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SPEECH  
OF  
HON. WILLIAM W. CRAPO.

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On affairs in the District of Columbia.

Mr. CRAPO. Mr. Speaker, the fact that the Committee for the District of Columbia has unanimously reported certain resolutions as the conclusion reached by it upon its examination into the affairs of the District, under the order of the House directing the investigation, would seem to make unnecessary any discussion of the question. But while entirely harmonious in recommending the action to be taken by the House, the committee have submitted reports quite conflicting, and members of the committee widely disagree in the inferences drawn from the testimony. I am compelled, from a sense of duty, to dissent from the report presented by the chairman, [Mr. BUCKNER,] which expresses the views of the minority of the committee, and beg to state briefly my reasons.

This investigation has been thorough and painstaking. It has been conducted with candor and fairness. Every person with a complaint or grievance, desiring a hearing, has been fully heard. Statements directly and remotely bearing upon the inquiry have been received. Disappointed contractors, discharged employés, "ring" men and "anti-ring" men, representatives of every theory of District government and District management, have had entire freedom of speech accorded to them. On the other hand those representing the District commissioners and the board of audit have had every opportunity for defense and explanation. While we have listened to every rumor and suspicion of official misconduct, we have granted every facility for explanation and contradiction. It is but simple justice to all of the members of the committee to say that there has been a denial to none in the search for facts and truth. No single member of the committee can arrogate to himself a purer purpose or a more impartial mind in this investigation than his colleagues.

And yet, Mr. Speaker, we find ourselves reaching very different conclusions. Why is this? I account for it upon a theory entirely consistent with fairness and integrity. Some of the committee naturally approach the inquiry with the feeling that there must of necessity be a grievous wrong and a corrupt intent simply because a debt which they had supposed, from an imperfect knowledge of the details, should not have exceeded \$10,000,000 has reached nearly fifteen millions. Here at the outset is a circumstance which to some carries suspicion of fraud and corruption, and with it a natural prejudice. There are some men, and they can be found on congressional committees as well as elsewhere, who, without intending to wrong any one, believe that office-holders have more than the ordinary share of human infirmities and are more liable to err than men in private

life. On the other hand there are those who in an investigation like this have some faith in human nature; who are slow to believe that men who have worn a reputation for honesty and integrity both in public and private life, trusted and honored for years by their neighbors and friends, respected by all who know them intimately, do not surrender all virtue and morality simply by being placed in official position even at Washington.

But these differences in temperament and the prejudices which arise from political preferences and party associations do not fully account for the conflicting views held by the committee. There is in my judgment a better and more satisfactory explanation for these opposite conclusions, and one which, while prejudice and bias may intensify the opinion when formed, is not inconsistent with an honest and earnest endeavor to arrive at correct results. This explanation I find in the contrary views entertained by members of the committee upon the legal effect of the act of June 20, 1874, and the different opinions concerning the authority conferred by that act upon the District commissioners and the board of audit. If the legal propositions stated by the gentleman from Missouri [Mr. BUCKNER] are correct, then I can find some warrant for his conclusions, although a partisan spirit may have magnified some of the alleged misconduct and offenses. But if, on the other hand, his construction and interpretation of the law is erroneous, then the conclusions and inferences which he has drawn from the evidence fail.

In my judgment the report of the chairman is based upon a misapprehension of the law and an incorrect legal understanding of the powers and authority conferred by Congress upon the District commissioners and the board of audit. The District commissioners and the board of audit, before entering upon their duties, consulted with persons learned in the law and competent to advise them. They obtained the legal opinion of the official law adviser of the District, and they sought information from those who, as members of a special committee of the last Congress, had given much consideration to the affairs of the District, and had been largely instrumental in the passage of the act which authorized their appointment. Acting thus carefully at the outset in determining their powers and duties, and with no doubt about their legal authority, they proceeded to the discharge of their trust. It is admitted by all that they have acted in good faith, and that their administration has been marked with personal integrity and good sense; but it is asserted in the minority report (that signed by Mr. BUCKNER and others) that they grossly exceeded the limited authority conferred upon them.

Let us consider this question. It is admitted by the report that "there can be no dispute or controversy that Congress intended that the valid contracts of the board of public works should be completed, and that provision was made for auditing and funding the claims growing out of the completion of this work according to the terms of these contracts."

Elsewhere in the report it is stated concerning the provision for the settlement of the fourth class of claims in section 6 of the act of June 20, 1874, that "the phraseology of the statute describing the claims of this class leaves no doubt that it was intended to include the claims growing out of the incomplete contracts of the board of public works. They must be claims for work done, or claims hereafter created, that is, for work to be done, but arising out of contracts already made by the board of public works."

