44TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 623.

THE ALASKA COMMERCIAL COMPANY.

JUNE 3, 1876.—Recommitted to the Committee of Ways and Means and ordered to be printed.

Mr. FERNANDO WOOD, from the Committee of Ways and Means, submitted the following

REPORT:

The Committee on Ways and Means, to whom was referred the resolution of the House of Representatives, directing an investigation into certain matters relating to the lease made between the United States and the Alaska Commercial Company, of the right to kill fur-seals on the islands of Saint George and Saint Paul, in Alaska, beg leave to report:

That on the 25th of February, 1876, they proceeded to take testimony, as ordered by the House, and have made a full and complete inquiry into the several branches of the subjects as contained in the resolution under which they were acting, which is as follows:

Resolved, That the Committee on Ways and Means be requested to examine into and report whether the lease from the United States to the Alaska Commercial Company, of the right to take fur-seals in Alaska, signed and executed by William A. Richardson, as Acting Secretary of the Treasury, in behalf of the United States, and John F. Miller, in behalf of said company, was made and executed in pursuance of law. And whether said lease, as made, was to the best advantage of the United States, according to the offers of the bidders; and also whether the interests of the United States were properly protected by the stipulations of said lease; and whether the Alaska Commercial Company have complied with its terms and conditions, and with the provisions, regulations, and limitations of the act of Congress approved July 1, 1870; with power to send for persons and papers, to administer oaths, and to report at any time.

The matters to be investigated by this resolution are as follows:

First. Whether the lease from the United States to the Alaska Commercial Company, of the right to take fur-seals in Alaska, signed and executed by William A. Richardson, as Acting Secretary of the Treasury, in behalf of the United States, and John F. Miller, president, in behalf of said company, was made and executed in pursuance of law?

Second. And whether said lease, as made, was to the best advantage of the United States, according to the offers of the bidders?

Third. And whether the interests of the United States were properly protected by the stipulations of said lease?

Fourth. And whether the Alaska Commercial Company have complied with its terms and conditions, and with the provisions, regulations, and limitations of the act of Congress approved July 1, 1870?

The committee, in the discharge of their duty, summoned such witnesses as could give information relating to the subject-matters contained in the resolution of the House, and heard eminent counsel in behalf of those who had instigated the investigation and who sought the abrogation of the lease. The testimony is appended to this report and presented as a part of it.

WAS THE LEASE MADE IN PURSUANCE OF LAW?

The answer to this question depends upon the answers to be given to two other questions:

1. Was the lease, as made, in pursuance of powers previously granted by Congress?

2. Were the powers granted exercised in good faith by the Secretary of the Treasury, and without fraud on the part of the company obtaining the lease?

1. The power to lease is not only conferred on the Secretary of the Treasury by the act of July 1, 1870, entitled "An act to prevent the extermination of fur-bearing animals in Alaska," but the exercise of that power by the Secretary is made imperative. By the fourth section of that act it is provided, "that immediately after the passage of this act the Secretary of the Treasury *shall lease*," &c. No question can be made on the fact that the lease was made by the Acting Secretary of the Treasury. Such a question, if made, would be sufficiently answered by two facts established by the evidence:

1. That at the time of the actual execution of the lease the Secretary of the Treasury was absent, and this absence, by section 177 of the Revised Statutes, devolved the power upon the Acting Secretary.

2. The lease as made was executed by the Acting Secretary in pursuance of the orders and directions of the Secretary.

The power to lease, then, is clear and beyond dispute. The evidence shows that the formal conditions to be observed in making the lease, such as the deposit, the execution of bond, &c., were all required and complied with, and therefore the authority to make the lease as formally made must be conceded. But the act of Congress contains several conditions of substance which the Secretary of the Treasury is *required* to observe in executing the power to lease, and the disregard of these conditions would certainly vitiate any lease made. Here are the conditions specified:

1. As to the rental, it must be for not less than $50,000 per annum, secured by United States bonds, and a revenue tax or duty of two dollars upon each fur-seal skin taken and shipped from the islands of Saint George and Saint Paul during the continuance of the lease.

2. The lease must be to "proper and responsible parties."

3. The lease must be to the advantage of the United States.

4. In carrying out the foregoing provisions, the Secretary of the Treasury is directed to have due regard (1) to the interests of the Government, (2) to the interests of native inhabitants, (3) to the interests of the parties heretofore engaged in the trade, and (4) to the protection of the seal-fisheries.

