in violation of the rule of the Senate. Let it be recollected, said he, that in the commencement of the session, two resolutions were offered to the Senate calling upon the President of the United States for information as to the claim of the United States to the territory in question. They were thought improper, and the Senate refused to call for the information. What has been the course of this business? After the Senate had expressed this opinion, a gentleman rises and reads precisely the documents which the Senate had refused to call for, and compels us, notwithstanding our own decision, to hear those papers read. I should be sorry to believe that the gentleman did it intentionally; but as respects the rule laid down for the government of the Senate, it is a palpable violation of it. All things in the nature of treaties, &c., come to us confidentially, and so remain until the injunction of secrecy is taken off. If a gentleman sees proper to rise and read those communications, does he not incur the responsibility attached to the violation of those rules, and may he not do infinite mischief? When instructions were sent forward to acquire, by purchase, so much territory as should secure to us the right of deposit at New Orleans, to the surprise of every one, the

JANUARY, 1811.

Question of Order.

SENATE.

whole country was acquired. We purchased this Territory, and have gone on to legislate on the purchase. We have set up a claim and established it; but, upon the representation of the Spanish Government, have forborne until now to occupy the Territory. This state of things was kept in view by the President. The people of Florida having denied the authority of Spain, and set up a claim of their own, the United States say, they will now enforce their claim, subject to a future negotiation with Spain, if she should be in a situation to renew her claim. While this is pending, an Executive record of six years standing is read; and it is impossible that even the President of the Senate could say that the gentleman was reading papers confidentially communicated. No man, from memory, could have stopped the gentleman in the commencement of the reading. The Senate, after laying down rules for its government, ought to see that they were observed.

Mr. SMITH, of Maryland, said that having been interrupted by the gentleman from Connecticut, he had forgotten one thing he intended to notice. He now rose to apologize for what the gentleman had termed negligence. The gentleman stated, said Mr. S., that the member from Massachusetts had read one document, and declared his intention to read another; and yet that the sensitive feelings of no gentleman had induced him to check him. When the reading of the papers was first began, sir, I doubted whether they were or were not confidential papers. After the letter of Mr. Talleyrand was read through, I thought they were confidential papers, but I was not certain. I applied to the Secretary of the Senate to know whether they were or were not. On being informed of the fact, I immediately, as I deemed it proper, stated it to the Senate.

Mr. CLAY wished to be allowed to trespass on the attention of the Senate one moment in reply to some remarks not before noticed. If indeed there had been such repeated violations of the rule, and even within one week, that the gentleman was to lose the responsibility of it in consequence of its frequency, it seemed the more necessary to revert to the original rules and give to them the force which they had lost. If any gentleman feels at liberty to disclose at will Executive communications, it is necessary to give some pledge that we will henceforward pay more regard to them. The gentleman from Connecticut, if I mistake not, has told us, sir, that the secrecy imposed by communications in confidence depends on the individual honor of each member—[Mr. DANA said, he had said it depended on the honor of the members as composing this body.] Mr. C. continued. I did not mean to impute to the gentleman an opinion that each member was at liberty to disclose matters communicated confidentially, but I did understand him that the honor of the individual members was a sufficient pledge that they will not disclose that which is communicated in confidence. It is not simply on that bond, forcible as it ought to be, that the President ought to

have entire reliance that his communications will not be divulged; but, in my mind, on a solemn compact between the President and Senate, which ought to be inviolable. The following is the rule in relation to this subject: "All confidential communications made by the President of the United States to the Senate, shall, by the members thereof, be kept inviolably secret; and all the treaties which may hereafter be laid before the Senate shall also be kept secret until the Senate shall by their resolution take off the injunction of secrecy." Relying with confidence on the honor of the body and the rule before me which promises secrecy, could the President anticipate the unpleasant event of a disclosure of confidential papers, not only contrary to his wish, but to the will of the Senate, and to our rules? Will the gentleman from Connecticut contend that a casual incidental reference, in the course of a detail of circumstances, to communications of this kind, is to be compared to the deliberate act of taking a file of papers, unfolding them, reading paper after paper, and commenting on its language? Surely there is all possible difference between the character of the two acts. I certainly, sir, do not recollect all the circumstances detailed by the gentleman from Vermont. He went into a particular detail of circumstances attending the acquisition of Louisiana, and possibly, though I do not recollect it, he might have glanced incidentally at these papers. When these communications were made I was not a member, and till the day before yesterday did not know that they were communicated confidentially. Every view requires of us, in justice to the character of the Senate, to afford a pledge that confidential communications hereafter made shall not be indiscreetly disclosed.

