IN SENATE OF THE UNITED STATES.

JUNE 8, 1838.

Submitted, and ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee on Finance, to which was referred the resolution of the Senate of the 31st ultimo, directing certain inquiries as to various provisions of an act entitled "An act to regulate the deposites of the public money," passed on the 23d day of June, 1836, respectfully report:

The resolution *instructs* the committee to take into consideration the act of the 23d of June, 1836, entitled "An act to regulate the deposites of the public money," and to make inquiry upon three points, viz:

FIRST. "*Whether, according to the provisions of that act, it is now competent for the Secretary of the Treasury to employ any bank which has heretofore been selected as a public depository, and which, since the passage of that act, has suspended specie payments.*"

The committee have examined the act with attention, and find that, all other objections being obviated, it is competent for the Secretary of the Treasury to employ, as a public depository, any bank which has heretofore been selected for that service, "and which, since the passage of that act, has suspended specie payments." The eighth section of the deposite act prohibits the Secretary of the Treasury from discontinuing any deposite bank, and from withdrawing the public money therefrom, except for certain enumerated causes, one of which is in the following words:

"*Or if any of said banks shall, at any time, refuse to pay its own notes in specie, if demanded.*"

Upon this cause being presented, it is made the express duty of the Secretary, by the same section of the act, "to discontinue any such bank as a depository, and withdraw from it the public moneys which it may hold on deposite at the time of such discontinuance;" but when the bank shall have again resumed specie payments, nothing is found in this language to interdict its re-selection as a public depository.

The fourth section of the act sets out the terms and conditions upon which the banks shall agree to receive the public moneys, before they shall be employed as depositories.

The second of these terms is prescribed in the following words:

"SECONDLY. *To credit as specie all sums deposited therein to the credit of the Treasurer of the United States, and to pay all checks, warrants, or drafts, drawn on such deposites, in specie, if required by the holder thereof.*"

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The breach of this condition, on the part of the bank, would be a refusal to pay its depositors in specie, and, consequently, a suspension, to that extent, of specie payments; and the duty of the Secretary of the Treasury to discontinue it, as a depository, and to withdraw the public money from it, would become imperative by the language of the eighth section before referred to, which assigns as another cause of discontinuance and withdrawal, that "at any time any one of said banks shall fail or refuse to perform any of said duties, as prescribed by this act, and stipulated to be performed by its contract."

This contingency, therefore, like the former, would take from the bank its character as a depository for the time being; would forfeit the existing contract; and render its discontinuance, and the withdrawal of the public money from it, an imperious duty; but the committee see nothing in either of the clauses to prevent a second contract with the same bank, when it should again resume specie payments, again consent "to pay its own notes in specie, if demanded," and again pay all checks, warrants, or drafts drawn on the public deposites, in specie, if required by the holder thereof." They find no provision in any other part of the act, interdicting a second contract with the same bank, when the first shall have been terminated for either of these causes, and they therefore express their opinion that "it is now competent for the Secretary of the Treasury to employ any bank which has heretofore been selected as a public depository, and which, since the passage of that act, has suspended specie payments;" there being no other obstacle in the way of such second employment than the act of suspension of specie payments.

The next point to which the resolution directs the inquiry of the committee is in the following words:

SECOND. "*Or which has, since the fourth day of July,* 1836, *paid out notes, or bills, of a less denomination than five dollars.*"

To cause the inquiry to be clearly understood, it is necessary to connect the preceding language with the words above quoted, and the inquiry will be, *whether, according to the provisions of that act,* (the deposite law of 1836,) *it is now competent for the Secretary of the Treasury to employ any bank which has, since the fourth day of July,* 1836, *paid out notes, or bills, of a less denomination than five dollars.*

In answer to this inquiry, the committee find the two first clauses of the fifth section of the act to be in the following words:

"SEC. 5. *And be it further enacted,* That no bank shall be selected or continued as a place of deposite of the public money, which shall not redeem its notes and bills, on demand, in specie; *nor shall any bank be selected, or continued, as aforesaid, which shall, after the fourth day of July, in the year one thousand eight hundred and thirty-six, issue, or pay out, any note, or bill, of a less denomination than five dollars.*"

The last of these clauses meets and answers the inquiry directly, and shows that it is not competent for the Secretary of the Treasury, under this act, now to employ, as a public depository, any bank which has, since the fourth day of July, 1836, either *issued,* or *paid out,* notes, or bills, of a less denomination than five dollars; while the first clause interdicts the selection, or continuance, at any time, and under any circumstances, of any bank "which shall not redeem its notes and bills, on demand, in specie."