In the formal judgment rendered by the Acting Secretary of the Treasury, it is recited that the proposals of the various parties desirous of taking the lease, with the terms of each, had been carefully examined and considered, and that "having due regard for the interests of the Government, the native inhabitants, the parties heretofore engaged in the trade, and the protection of the seal-fisheries, as required by said act, it is decided to make the lease to the Alaska Commercial Company," &c.

In the testimony of Mr. Boutwell, the Secretary, and of Mr. Richardson, the Acting Secretary of the Treasury, before this committee, the truth of these recitals is repeated under oath, with the additional fact that these recitals, with the judgment rendered thereon, were made and rendered by both the Secretary and the Acting Secretary of the Treasury. Upon this branch of the subject the first question to be con-

sidered by the committee is, what is the legal effect of such a judgment, in such a case, by the executive officer of the Government?

This question has been frequently made before and decided by the courts of the United States, including the Supreme Court, and must be accepted by this committee and by Congress as adjudicated.

In the case of the United States *vs.* Arredondo, to be found in 6 Peters, the general principle is thus stated on page 749:

> It is a universal principle that, when power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to its or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done and the public, or any person denying its validity, are power in the officer and fraud in the party. All other questions are settled by the decision made or act done by the tribunal or officer whether executive, (1 Cranch., 170, 171,) judicial, (11 Mass., 227; 11 S. & R., 429; adopted in 2 Peters, 167, 168,) legislative, (4 Wheaton, 423; 2 Peters, 412; 4 Peters, 563,) or special, (20 J. R., 739, 740; 2 Dow. P. Cas., 521, &c.,) unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal is prescribed by law.

This general principle has been frequently applied by the courts to cases actually arising.

The case of Allen *vs.* Blunt, decided by that eminent jurist, Judge Story, on the circuit, is a strong case in point. This was a case for the infringement of a patent. An original patent had been granted, and there had been two surrenders for imperfections, and new patents issued by the Commissioner of Patents, under the thirteenth section of the patent act of 1836. The three specifications attached to the three patents appeared to be for three different things, and not for one and the same invention; and the point made was that the Commissioner of Patents had exceeded his authority under said act.

In pronouncing his decision, Judge Story says:

> Whether the invention claimed in the original patent and that claimed in the new amended patent is substantially the same, is and must be in many cases a matter of great nicety and difficulty to decide. It may involve considerations of fact as well as of law. Who is to decide the question? The true answer is, the Commissioner of Patents; for the law intrusts him with the authority, not only to accept the surrender, but to grant the new amended patent. * * * * * No one can well doubt that in the first instance, therefore, he is bound to decide the whole law and facts arising under the application for the new patent. *Prima facie*, therefore, it must be presumed that the new amended patent has been properly and rightfully granted by him. I very much doubt whether his decision is or can be re-examinable in any other place or in any other tribunal, at least unless his decision is impeached on account of gross fraud or connivance between him and the patentee, or unless his excess of authority is manifest upon the very face of the papers; as, for example, if the original patent was for a chemical combination, and the new amended patent were for a machine.
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> In other cases, it seems to me that the law, having intrusted him with authority to ascertain the facts, and to grant the patent, his decision, *bona fide* made, is conclusive. It is like many other cases where the law has referred the decision of a matter to the sound discretion of a public officer, whose adjudication becomes conclusive. * * In short, it may be laid down as a general rule that where a particular authority is confided to a public officer, to be exercised by him in his discretion upon an examination of the facts, of which he is made the appropriate judge, his decision upon these facts is, in the absence of any controlling provisions, absolutely conclusive as to the existence of these facts." (3 Story, Rep., 742.)

The same question has been repeatedly decided by the Supreme Court. Your committee refer especially to the cases of Kendall *vs.* The United States (12 Peters, 520) and Decatur *vs.* Paulding, (14 Peters, 497.) In the first case, certain claims of Stokes *et al.* were referred by Congress to the determination of the Solicitor of the Treasury, (a subordinate officer,) with authority "to make such allowance therefor as upon a full examination of all the evidence *should seem right according to*

the principles of equity." And Congress further directed the Postmaster-General to credit Stokes *et al.* "with whatever sum, if any, the Solicitor should decide to be due to them."

The Solicitor did examine and decide a large sum ($161,563.93) was due. The Postmaster-General decided that a less sum was due, ($122,101.46,) and refused to credit more. Upon mandamus, the Supreme Court directed the Postmaster-General to credit the full sum found by the Solicitor, and held that "under this law the Postmaster-General is vested with no discretion or control over the decision of the Solicitor, nor is any appeal or review of that decision provided for by the act." The court further held that Congress had entire power to vest such discretionary power in any one, "especially in an officer of the Government," and that in the absence of fraud "or misconduct in the officer, it may will be questioned whether the relators had not acquired such a vested right as to be *beyond the power* of Congress to deprive them of it."