Mr. ANDERSON said he should have said nothing on this subject but for the ground taken by the honorable gentleman from Connecticut, as a justification of the conduct of the gentleman from Massachusetts. I did not (said Mr. A.) understand any gentleman to say anything in debate relating, as I conceived, to confidential communications; but the honorable gentleman from Connecticut has taken that as a ground of defence. The gentleman seems desirous that we should suffer the resolution to be withdrawn, and pass a censure on the Senate for having suffered it to go on, because the presumption is, not having been sooner called to order, that the gentleman was not out of order. But will it be supposed for a moment that the gentleman was not out of order? It has been well observed that on this subject two resolutions had been offered to the House and disagreed to by large majorities. Although I was a member of the Senate when the documents were communicated, and for many years since, I could not at once recollect when or how they were communicated. The gentleman did not say they were confidential. When he was asked, are they confidential—without locking at the endorsement or anything, he answered that they were confidential. Is there any comparison between this deliberate perusal

and vague allusions to them? Certainly not. I hope the resolution will pass.

Mr. TAYLOR said he was already fully sensible of the disadvantages under which a new member labors in a legislative body; but if he had totally forgotten them, he should have been reminded of them to-day. But if the situation have its disadvantages it has also its advantages. I was not (said Mr. T.) a witness of the previous aberrations from order, and, therefore, this simple question is before me: Was the gentleman from Massachusetts guilty of a breach of order, and is he, therefore, amenable to the Senate? And I should not now rise but that the course of debate particularly introduced by the gentleman from Connecticut appears to have led the Senate from the issue in fact which was tendered by the gentleman from Massachusetts himself. The justification of the gentleman is still almost vibrating in the ears of the Senate—it has gone abroad—I have seen it already in print. He did not justify the perusal on the ground that the subject had been touched upon by other gentlemen of the Senate, but because it was a great question—a question of war or peace; and he took the ground, I presume, of a right to judge, in his individual capacity, of the propriety of divulging or not divulging this matter, the disclosure of which is forbidden by the rules of the Senate. That appeared to me to be the issue tendered by the gentleman himself. The rule having been read to me, and the gentleman having justified his departure from it on the ground of the importance of the subject, I have nothing to do but decide whether we shall at once, by suffering the transaction to pass unnoticed, do away all that confidence which ought to subsist between the different branches of the Government. I cannot under these circumstances but give the resolution my decided affirmative.

Mr. PICKERING.—Mr. President, when I came to the Senate this morning, I did not know that any gentleman would speak either for the purpose of postponing a decision on the question now under consideration, or of explaining it; or take any ground for my vindication. All that has been said with these views was without my previous knowledge. The gentleman from Connecticut (Mr. DANA) has taken the ground on which I meant to rest my defence; and his observations may, therefore, be thought to supersede any of my own. But, not thinking of such support, I had endeavored to recollect what passed on the first day the West Florida bill was under discussion, and which gave occasion to the production of the papers, the reading of which is now the subject of censure. To repeat what I recollect may not be useless.

The gentleman from Vermont on my left, (Mr. BRADLEY,) on taking up the bill, and advocating the title of the United States to West Florida (which is assumed as the basis of the bill) referred to the papers relating to the negotiation for the purchase of Louisiana; and asserted that the French Ministers had then stated to those of the United States, (Messrs. Livingston and Monroe,)

and induced them to believe, that Louisiana comprehended West Florida. To this I answered, that I was satisfied the gentleman was mistaken; that I had some recollection of those papers; and that they would show the idea of West Florida being comprised in the purchase of Louisiana, to have been an after-thought of our Ministers, some time subsequent to the conclusion of the treaty. I also repeated, from my recollection, an observation of our Ministers on the occasion—that, if West Florida was comprehended, the purchase would be the more valuable. I said also, that, prior to the purchase, Louisiana and West Florida were considered as distinct territories; and for the proof I referred to a letter from Mr. Talleyrand to General Armstrong, in consequence of his application for the favorable interposition of the French Government to induce Spain to cede to the United States both the Floridas; and I stated that the reasons contained in that letter appeared so convincing, on both sides of the Senate, that every mouth was shut, as to our title to West Florida.