It is also stated that "neither the commissioners nor the engineer

can be held responsible if the work needful to finish these contracts required a larger expenditure than the sum estimated by the joint committee" of 1874. The report makes "no exception to the increase of the debt of the District growing out of this expenditure. Whether more or less than estimated, the claims growing out of the completion of these incomplete contracts were provided for and required to be audited by the board of audit." But the report contends that the completion of these contracts "was not a matter over which the commissioners had any jurisdiction, except to see, by their engineer, that the work was done according to the original contract, and that the measurements were honestly and fairly made."

The report also contains the following admission respecting the power of the commissioners: "There is no doubt that they had authority, and it was their duty, to preserve and protect the improvements of the District." But it is denied "that it results from this admitted power that they had authority to contract for the payment of the labor expended in the preservation and protection of these improvements in the bonds of the District."

And touching the ninth section of the contract of the late board of public works, which is in the following language:

Ninth. It is further agreed that if at any time, during the period of — years from the completion of this contract, any part or parts thereof shall become defective, from improper material or construction, and in the opinion of the said party of the first part require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part; and in case of failure or neglect of the said party of the second part so to do, the same shall be done under the direction and orders of the party of the first part, at the expense of the party of the second part.

It is contended in the report that even if the commissioners, under that section, had the power, on notice to the contractor of a failure on his part, to make the repairs and charge the cost thereof to the contractor, still the commissioners have no authority "to issue bonds of the District in payment of those repairs." It is further contended that "if the obligation is between the District and the contractor, that obligation is that the contractor shall keep the streets improved by him in repair, and the commissioners would enforce this contract on the part of the District by suing the contractor for his failure and obtaining a judgment against him.

The report admits that there is before the committee no positive and direct proof of "corrupt motive or criminal misconduct" on the part of the commissioners, and does not even insinuate that there is any kind of evidence, however slight, of such motive or misconduct. Nor does the report deny that the work performed by the commissioners was well done, was advantageous to the public interest, was necessary to the preservation and protection of existing improvements and to the convenience of the public, and prevented the destruction or waste of public property. But nevertheless the report claims that there has been on their part "not only frequent violations of law, but absolute unfaithfulness in the administration of the affairs of the District."

The report, however, imputes to the commissioners no other violation of law or unfaithfulness than those involved in proceeding with entire integrity of purpose to accomplish important and necessary public benefits under a construction of the law differing in the respects indicated from that adopted by the report.

Thus it is seen that the points especially laid down in the report wherein its construction of the law differs from that of the commissioners, and wherein it consequently claims that the latter violated the law, are as follows:

First, it is contended in the report that although under the grant of authority to the commissioners in the act of June 20, 1874, and under section 6 of that act, providing for the settlement of the fourth class of claims therein specified, namely, "claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works," it was, in the words of the report, "intended to include all claims growing out of the incomplete contracts with the board of public works," and "provision was made for auditing and funding the claims growing out of the completion of this work according to the claims of this contract." Yet nevertheless the commissioners were required to adhere strictly to the terms of these contracts, and only in the case of the performance of such contracts according to their strict terms could claims be adjusted by the board of audit in certificates of that board convertible into 3.65 bonds.

Second. It is claimed in the report that, as respects the ninth section above quoted of board of public works contracts, the commissioners could only sue the contractor for his failure and obtain judgment against him, and in making repairs, in case of default of contractor, could only apply taxes or other revenue to the payment of the same.

The adoption of a construction different from that of the report in these two respects, admitted to be "without corrupt motive or criminal misconduct" and (by the implied admission of the report) for the accomplishment of public benefits, constitute flagrant violations of law and an absolute unfaithfulness in the administration of the affairs of the District charged to the commissioners in the report.

Let us examine these two points.

First. According to the report the unfinished contracts of the board of public works were intended by the law to be completed. The second section of the act of June 20, 1874, vested in the commissioners the power and authority theretofore lawfully vested in the board of public works, except so far as limited by said enactment; consequently, after the board of public works was abolished, the commissioners became vested, within the limitations prescribed in the act of June 20, 1874, with the former power and authority of the board of public works in respect to such contracts. They were substituted for the board of public works as one of the contracting parties. Within the limitations of the act, as a contracting party, and with the concurrence of the other party, or so far as authorized by the contract without authorization from the other party, they might modify unfinished contracts of the board of public works. The limitation upon the power of the commissioners is against the making of contracts or incurring of obligations "other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing or commenced and not completed at the time of the passage of this act."