These two points of the inquiry seem to the committee to assume the expediency of a course of legislation which shall revive, and introduce again into practice, the deposite system established by the act of 1836, as the system upon which the public money is to be kept and disbursed. Under this supposition, the opinion of the committee, as to the first inquiry, does not indicate the necessity of further legislation; while the plain and unquestioned construction of the act, as to the second, compels an answer, which, to the minds of those who desire the re-introduction of that system, may seem to point out such a necessity.

Not so with the majority of the committee. While left by the Senate to the free exercise of their own opinions, they cannot recommend any legislation, the effect of which will be to reunite the public Treasury and the banks, by a return of the public treasure to the uses of banking; to stimulate and compel the banks to discount upon the public money, by exacting from them an interest for its use; to promote an expansion in the paper issues of the banks, exactly proportioned to the fertility of the public revenues, and a correspondent embarrassment of the public Treasury, when a sterility of revenue shall call for the public money which has passed into the hands of the customers of the banks. Such, they believe, have been the effects of the system of deposites, the revival of which the resolution seems to contemplate. That system compelled the deposite of all the public money in banks; it placed it in those institutions upon general deposite, and thus made it, in fact and in law, the money of the banks, and not the money of the people; it not only held out an inducement to the banks to use the money for the purposes of discount and banking, but, in this way, gave them the right so to use it, in defiance of the popular will, and of the public authorities; it went farther, and compelled them to convert it to some profitable employment, by demanding interest from them while it was in their keeping. Time and experience have shown the consequences of such a policy; and, were there no other reason, these consequences would forbid the committee from recommending any legislation calculated, or intended, to revive that system.

The action of the Senate, however, appears to them equally to stand in the way of any such recommendation. A special convocation of Congress, in September last, was a necessity imposed by the failure of this system of deposites and the embarrassments to the public Treasury thereby occasioned. Recommendations for the keeping and management of the public money, without the aid of the banks, and especially for a permanent separation between the treasure of the people and the business of banking, were then laid before Congress by the President. These recommendations were deliberately and definitively acted upon and adopted by the Senate, but failed to receive the assent of the other branch of Congress. At the commencement of the present session, the same recommendations, substantially, were renewed, and again the Senate has, after long deliberation and debate, adopted them, in the shape of a bill, and thus sent them to the House for its concurrence. If that bill shall become a law, the whole deposite system recognised and legalized by the deposite act of 1836, will be superseded. Will the Senate, then, by its own action, supersede its own bill? Will it, in the absence of all information as to what may be the fate of that measure in the co-ordinate branch of the Legislature, or rather with the knowledge that it has not yet been considered there, send another bill, upon the same general subject, based upon adverse principles?

The committee can only repeat, what they have found it to be their duty to say upon a kindred branch of this subject, that whether such duplicate action, by the same legislative body, be consistent with established parliamentary law, with the economy of legislation, or with the uniformity of decisions which should characterize all deliberative bodies, are questions which properly address themselves to the Senate, and not to them; but upon the merits of the propositions they must be permitted to feel entire confidence that no sufficient reasons for a change of opinion or action can be presented.