In this manner those documents were originally referred to; and although they had been confidentially communicated, which no gentleman who was a member of the Senate in 1803 and 1805 could have forgotten, yet this plain and public reference to them passed without objection. In fact, as no negotiation was pending, as we had no Minister at any foreign Court, to be affected by the disclosure, there existed no reason for concealment; and I could not consider the papers any longer under the seal of secrecy, and that to have recourse to them to ascertain material facts, and whether the memory of the gentleman from Vermont or my own was correct, would be a "palpable" departure from the rules, I, therefore, openly referred to them. But, sir, on Monday last, when the bill was again taken up, and before I read the papers in question, I gave some details, to show how the negotiation relative to Louisiana had originated. I stated that the United States having the right to navigate the Mississippi, they, in 1795, acquired the right of deposit for our merchandise and effects at New Orleans, by our treaty with Spain; that at a subsequent period (in 1801 or 1802) this right of deposit was disputed, and the navigation obstructed. I remarked, that to recover our rights different projects were suggested; on one side it was proposed to resort to arms; on the other, to take a pacific course; that the latter being adopted, our Ministers were instructed to negotiate with France for the purchase of New Orleans and the Floridas, or for such part thereof as could be obtained: that the purchase of Louisiana had never been contemplated. And to show the error of the gentleman from Vermont, on the first discussion, I turned to a letter from our Ministers, dated the 7th of June, 1803, more than five weeks after the treaty had been concluded; and read a passage to prove what I suggested on the first day's discussion, that the idea of West Florida being comprised in the cession of Louisiana, originated with them, and not with the

JANUARY, 1811.

Question of Order.

SENATE.

Ministers of France. I next proceeded to read the letter of Mr. Talleyrand to General Armstrong, of the 21st of December, 1804, which produced the powerful effect already mentioned, when first read in the Senate six years ago.

Having proceeded thus deliberately; having particularly described each paper before I read it, I presumed every gentleman of the Senate who had been a member in 1803 and 1805, knew distinctly what the papers were; and perceiving no objection, I could only suppose that the Senate acquiesced, and in fact were desirous of hearing them read.

But, sir, it has been said by more than one gentleman, that two resolutions for the production of all the papers, of which I read a small part, had been offered and rejected. It is very true; and the gentleman from Maryland (Mr. SMITH) has, I believe, correctly stated why they were rejected. Not that the Senate were determined to shut their eyes against all evidence, but because they thought our title to West Florida to be clear, and they would not spend time in investigating it. It was not that these papers were to be locked up forever; but that members were so well satisfied of the title, they wanted no further information concerning it.

The gentleman from South Carolina (Mr. TAYLOR) has stated my having put myself on the issue of fact, and taken the ground of justification. It is very true, and that, on Monday, when some discussion took place, I offered, at the moment, what appeared to me a substantial reason why the documents should be read. I have now explained the grounds on which I proceeded, and really cannot but think they will prove a sufficient justification.

The gentleman from Maryland (Mr. SMITH) said, on Monday, that there would be no objection to the publication of the papers which I read; and that, if leave had been asked to read them, it would doubtless have been granted. Then, sir, no harm is done. What is the reason of the rule in question? Its object is to prevent the disclosure of any facts which the public interest requires to be kept secret. And what is the real state of the case under consideration? I have publicly read to the Senate some papers originally communicated confidentially, on a subject concerning which there is no negotiation depending in relation to any foreign Power, or any Minister abroad; and in which there is nothing any longer requiring secrecy. Surely, then, the reason for this rule of confidence has ceased; it did not apply to these papers. No State secret was disclosed, or meant to be disclosed. When a proposition was made to publish the whole of the documents, I myself remarked that there were some which it might be improper to publish. What does this prove? Certainly that I was not disposed to divulge what required confidence. And, so far as I went, I really conceived that I was proceeding with the approbation of the Senate.