The report concedes that the commissioners might make contracts and incur obligations for either of these purposes. If they might make a contract for these purposes and afterward, with the concurrence of the other contracting party, modify such contract, so also, being substituted by the act of Congress for the board of public works in unfinished contracts with that board, and taking all the power and authority of that board within the above limitations, it necessarily follows that in the performance of such contracts the

commissioners might make modifications of their provisions necessary to the faithful administration of the valid laws enacted for the government of the District, to the execution of existing legal obligations and contracts, and for the protection or preservation of improvements existing, or commenced and not completed at the time of the passage of the act of June 20, 1874. A different construction, denying the authority of the commissioners to make the modifications necessary for such purposes, would operate very prejudicially to the public interests, and would require them to go on with the performance of contracts of the board of public works in a manner conflicting with the faithful administration of the valid laws, or with the execution of existing legal obligations, or prejudicial to the protection and preservation of existing improvements. Assuming, then, that such a modification might be made, the question upon which the report adopts a different conclusion from that acted upon by the commissioners is whether claims for work done pursuant to such modifications would have to be audited and settled by the ordinary accounting officers of the District and paid for in cash out of the revenues of the District, or whether such claims under such contracts of the board of public works, so lawfully modified, came within the fourth class in section 6 of the act of June 20, 1874, as "claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works," and coming within such class had to be audited and settled by the board of audit and paid in certificates of that board, convertible into 3.65 bonds. The report furnishes no reasoning in support of the former of these two constructions. The construction is simply dogmatically laid down, and the adoption of the other construction is stigmatized as a "flagrant violation of the law and absolute unfaithfulness in the administration of affairs."

But a claim arising under such an unperformed contract of the board of public works, and created by a modification lawfully and necessarily made by the commissioners, was a claim necessarily and lawfully created after the passage of the act of June 20, 1874, and arising out of a contract of the board of public works. Therefore, in respect of all of its conditions, it belonged to the class of "claims existing or hereafter created for which no evidence of indebtedness has been issued arising out of contracts, written or oral, made by the board of public works."

In specifying claims not merely to arise after the passage of the act, but to be thereafter created, the law seems to provide pointedly and specifically for lawful and necessary modifications of the original letter of the contract. Such modifications always become necessary in the prosecution of extensive public works, and cannot be avoided. Again, the construction laid down in the report would have required a claim arising out of such a lawful modification of a contract of the board of public works to be separated into two branches, one belonging to the strict and original letter of the contract, and coming within the jurisdiction of the board of audit; and the other coming within the jurisdiction of the ordinary and subordinate accounting officers of the District; the latter branch to be paid for in cash, and the other to be paid for in board of audit certificates convertible into 3.65 bonds. In carrying out these necessary modifications nice calculations would have to be made in order that these two kinds of payments might accord. In many cases it would be impossible to regulate the compensation of the contractors, and impossible to audit and settle the claim by separating it into the two branches, and sending one branch to one

set of accounting officers for one mode of payment, and the other branch to a different set of accounting officers for payment according to a different standard of values. Much confusion would have resulted from this course, even if practicable. But the act of June 20, 1874, contemplated and required that claims for work rendered necessary in the completion of contracts of the board of public works should be submitted to the examination, not of the subordinates and appointees of the commissioners, but to examination by the board of audit, composed of the Comptrollers of the United States Treasury, the highest accounting officers of the United States Government, independent of the executive authority of the District, and possessing high personal qualifications as well as high official position. One great purpose of the act of June 20, 1874, would have been frustrated had necessary modifications in uncompleted contracts—however slight such modifications might have been—removed the settlement of claims under such contracts from the jurisdiction of the board of audit and transferred their settlement to subordinate officers of the District, appointed by the District commissioners. It would have been a “flagrant violation of law and absolute unfaithfulness in the administration of affairs” had the commissioners and the board of audit adopted the construction laid down in the report.

Second. The only remaining matter wherein the report claims that the law was wrongfully construed by the commissioners and by the board of audit is in reference to the settlement of claims under contracts made by the commissioners pursuant to the powers given to them under the ninth section of contracts originally entered into by the board of public works. This point requires an examination also as to the fifth section, to which the report makes no reference. The fifth section of board of public works contracts is as follows:

Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is willfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part, out of such moneys as may be then due, or may at any time thereafter grow due to the said party of the second part, under and by virtue of this agreement, or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference; and in case such expense shall exceed the last said sum, the amount of such excess shall be paid to the party of the first part by the party of the second part.

The ninth section has been cited above.