The remaining inquiry embraced in the resolution is in the following words:

THIRD. "*And also to inquire into the expediency of repealing or modifying those provisions of the said act which prohibit the receipt in payment of debts and dues to the United States of the bills of all banks which issue bills of less denomination than five dollars.*"

This inquiry relates to the last clause of the 5th section of the act, which reads as follows:

"*Nor shall the notes or bills of any bank be received in payment of any debt due to the United States, which shall, after the said fourth day of July, in the year one thousand eight hundred and thirty-six, issue any note or bill of a less denomination than five dollars.*"

This provision of the law of 1836 was inserted in furtherance of a policy some years since adopted by Congress, as will be seen by the 8th section of the proposed recharter of the Bank of the United States, of the year 1832, which reserved to Congress the power, from and after the 3d of March, 1836, to prohibit that institution from issuing or circulating notes of a less denomination than twenty dollars. That act did not become a law, but this feature of it met the approbation of the two Houses of Congress, while the objections of the then President to the bill made no mention of this provision as exceptionable in his mind. On the contrary, his whole policy, and all his recommendations, in relation to the currency, after that date, and especially after the time when the power could have been exercised, favored the policy of this limitation. Various legislation of Congress, in the year 1836, distinctly indicated a determination to adhere to and carry out the policy; and, by limiting the circulation of bank notes of the smaller denominations, to secure a currency of coin only for the minor transactions of business, for the payment of laborers, for the change required in pecuniary dealings, and the like; and in this way, also, to give a more broad metallic basis to our whole paper circulation. Many of the States of the Union fell into the policy thus adopted and pursued by this Government, and conformed their legislation to the object proposed.

It seemed to be universally conceded that these two objects could only be secured by the exclusion of all small bank notes from ordinary circulation; and all adopted the policy as wise and worthy of pursuit. The powers of this Government could effect little, as the paper circulation to be suppressed was that of the notes of banks existing by, and acting under, State authority; but what it could do was proposed to be done by the provision of the deposite law above quoted. As a more direct, and much more efficient movement, a very general and vigorous effort was made by the States and the people to exclude from circulation bank notes of a less

denomination than five dollars; and several States, whose banks had theretofore been authorized to issue notes of the denomination of one, two, and three dollars, took from them that authority, while the banks of several other States had either never possessed that authority, or had been deprived of it at a previous period. The progress in this attempted reform of the currency was materially retarded by the fact that all the States did not enter into, and act upon it, so as to restrain the issue of small notes by their banks, and that the banks of the British provinces upon our northwestern boundary continued to issue small notes, which found a more or less extended circulation in the contiguous States of the Union. Still the advance towards an entire metallic circulation, for all sums below five dollars, was as rapid as, in the then situation of the country and the banks, could reasonably have been expected; and additional States were taking measures for the gradual exclusion of the small notes of their banks, when the suspension of specie payments, with very few exceptions, by all the banks of all the States, in May, 1837, arrested the salutary improvement.

The suspension was, to every practical extent, perfect. The banks, as a general rule, did not pay specie upon any denomination of their notes, or to any class of their creditors. An unavoidable consequence followed. All the coin in circulation, the most of which had been put in circulation by the policy and measures before adverted to, was either gathered into the banks, not to be again given out for the circulating currency of the country, or was hoarded by private holders, to whose minds the suspension had communicated a feeling allied to panic, inclining them to treasure up all they had which was money, precisely in proportion to the diminution of their confidence in the value of that circulating medium which had, theretofore, represented money, but could not do so during the continuance of the entire suspension of specie payments by the banks. Hence either an absence of any medium for business transactions under five dollars, or the worst of all media which an enlightened public feeling could tolerate, soon became, in many sections of the Union, an evil of the first magnitude, and one against which the interference of the State Legislatures was commandingly invoked. In obedience to calls of this description from a suffering constituency, the Legislatures of several of the States which had adopted and prosecuted the policy of substituting the circulation of coin for that of small bank notes, in the minor pecuniary transactions of society, felt it to be their duty to retrograde in their action, and again to confer upon their banking institutions the power to issue, and the right to circulate, notes of the denominations below five dollars. In some cases this change of policy in the action of the States has been made general and unlimited, while in others, as the committee think more wisely and fortunately, it has been made temporary, and adopted with an evident design, not to abandon the policy, but to meet the particular grievance; and, that being obviated, to return to those sound measures which, as permanent regulations of law, cannot fail to have a most salutary influence upon our currency generally, and especially upon the interest of the poorer and by far the most numerous classes, in its soundness and reality.