As to the documents which I read, the reason of the rule is at an end. And, with gentlemen

of the bar, the maxim is familiar, that when the reason of the law ceases, the law itself ceases. If there has been a violation of the rule, it is of the letter only; and to this another law maxim applies—he who sticks in the letter, sticks in the bark. I will quote one more maxim, from a higher authority: "The letter killeth, but the spirit giveth life."

With these observations I will close. They appear to me, and I did trust they would have appeared to the Senate, a complete vindication.

Mr. CHAMPLIN said he could not put his hand on his heart, and say that the transaction which was the subject of the resolution was strictly correct. But circumstances palliated the act. There certainly had been, in the previous debate, some allusion to papers not published. Being a new member, of course he knew very little about the confidential documents, but he certainly had heard allusions which he really did not understand, having reference to documents of which he had no knowledge. He did not recollect by what gentleman these were made. What had the gentleman from Massachusetts done? Had he taken the Senate by surprise? No. He declared that France had been of a different opinion from our Administration as to the boundary; that on application an answer had been given to them by Talleyrand, which, when read, had closed every mouth in the Senate on the subject of the title of the United States. Mr. C. said he had heard no objection to this allusion; nothing had been said about it. If it had been the intention of the honorable gentleman to have palmed this paper on the public, and to take the Senate by surprise, would he have stated what he did before he read it? He did it in the most deliberate manner, and called the attention of every member to it. Mr. C. said he was very glad the paper was read, and he hoped gentlemen would also permit it to be published, not only for the information of the Senate, but for the information of the people, because he considered this question as one of peace or war. He himself could not consent to vote on this bill till he was better informed; he was ignorant of many points. From the open manner in which the gentleman had introduced the letter, it became every or any one who had a knowledge of its being confidential, to call him to order. If I am called upon to express my opinion, I cannot, in conscience, say the gentleman was altogether correct; neither was it correct in gentlemen previously to allude to those papers. I think the gentleman had no right to decide for himself; it was for the Senate to decide whether it would be proper to disclose them. And yet, admitting this fact, I cannot consent to give my vote that the gentleman has been guilty of a palpable violation of the rule. What, sir, shall we, for this offence, declare that an honorable member of the Senate, who has grown grey in the public service, whom I venerate, has palpably offended against our rules! Mr. C. said he thought the gentleman's conduct had not been justified fully by himself; but there were strong palliating circumstances.

As to politics, if, on this occasion, they were drawn into view, he agreed with the gentleman, except in some points in relation to Great Britain, in which he did not agree with him. But difference of opinion from the gentleman would not induce him to give a vote to stigmatize him. To pass a censure on a man grown grey in the public service, as a palpable violator of the rules of the Senate, he could not agree. He must vote against the resolution, and he hoped that, from that vote, no inference would be drawn that he believed the conduct of the gentleman to have been entirely correct.

Mr. SMITH, of Maryland, said, he had no doubt on his mind, that if the gentleman had asked the consent of the Senate to read those papers, it would have been given. The gentleman, however, had said, that when those papers were read, in 1805, they had shut the mouth of every member as to the claim of the United States. For my own part, sir, said Mr. S., I can only state that the reading of those papers had not the least effect whatever on my opinion as to the title of the United States. I did then, and do now, believe, that the words of the treaty, by which alone we and they are bound, did give us a fair right to the country in question. Neither, sir, can I recollect any act at that time pending before Congress, which could have shown that the mouth of every member was shut as to this question.

Mr. ANDERSON said, the paper in question had not, at the time it was sent to the Senate, and he now declared it might not have, any bearing on the title of the United States. He recollected that this letter was addressed to our Minister at a time when they wished to extend the boundary of East Florida as far west as they could, in order to induce the United States to give a greater price for it than they would otherwise have done.

