

OPINIONS

OF THE

HON. EDMUND RANDOLPH, OF VIRGINIA:

APPOINTED TO THE OFFICE OF ATTORNEY GENERAL OF THE
UNITED STATES SEPTEMBER 26, 1789.

INTEREST ON CERTIFICATES FOR 1791.

Interest on certificates issued pursuant to the act of Congress passed August 4, 1790, is not allowable, and the courts would embarrass a system of finance by a determination in favor of interest for the year 1791.

PHILADELPHIA, *August 21, 1791.*

SIR: In the opinion given by Mr. Bradford and Mr. Ingersoll, I find the case of Mr. Robert Buchanan to be accurately stated; but after paying a respectful attention to the sentiments of those gentlemen, I am compelled to say that I differ in the conclusion drawn from that statement, for I cannot agree that any interest is to be received upon the certificate for the year 1791.

I acknowledge that the certificate was issued in conformity with the act of Congress passed on the 4th of August, 1790, and that its silence as to interest is no objection to such a claim, if that act warrants it.

A subscription to a loan is therein proposed, payable in certificates issued for the domestic debt. Among these are some bearing an interest of six per cent., and others, called indents of interest, bearing no interest at all. Mr. Buchanan's certificate is founded upon indents of interest; and had they been subscribed, he would have been entitled to a certificate purporting that the United States owe to him, as the holder, or his assigns, the sum of \$7,500, bearing an interest of three per centum per annum.

He has not, however, subscribed those indents, but obtained the certificate from the Register of the Treasury before the 1st day of June, 1791, to wit: on the 16th of February, 1791, in pursuance of the tenth section of the above-mentioned act. Upon the construction of that section the decision depends.

Interest on Certificates for 1791.

The opinion asserts the first part of that section to be a substantive clause, and yet in the next sentence it connects that clause with the following parts of the section. The truth is, that the section itself forms one integer. The term *creditors* comprehends all holders of the domestic debt which might be subscribed to the loan, and was not. It is immediately afterwards directed that such of them as possess the original certificates should exchange them for others, to be issued by the Register of the Treasury; consequently all the non-subscribing creditors are under the necessity of making this exchange, and, being so, must submit to the conditions prescribed for it.

One of these conditions is, that the new certificate shall not only specify the specie amount of those which are cancelled, but shall be *otherwise* of the like tenor with those heretofore issued by the Register of the Treasury for the registered debt. These import that the debt bears an interest of six per centum; and it is not denied that a new certificate given in lieu of cancelled indents, cannot carry an interest of six per centum. The question, then, is, whether a new certificate, which is not upon the most sanguine construction capable of a higher interest than three per centum, is of the same tenor with one granting an interest of six per centum?

It does not seem to be correct to resort to the popular and common acceptance of the words "*like tenor*," when they are known to be peculiarly technical. Nor can I admit that this acceptance would establish in this instance a likeness of tenor between two papers, so substantially different as in three per cent. per annum. The gentlemen, by confining their exposition to popular acceptance, virtually concede the interpretation of *law* to be against them. And without entering into prolix authorities, I take the liberty of saying that in every law-proceeding which I can call to mind, it would be decided that there is a *material variance* between two such documents; and therefore that they could not be of the same tenor.

But let us not content ourselves with resting on the criticism of single words: let us rather examine the context.

It is not for me here to estimate the merit of any scheme of finance: my office is to ascertain the sense of Congress. It strikes me, then, immediately, that the principal was far more

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respected than the interest, and that the higher interest allowed to the former was intended to correspond with that stipulated by the old certificates, whereas no interest was originally stipulated on the latter. It appears probable that, being anxious that all the indents of interest should be subscribed, they might have satisfied themselves of the propriety of distinguishing between subscribed and unsubscribed indents, because interest, not being *demandable* on the face of them, might in some measure be considered as a gratuity, which the legislature might apportion at pleasure.

That such was the meaning of Congress, is confirmed by the first clause in the tenth section itself, which gives to non-subscribing creditors interest during the year 1791, *including interest* to the last day of December, 1790; thus showing that creditors whose demands would carry interest to that time by force of the contract, were the persons contemplated: of this kind were indents for interest. And this idea receives confirmation from the care used in the third section to be explicit as to certificates carrying no interest, when they are really designed.

Upon the whole I cannot persuade myself that, with these strong features, indicating the purpose of Congress, the courts of the United States would embarrass a system of finance by a determination in favor of interest to Mr. Buchanan for the year 1791.

I have the honor, sir, to be, with great esteem and respect,
your most obedient servant,

EDM. RANDOLPH.

To the SECRETARY OF THE TREASURY.

COMMISSIONERS OF THE BANK OF THE UNITED STATES.

The commissioners appointed in pursuance of the act incorporating the Bank of the United States have no power, as such, to superintend the election of directors, or to interfere therein.

PHILADELPHIA, *October* 18, 1791.

THE Attorney General of the United States does himself the honor of replying to the questions propounded by the Secre-