Still the committee suppose that nearly all the banks in many entire States have, in obedience to, and in conformity with, this change of policy in the legislative action of the States under whose authority they exist, violated the restriction imposed by the clause of the deposite law of 1836, last above quoted, and thus put it out of the power of the fiscal officers of this

Government to receive any of their notes in any payment to the United States, while that restriction remains in force, and without modification. Under such circumstances, the committee are not prepared to say that this provision should be so rigidly adhered to as to perpetuate the exclusion of the notes of these banks from the public receipts, while the notes of other banks, no more safe, are received. Such a rule would not aid the policy which the committee earnestly advocate, of giving greater stability to our paper circulation; but would merely establish an invidious discrimination between the different local banking institutions, founded, so far as they can discover, upon no defensible principle. Had these violations of the restriction imposed by the deposite law been entirely voluntary on the part of the banks; had no suspension of specie payments, and no consequent derangement of the whole paper currency, intervened; and, even under these pressing inducements, had not the interference of the Legislatures of the States authorized the violations, and, in some cases, at least, rendered the issue of the small notes almost, if not altogether, a duty, in the estimation of the surrounding community, the committee would be the last persons to suggest even, much less to recommend, the remission of the penalty which this law of Congress imposes upon the act.

After what has been said, it will not be expected that the committee will yield to "the expediency of *repealing* those provisions of the said act which prohibit the receipt in payment of debts and dues to the United States of the bills of all banks which issue bills of less denomination than five dollars;" this would be to yield the sound and salutary policy which the provisions were designed to carry out; one of the last things in the administration of the affairs of this Government which the committee are disposed to surrender. While the benefits of a sound and stable currency are so loudly demanded by all parties and all interests, and while the committee know and feel that a greater infusion of coin into the circulating medium of the country is the surest mode of reaching that great and good result, they cannot become parties, much less agents, in a course of legislation which shall surrender the first step towards a consummation so ardently desired by all. They therefore give their opinion against a *repeal* of this provision.

It remains to consider what modification can properly be adopted to meet the case, and not weaken the great principle contended for. That, in the opinion of the committee, is a proposition of easy solution. The legislation of several of the States, to which reference has been made, furnishes a precedent which Congress can safely follow. A postponement so far of the operative limitation of the provision as to relieve the banks from the exclusion caused by former violations; the fixing of another day beyond which, if they shall again cease to issue notes below the denomination of five dollars, their notes may be received in payment of the public dues, will effectually cure the evil complained of, place the excluded banks, so far as the legislation of Congress is concerned, upon the same footing with their neighbor institutions, and preserve the policy of the law, in no other respect impaired than as to the time when that policy shall become practice.

The committee cannot, in justice to their own feelings, fail here to notice that many of the excluded banks have been among the first in the country to resume specie payments; that their issue of notes under the denomination of five dollars was a measure believed, not by those interested in the banks simply, but by the community within which they are located,

to be in direct aid of a speedy resumption by the institutions which made the issues; and that the effect of those issues, under the circumstances of the case, and in the then condition of the currency, is still thought to have been salutary upon all interests, public and private. These are circumstances which, as it seems to the committee, cannot escape the attention of Congress in deciding upon the propriety of the suggested modification of this provision of the deposite law of 1836.

Still the question is one connecting itself with the general subject of legislation, covered by the bill upon which, as has been before remarked, the Senate has acted, during its present session, and which bill has been, long since, sent to the House of Representatives for the concurrence of that body. When that bill shall be acted upon, the committee believe that an amendment, to the effect they have suggested, will be proper and expedient; and as they have abundant evidence that the attention of that body has been repeatedly and expressly called to this particular point, they have no reason to doubt that it will receive the required modification there, in case the judgment of the House, upon the propriety of its adoption, shall agree with that which the committee entertain and express.

They believe it, therefore, inexpedient that any independent proposition to accomplish this object should, at the present time, be originated in, or acted upon by, the Senate. Should the bill referred to be rejected by the House, or should it be returned to the Senate without the amendment suggested, in either case the modification may be originated and passed as an independent bill, without material consumption of time, in relation to the business of this body, while its adoption by the other, in the manner here suggested, will save the time and forms of independent legislative action. For these reasons the committee return the resolution to the Senate, without any proposition for the *present* action of the body upon any one of its suggestions.