Mr. CRAWFORD said, he regretted extremely the occasion which had given rise to this discussion. It was, at all times, unpleasant to come into a state of collision with those with whom we are called upon to act, and, particularly so, when the resolution before the Senate charged a member not only with having violated a rule, but with having palpably violated it. The resolution assumed a fact, not denied, that certain confidential papers were publicly read without a removal of the injunction of secrecy. Mr. C. said he was not in his place when this unpleasant transaction took place, nor had he a distinct recollection of what had fallen from the gentleman from Vermont. He recollected, to be sure, some metaphysical ideas expressed by the gentleman, to which he did not assent. If the gentleman made any allusion to those papers, Mr. C. said he could not have detected it, as he had never before heard them; nor, probably, were there half a dozen of the present members of the Senate who had heard them. Mr. C. said, he could not, unless he were constrained, from the nature of the act itself, charge on the records any member with having deliberately violated such a rule as this. He must believe the gentleman

did the act without reflection. Believing the gentleman from Massachusetts had not well examined the matter, and did not intend wilfully to violate the rule, he moved to erase from the resolution the word "palpable." Every one must agree that the gentleman's conduct was a violation of the rule.

Mr. CLAY acceded to the motion.

The amendment was agreed to, *nem. dis.*

Mr. LLOYD said he had considered the word "palpable" as meaning an intentional violation of the rule. As it was admitted now that the disclosure had been attended with no injury; as the gentleman had named the paper he was about to read, and no one had objected to the reading it; and as the resolution would go to imply a censure on the older members of the Senate, as they must have been forgetful of one of the most important national transactions; or have been willing to avail themselves of the honest zeal of a man who had spent his life in the public service to entrap him, and put a censure on the journals of the Senate which should blast his character abroad. He, therefore, moved to insert before the word "violation" the word "unintentional."

Mr. CLAY expressed his surprise at this motion. If it were persisted in, he should feel himself bound to move to strike out of the word the syllable *un*. If he was compelled to vote at all upon the subject, he would say that the gentleman's conduct had been intentional. But when all were willing to soften the censure; when a gentleman on the same side had admitted that the gentleman's conduct was inexcusable, and the gentleman himself did not say that his act was unintentional, would it not be improper in the House to say that it was? If the thing be persisted in, if the gentleman urges us to decide a fact to which I was willing to have given the go-by, I must feel myself bound to pronounce it an intentional violation.

Mr. ANDERSON said he had been perfectly willing to erase the word palpable; but, if this motion were persisted in, he must call for the yeas and yeas on it; and the gentleman would find the effect of the motion very different from what he intended.

Mr. FRANKLIN repelled, as unfounded in fact, the insinuation of a design in the old Senators to entrap the gentleman from Massachusetts.

Mr. LLOYD withdrew his motion, in consequence of the wishes of his friends near him. It was possible, he said, that, with his very bad memory, he might forget transactions of a week past. But he would not take back the declaration, either that gentlemen had forgotten the documents or were guilty of a breach of duty in not stopping the gentleman from giving them to the world. The proposition before the Senate was not a naked one, but stated two facts; one, that the rule was violated, and the other that it had been so violated as to deserve one of the most serious censures. Unless gentlemen could make up their minds to say that it was an intentional violation, they could not vote for the resolution.

JANUARY, 1811.

Question of Order.

SENATE.

Mr. GOODRICH said, that the grounds on which gentlemen supported the resolution were as he apprehended too limited and partial; they seemed to suppose that our attention ought to be confined solely to the question, whether or not the transaction alluded to was an infraction of the Senate's rule. To give the subject the liberal and just view it merits, other and important considerations must be noticed. We must consider the nature and character of the transaction, its effects in relation to the Senate, and the public interests, and what is proper for us to do. On a candid examination of these questions, I am persuaded that it will be found that neither a respect for the order or honor of the Senate, nor any of the public interests, require the adoption of the resolution. It is not denied, it is admitted, that the transaction was an infraction of the letter of the rule. Does it thence conclusively follow that the resolution is necessary or proper? The occurrence is not uncommon for gentlemen in the zeal and ardor of discussion to trespass on the rules of order prescribed for their conduct. And it may be asked, whether this be the only instance in which documents of a confidential nature have been adverted to and commented on in public debate? On ordinary occasions, Mr. President, under your superintendence, order is preserved, without being over nice and critical on questions of this sort.