The power of the commissioners to act under the fifth section arose in the courts soon after the commissioners entered upon their duties. The power was sustained. The commissioners reported the matter to Congress in December, 1874. (See commissioners' report, December, 1874, page 22.) The commissioners advised Congress also of the fact that claims arising under contract entered into by them by reason of this fifth section were being audited and settled by the board of audit. The same policy and requirement of the act of June 20, 1874, which required claims of the original contractor to be examined and audited by the highest accounting officers of the United States Government, acting independent of the executive authorities of the District, required also that claims where a contractor substituted by

the commissioners for the original contractor by virtue of the fifth section of the original contract entered into by the board of public works should also be audited and settled by the same accounting officers. It would have been a flagrant violation of law had the board of audit neglected to perform such a duty, or had the commissioners usurped the authority and themselves, or through their subordinates assumed to examine, audit, and pay for claims under a so-called new contract made by the commissioners under the fifth section of the old contract. But if claims created under and resulting from obligations entered into by the commissioners pursuant to the fifth section of an old contract were properly to be audited by the board of audit and settled in the certificates of that board convertible into 3.65 bonds, so also were claims resulting from obligations lawfully entered into by the commissioners under the ninth section. The right in respect to the fifth section is not controverted in the report, but both sections were parts of written contracts made by the board of public works. Claims arising out of one would have to be treated in the same way as claims arising out of the other. These sections could not be separated from other sections, and claims under them be paid in cash, and claims under other sections be paid in board of audit certificates, convertible into 3.65 bonds; and the propriety and necessity of examination and audit by the board of audit in the cases where the fifth section is acted upon by the commissioners being conceded, it necessarily results that the same propriety and necessity exist in respect to the action of the commissioners under the ninth section. The commissioners, then, did not violate the law in acting under the ninth section of contracts originally made by the board of public works. The only question that remains is whether they were in any respect "absolutely unfaithful in the administration of affairs" by so acting. The report states that "if the obligation is between the District and contractor, that obligation is that the contractor shall keep the streets improved by him in repair, and the commissioners shall enforce the contract on the part of the District by suing the contractor for his failure and obtaining judgment against him." But this ninth section of the contracts contains an express stipulation binding both contracting parties, that if at any time during the prescribed period any part of the work done under the contract shall become defective from imperfect or improper material or construction and require repair, the contractor must be notified thereof and thereupon must commence and complete the same; and in case of failure or neglect of the contractor so to do, the same is then to be done under the direction of the authorities at the cost and expense of the contractor. Legal proceedings could not be instituted by the commissioners and judgment obtained against the contractor, in violation of the provisions of this section. In order to hold the contractor, the commissioners were obliged to act under this ninth section. If they had not done so, the right of recovery against the contractor would have been lost, and of course the right of recovery against his sureties.

But the report of the chairman, while denying the authority of the commissioners to make these repairs, asks, even admitting the commissioners have this right, "where do they obtain the authority to issue the bonds of the District in payment of these repairs?" The question contains a misstatement of fact. The commissioners do not issue the bonds of the District. In the case of claims under these so-called repair contracts arising out of the ninth section of contracts of the board of public works, as in the case of other claims belonging

to the fourth class named in the sixth section of the act of Congress, the conversion of certificates of the board of audit into 3.65 bonds belonged entirely to the commissioners of the sinking fund under the act of Congress; and in the discharge of that duty the sinking-fund commissioners were entirely independent of the District commissioners. The question of the examination and allowance of such claims, and of the issue of certificates thereon convertible into 3.65 bonds, was one which had to be decided by the First and Second Comptrollers of the United States Treasury. The corresponding question, as to whether the commissioners would assume to exercise authority under the ninth section of the board of public works' contracts, had to be determined by the commissioners. But the views of the commissioners could not and did not control the views or action of the board of audit; and no effort was made to influence the judgment of those officers. The action of the commissioners of the sinking fund in converting the board of audit certificates into 3.65 bonds was also independent of the action of either the board of audit or the commissioners. Had not these three boards in the exercise of their independent duties concurred, not a single 3.65 bond would have been issued in payment of this class of work; nor would the commissioners have exercised any authority under the ninth section of the old contracts. It may well be said, however, that the decision of the First and Second Comptrollers of the United States Treasury, the highest accounting officers of the United States Government, who were expressly selected for their personal qualifications and on account of their official position by the act of June 20, 1874, for the responsible duties imposed upon the board of audit, was an authority in support of the construction of the commissioners which is entitled to great weight.