In the second case the question arose upon the execution of a resolution of Congress which devolved certain duties upon the Secretary of the Navy, as the head of one of the Executive Departments of the Government, in the ordinary discharge of his official duties. The decision was delivered by Chief-Justice Taney, and among other things it is said:

> In general such duties, whether imposed by act of Congress or by resolution, are not *mere ministerial duties.* The head of an Executive Department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress under which he is from time to time required to act. If he doubts, he has the right to call on the Attorney-General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the heads of Departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion were to be exercised.

In the case now under consideration, it is clear, from the terms of the act of July 1, 1870, that it was the duty, as well as power, of the Secretary to lease, "for a term of twenty years from the 1st day of May, 1870, the right to engage in the business of taking fur-seals on the islands of Saint Paul and Saint George, and to send a vessel or vessels to said islands for the skins of such seals."

It is also clear from the terms of the act that, in making such lease, the Secretary of the Treasury was made the judge to determine who were "proper and responsible parties," what "was the best advantage of the United States," and what was a "due regard to the interests of the Government, the native inhabitants, the parties heretofore engaged in the trade, and the protection of the seal-fisheries."

It is also made to appear before the committee that all these duties were carefully examined and considered by the Secretary of the Treasury in executing the powers conferred by the act.

Certain questions arose touching the proper construction of the act, and the manner of procuring offers, and the rights of various bidders, upon which the Secretary, having doubts, called to his aid the counsels of the Attorney-General.

Your committee are unable to find that the Secretary of the Treasury, in making the lease, exercised any power not granted by the act of Congress, or exceeded the power granted by said act, and that, as a question of power, the lease made "was made and executed in pursuance of law."

2. As the power to decide was thus clearly confided by the act to the Secretary, the only question remaining is, does the evidence show that the decision rendered by that officer was procured, or in any manner in

fluenced, by fraud practiced upon him by the lessee, or by any fraudulent combination or collusion between the officer and the successful bidder.

It is charged that others, and especially the parties represented by Louis Goldstone, made a higher bid than that made by the Alaska Commercial Company. The sufficient reply to this is, that the amount of the bid was not made by the act of Congress the sole, nor, indeed, the chief, consideration for the Secretary to weigh in awarding the lease. The act itself fixes the minimum rental, and then proceeds to confide to the Secretary of the Treasury several other matters for decision in the execution of the law.

It is alleged again that the form of the bid made by the Alaska Commercial Company was not legal, and should not have been allowed or considered, and that there was fraud or wrong in allowing this company to take any benefit under the offer "to give as much as any other responsible bidder," &c. The evidence shows that this question was carefully considered by the Secretary, and that he felt constrained, under the language of the act, the facts before him, and the decision of the Attorney-General, to treat the Alaska Commercial Company as occupying preferred ground. He was required to make the lease with *due regard* to the interest of "the parties heretofore engaged in the trade."

Who were the parties thus engaged was a fact left by the act to the Secretary to ascertain. What was due regard to their interests was a question left by the act to the Secretary to determine. In the language of Judge Story, "he was made the judge, in the first instance, of the law and the fact," and, without fraud, his decision must stand. We cannot discover any fraud, or favoritism to the Alaska Commercial Company, in a decision which *required* them, in spite of their position of preference under the act, to give as much for rental as any other persons were willing to give.

The committee will refer but briefly to the charge of actual fraud and corruption which has been intimated against Secretary Boutwell in connection with the lease under investigation.

It is certainly one of the highest duties devolved upon the representatives of the people to guard with sleepless vigilance the interests of their constituents and the integrity of public administration from all the approaches of what history abundantly proves to be the most insidious and the most deadly enemy of free institutions—official corruption. But it is equally their duty to protect the characters of those intrusted with the public administration from unjust aspersions, which experience abundantly shows are often made by disappointed applicants for place and favor. If worthy officials, who care all for character, be not protected from reckless or unfounded calumnies, then it will not be long before only unworthy men, who care nothing for character, will accept official station.

In the present case, after nearly four months of patient investigation, during which time the doors have been thrown wide open for all who knew, or thought they knew aught of evil or corruption in this transaction against the Secretary of the Treasury, no fact has been elicited which can justify or even excuse the charge of corruption, or of even partiality or favoritism; nor is there any evidence that the Alaska Commercial Company attempted to practice any fraud upon the Secretary or his subordinates.

On the first question, therefore, submitted for investigation under the resolution of the House of Representatives, the committee report, that the lease from the United States to the Alaska Commercial Company of