And this, sir, may be one reason, why the Senate is distinguished, as it eminently is, for the decorum of their proceedings. Admitting what, it is believed, no one is disposed to question, that there has been an infraction of the rule literally considered, are we, I ask, bound, as gentlemen insist, to notice it, and in this novel and unprecedented manner, by recording it in our journals? It will not escape the attention of gentlemen that a proposition may be true—but, being a mere abstract proposition, leads to no practical use; it may neither do good or harm. This resolution however is not altogether of that cast; it is not a mere abstract proposition in itself innocent and harmless; in many respects it is extremely exceptionable. It does not, as it ought, fully state the case. Those prominent circumstances which forcibly mark the quality, and go to decide the character of the transaction, are left out. They passed before us: we were witnesses of them, and since, in our present discussion, they have been brought fresh to our recollection by a minute and faithful recital of them. Can gentlemen say those circumstances are not essential to the forming a true and correct estimate of the transaction? And if so, how can we justify a vote in favor of the resolution, when there is left out of it facts important to the true and correct state of the whole case? The resolution implies censure. It is not merited. Taking everything into consideration, no one can suppose that the honorable gentleman whose conduct is impeached was actuated by improper views. I do not believe that he had any idea of violating the confidence enjoined by the Senate's rule; what may be said is, that there has been a want of that circumspectful attention to its injunctions that their preemptory nature re-

quired. He has offended in the letter. If he had other than honest and fair views, why did he read the documents in the open and public manner he had done, first naming each of them and commenting on their contents as he proceeded? And are not the previous circumstances so often mentioned, naturally leading to the proceeding, and the silence of the Senate on the occurrence while passing before us to be taken into account? The honorable gentleman from Georgia (Mr. CRAWFORD) with a candor which marks his conduct, says that he does not believe that there was a criminal intent to violate the rule. If I understood him he placed it on the grounds I am disposed to consider it; as proceeding from want of circumspection, indiscretion, and not from intention. Believing this, sir, I cannot consent to place on the records a resolution which goes unquestionably in its nature to censure the conduct of the honorable gentleman, and without any of the accompanying circumstances which mark the character of the whole transaction. While we seek to maintain inviolate the order and dignity of the body of which we are members, we ought not to overlook those considerations of respect and justice which are due to every individual member.

In respect to our proceedings on this resolution, so far as they relate to the Senate, and what best comports with our own honor, permit me to ask of gentlemen, whether we are not attaching to the act an importance in the public view greater than it really merits.

This resolution will give to the occurrence a consequence, which it could acquire only by our own act, and, instead of protecting, we shall sacrifice our honor. Will not our proceedings partake of an oppressive severity, rather than of the liberality, candor and justice, the case under all its circumstances demands? No public interest has been prejudiced, at home or abroad. Nothing has been revealed which it was necessary or important longer to keep secret.

There is due from each member of the Senate, to all the members, that candor and liberality which may give to our proceedings such a spirit of harmony and consistency, as, however we may differ on great questions, will leave us to discuss subjects here, with that attention and deliberation which serves the great interests of the country. But if, on unintentional violations of the rules of the House, and in their letter only, we bring forward and record on our journals particular propositions pointing to the fact itself, and conveying censure, instead of promoting we shall derogate from the order and harmony of our proceedings, and the dignity and honor of the Senate.

Believing, as I do, that whatever infraction of the rule has taken place has been merely in the letter, proceeding not from intention but from want of circumspection and discretion, that no public interest has been prejudiced by the transaction, and none will be promoted by the resolution, I cannot give to it my assent.

Mr. PICKERING.—Mr. President, I am much obliged by the liberal sentiments expressed to-

wards me by my friend at my right hand, (Mr. GOODRICH,) but I do not feel willing to consider the act which is the subject of the resolution as an indiscretion. I know, sir, my own frailty; and am far from intimating that I am above the commission of an indiscretion: but I do feel that I have committed none in the present case.