The commissioners have shown, and the report does not deny, that the rapid deterioration of the pavements and carriage-ways of the city in 1875 made it impossible for the commissioners to make repairs within the limit of their cash resources. If the commissioners had not exercised the power given them by the ninth section the preservation and protection of the improvements would have been neglected, and the commissioners would have violated what the report concedes to be a duty plainly imposed upon them by the act of June 20, 1874. It follows, therefore, that in this respect the commissioners have not only not violated the law nor been unfaithful in the administration of affairs, but they have acted in conformity with the law, and by their course accomplished what could not otherwise have been accomplished and what was necessary to the faithful discharge of the duties imposed upon them.

If the work falling within necessary and lawful modifications made by the commissioners of unperformed contracts originally entered into by the board of public works and of obligations entered into by the commissioners under the ninth section of contracts of the board of public works was well done, and was necessary, (as to neither of which is there any denial in the report,) the only practical detriment that could result to the public interest by reason of the adoption by the commissioners of their construction instead of the one indicated in the report is that the one might involve a greater expenditure than the other. But the report fails to show how work could be done more economically under one construction than under the other, or how the District government could have received a better equivalent under one construction than under the other. If, therefore, there is even a fair question of construction in respect to

these two matters, a person adopting the construction laid down in the report would not be justified in stigmatizing the adoption of the other construction, without corrupt motive or criminal misconduct, as being a flagrant violation of law and absolute unfaithfulness in administration. The commissioners, however, have more than the justification of honestly adopting a reasonable construction of a statute with the concurrence of two other independent boards of officers. It has been shown that they could not logically or lawfully have pursued a different course; nor could they otherwise have regarded the act of June 20, in providing a separate tribunal of the highest accounting officers of the United States Government, independent of the executive authority of the District, for the examination of all the claims existing or thereafter created arising under the contracts and in the course of the performance of the contracts of the old board of public works. Nor could they hold delinquent contractors to their obligations, nor could they have carried out the official duty imposed upon them for the public benefit of preserving and protecting existing improvements.

Beyond the two matters above considered the report finds no fault with the construction of the act of June 20, 1874, according to which the commissioners have discharged their official duties. I have considered simply the question of legal authority under which the commissioners and the board of audit have acted. If the positions taken by me are sound, then the report and the argument of the gentleman from Missouri [Mr. BUCKNER] completely fail. If these officers acted within the authority conferred upon them by the statute, then there is no need of further discussion. The resolution of inquiry under which the committees have acted alleged that contracts had been made in the interest of favorites and friends. There is not the slightest evidence to sustain such allegation. On the other hand, the testimony shows that the commissioners and the board of audit have acted throughout in good faith and with the highest integrity.

My colleague from Vermont [Mr. HENDEE] has so fully stated the facts and figures demonstrating the wise, prudent, and economical management of the affairs of the District under the charge of the present officials, that I need not discuss this branch of the inquiry. There are in the present system of District government many imperfections which need to be remedied. But the faults are in the system rather than with the persons intrusted with the executive authority. The District has doubtless suffered great wrongs, and has been subjected to an enormous expenditure of money, through the recklessness and folly, and perhaps dishonesty, of those who heretofore have managed its affairs. But this misconduct and these errors of a former administration ought not to be placed at the door of the present officials, who were in no wise instrumental in their origin. The condition of the District, in its management, government, and administration, is peculiar and anomalous. None of us expect that the present method of administering the government of the District is to be permanent. It is temporary and provisional until something better can be devised and adopted. A few years ago Congress established a form of government for the District. It had a governor, a legislative assembly with two branches, a Delegate in Congress, and, above all, what few cities or even States can boast of, a board of public works. This government, while sadly deficient in ballast, had an enormous spread of canvas. Through the wild recklessness of officers and crew it plunged into the breakers and came near becoming a total wreck. Congress, without stopping to take in sails, summarily used the ax

and cut away the masts, and governor and board of public works went by the board. This was in June, 1874. Congress did not at that time make general repairs and re-organize the voyage, but rigged up jury-masts, in the shape of District commissioners and a board of audit, hoping to get the craft into smooth water and a safe harbor where there could be a thorough overhauling and a complete reconstruction. As yet nothing has been done except to stop a few leaks in the hull. If there is any blame or censure on account of this delay it attaches to Congress and not to the commissioners. While there are many defects in the present system, Congress has failed thus far to improve the system. Perhaps it may fairly be said that this neglect and delay in establishing a more perfect government is in a measure owing to the confidence which Congress and the residents of the District have in the high character and integrity and the wise judgment of those who now administer the affairs of the District.





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