

IN SENATE OF THE UNITED STATES.

JANUARY 10, 1843.

Ordered to be printed.—To accompany bill S. 12.

Mr. BERRIEN submitted the following

REPORT :

*The Committee on the Judiciary, to whom was referred the bill to indemnify Major General Andrew Jackson for damage sustained in the discharge of his official duty, beg leave to submit the following report :*

This bill has been referred to the Committee on the Judiciary, after having been made a special order in the Senate, and after having undergone discussion there. It has been so referred generally, and without specifying the particular points of inquiry which were contemplated by the Senate in ordering the reference. The whole subject having been thus referred to their examination, with all the interesting questions which it includes, perhaps it may be considered to be the duty of the committee, as the organ of the Senate in the preparatory examination of legal subjects, to examine and report on those connected with the object of this reference. Yet, in the absence of any specific instructions from the Senate, and looking to the discussions which have led to the reference of the bill, the committee have come to the conclusion that they will best fulfil their duty to the Senate by reporting it with an amendment, placing the restoration of the fine imposed on General Jackson by Judge Hall on grounds which do not involve any censure of either of the parties in this bygone transaction, nor in any degree arraign the conduct of the patriotic citizens of New Orleans, but simply protect the Senate from the possible inference that in passing this bill it has acknowledged the legal authority of a military officer to establish martial law within the limits of this free republic.

They accordingly report the bill with an amendment.

VIEWS OF THE MINORITY.

Mr. WALKER submitted the following; which was ordered to be appended to, and printed with, the views of the majority :

The undersigned, one of the committee on the Judiciary of the Senate of the United States, to whom was referred the bill to indemnify Major General Andrew Jackson for damages sustained in the discharge of his offi-

cial duty, dissents from the views of the majority or the committee in this case. The bill referred to the committee contains no censure of the conduct or motives of Judge Hall, nor does it express any opinion as to the acts of the citizens of New Orleans. It leaves all those subjects untouched, to depend upon the judgment of the present age and of posterity. The bill, should it become a law, will be only an expression of the legislative will, that, under all the facts and circumstances of the case, the money paid by General Jackson in discharge of this fine, and now retained in the Treasury of the United States, should be refunded. Such a bill arraigns and censures no one. But the report of the committee, by the clearest implication, in the opinion of the undersigned, does arraign the conduct of General Jackson in this case, as subversive of the constitution of the United States. The case does not necessarily involve the power of a military commander to "establish martial law within the limits of this free republic." This question, however, having been introduced by the committee, the undersigned submits, that in time of war and of imminent public danger, it may be the duty of the commander to arrest those regarded as traitors, spies, or mutineers, within the limits of his camp, especially in cases where it was obvious to him that his refusal to exercise such power, would involve the disbanding of his forces, the defeat of his army, and the surrender of that army, and of the country which he was bound to defend. The alternative, as he fully believed, was to make the arrest, or the abandonment of his country's standard, and the surrender of one of her greatest cities to a powerful enemy, whose motto of victory involved indiscriminate plunder and licentious outrage. Under such circumstances, should he make the arrest and save the country? To this question there will be but one response from the heart of every true American patriot. That General Jackson and those united with him in the defence of New Orleans fully believed this emergency to exist, is beyond all doubt or controversy. If then this was the state of the case, it was the duty of General Jackson to have made the arrest, and the act was not merely excusable, but justifiable. It was demanded by a great and overruling necessity, and had he failed to assume this responsibility, and the consequences which he anticipated had occurred, he would have merited and received universal execration. Such being the facts, was General Jackson bound to liberate the prisoner immediately upon the mandate of the federal judge of that district? If, as General Jackson believed, the danger was still imminent, that the liberation *at that time* of the prisoner would overthrow his power, and bring his authority as commander into contempt, that it would surely produce a repetition of similar acts of mutiny or treason, and demonstrate his inability to restrain, much less to punish them, that it would lead to the dissolution or defeat of his army, and the surrender of the city he was bound to defend, the same overruling necessity which justified the arrest, would require the detention of the prisoner until the emergency had passed, and he could be surrendered with safety into the hands of the civil authority. The law which justified the act, was the great law of necessity—it was the law of self-defence. This great law of necessity, of defence of self, of home, and of country, never was designed to be abrogated by any statute, or by any constitution. This was the law which justified the arrest and detention of the prisoner, and however the act may now be assailed, it has long since received the cordial approbation of the American people. That General Jackson never desired to elevate the military above the civil authority, is proved by his conduct during the trial, and after the

imposition of this fine. When the magistrate ascended the bench, acting, for no contempt in the presence of the court, acting in his own case as prosecutor, witness, accuser, and judge, when his answer was refused to be heard, and he was denied a trial by a jury, when a victorious army and a rescued and grateful people thronged the court, the terrified judge was about to adjourn without inflicting the sentence, General Jackson rose, he quieted the threatened tumult, requested the judge to proceed, the sentence was imposed, he bowed in calm and dignified submission to the mandate of the law, and paid at once the penalty inflicted for saving the country. And when upon retiring from the court he was surrounded by a grateful but indignant people, his brief, but glorious address, was an appeal to all who heard him, to respect the civil tribunals, and maintain the supremacy of the law. And now, the question is, shall this penalty thus incurred in discharge of a solemn duty, and thus paid, be retained or refunded. The bill provides that the money shall be refunded. The title is, "A bill to indemnify Major General Andrew Jackson for damages sustained in the discharge of his official duty." The title is in strict conformity with the facts of the case, and, in the opinion of the undersigned, should be retained. The committee however propose to reject it, and to substitute as a title, "A bill for the relief of General Andrew Jackson." General Jackson has never solicited, nor will he ever receive, such relief. He is no mendicant, he asks no alms or pension, or bounty from his country; but that country itself demands that this money shall be refunded, as an act of justice. It was a penalty incurred for saving the country, and the country requires that it shall be restored. Nor is the undersigned prepared to give the reasons assigned in the bill for refunding this money. The bill places the restoration of the penalty mainly upon the "consideration of the distinguished military services of General Jackson." This bill is not a payment for services, however great or meritorious. These services are being paid in the approbation of his conscience and of his country, in the glorious results of his immortal victories in a frontier saved from savage fury, and from indiscriminate massacre, in the rescue of New Orleans and the reconquest of Louisiana and of its noble river, paid in closing our late eventful struggle with glory and renown, paid in the highest honors and offices which a grateful people could bestow, and through ages to come, posterity will continue the payment in gratitude and praise, re-echoed by countless millions throughout this great republic, and in every country and in every land, where our principles shall go on conquering and to conquer, striking down the thrones of despots, and erecting upon their ruins the glorious fabric of the people's will. And are these the services which it is now proposed to compensate by the payment of this paltry sum, in a bill for the relief of General Andrew Jackson? It is not a bill for relief, but for indemnity; not a payment for services, but a restoration of money unjustly withheld, and in no other view can it receive the support of

R. J. WALKER.