There are two ways, sir, in which the assent of an individual or of a body of men may be given; by words—or by their silence. I have stated the object of my reading the papers adverted to, and the circumstances which accompanied the same; and not doubting that the gentlemen who, with me, were members of the Senate at the times when those papers were laid before us, know that they were confidentially communicated, and yet made no objection to the reading of them—I naturally inferred that the Senate assented to the act: Under these circumstances I cannot view it as an indiscretion.

The question on the resolution, as amended, by leaving out the word "palpable," was then decided in the affirmative—yeas 20, nays 7, as follows:

YEAS—Messrs. Anderson, Brent, Campbell, Clay, Condit, Crawford, Cutts, Franklin, Gaillard, German, Gilman, Leib, Mathewson, Read, Robinson, Smith of Maryland, Smith of New York, Tait, Taylor, Whiteside.

NAYS—Messrs. Bradley, Champlin, Dana, Goodrich, Horsey, Lambert, and Lloyd.

THURSDAY, January 3.

Mr. CAMPBELL gave notice that to-morrow he should ask leave to bring in a bill to authorize the surveying and making of certain roads in the State of Ohio, as contemplated by the treaty of Brownstown, in the Territory of Michigan.

The bill, entitled "An act making an additional appropriation to supply the deficiency in the appropriation for the relief and protection of distressed American seamen during the year 1810," was read the third time; and, on motion, by Mr. LLOYD, it was agreed, by unanimous consent, to amend the bill, so as to make the appropriation "seventy-six thousand dollars."

Resolved, That this bill pass with an amendment.

On motion, by Mr. POPE, the bill authorizing a subscription on the part of the United States to the stock of the Ohio Canal Company was referred to a select committee, to consider and report thereon; and Messrs. POPE, ANDERSON, and BRADLEY, were appointed the committee.

The bill, entitled "An act providing for the final adjustment of claims to lands, and for the sale of the public lands in the Territories of Orleans and Louisiana," was read the second time, and referred to a select committee, to consist of five members, to consider and report thereon; and Messrs. CAMPBELL, CRAWFORD, GREGG, BRADLEY, and DANA, were appointed the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to suspend the second section of the act, entitled 'An act regulating foreign

coins, and for other purposes," with amendments, in which they desire the concurrence of the Senate. They have also passed a bill, entitled "An act providing for the removal of the Land Office established at Nashville, in the State of Tennessee, and Canton, in the State of Ohio, and to authorize the register and receiver of public moneys to superintend the public sales of land in the district east of Pearl river;" in which bill they desire the concurrence of the Senate.

The bill last mentioned was read, and passed to the second reading.

The amendments of the House of Representatives to the bill, entitled "An act to suspend the second section of the act, entitled 'An act regulating foreign coins, and for other purposes,'" were read.

On motion, by Mr. BRADLEY, the further consideration thereof was postponed, and the amendments ordered to be printed for the use of the Senate.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act to fix the compensation of the additional Assistant Postmaster General," together with the amendment reported by the select committee; and, having agreed thereto, the President reported the bill to the House amended accordingly. On the question, Shall this bill be read the third time as amended? it was determined in the affirmative.

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act to continue in force for a further time the first section of the act, entitled 'An act further to protect the commerce and seamen of the United States against the Barbary Powers.'"

The Senate resumed, as in Committee of the Whole, the bill, entitled "An act to authorize the Secretary of War to ascertain and settle, by the appointment of commissioners, the exterior line of the public land at West Point with the adjoining proprietor;" and on motion, by Mr. SMITH, of New York, it was referred to a select committee, to consider and report thereon; and Messrs. SMITH, of New York, BRADLEY, and DANA, were appointed the committee.

The Senate resumed, as in Committee of the Whole, the bill declaring the laws now in force in the Territory of Orleans, to extend to, and to have full force and effect to, the river Perdido, pursuant to the treaty concluded at Paris, on the 30th day of April, 1803, and for other purposes; and on motion, by Mr. FRANKLIN, the galleries were cleared and the doors of the Senate Chamber closed.

A confidential Message was received from the President of the United States.

The doors of the Senate Chamber were opened; and on motion, by Mr. BRADLEY, the further consideration of the bill last mentioned was postponed until to-morrow.

FRIDAY, January 4.

Mr. CAMPBELL asked and obtained leave to bring in a bill to authorize the surveying and ma-