

In Congress Jan: 8: 1778

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The committee to whom the letters that passed betwixt general Heath & gen. Burgoyne, & the letters from general Burgoyne to general Gates were committed brought in a report; which was taken into consideration & agreed to; as follows

"That they have considered with mature attention the convention entered into at Saratoga betwixt major general Gates & lieutenant general Burgoyne in October last, & find numbers of the cartouch boxes, & several other articles of military accoutrements annexed to the persons of the noncommissioned officers & soldiers in gen. Burgoyne's army, have not been delivered up, & that agreeably to the ^{spirit of the} convention, & the technical interpretation of the word "arms", they ought to have been delivered up. This opinion is ~~not~~ warranted not only by the judgment of the most approved writers, but by the interpretation & practice of British officers in similar cases in the course of the present war, particularly in the capitulation of St. Johns on the 2 Nov: 1775

Your Committee farther report, that there are so many other circumstances attending the delivery of the arms & military stores, which excite strong suspicions that the convention has not been strictly complied with, on the part of general Burgoyne agreeable to its true spirit, & the intention of the contracting parties, & so many instances of former fraud in the conduct of our enemies, as to justify Congress, however cautious to avoid even the suspicion of want of good faith, in taking every measure for securing the performance of the convention, which did not impose any new condition, nor tend to delay its execution.

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Of this nature Your Committee consider the resolution of Congress of the 8th of November last, directing general Heath "to cause to be taken down the name of rank of every commissioned officer, & the name, former place of abode, occupation, size, age, & description of every non commissioned officer & private soldier, & all other persons comprehended in the convention of Saratoga". This cannot be considered as imposing any new condition, but as a measure naturally resulting from the articles of convention, which the conquering party has a right to avail itself of, & which is strictly justifiable, had no just suspicion of the want of good faith in the party surrendering presented itself. Your Committee are of opinion, that the reasons which general Burgoyne adduces for refusing a compliance, are inapplicable to the case; & they beg leave to observe that he is totally mistaken in his appeal to the conduct of Sir Guy Carlton of himself with respect to the prisoners released from Canada in August 1776. For notwithstanding his express declaration to the contrary, in his letter of the 23rd of Nov^r last to general Heath, it appears from the original list of the prisoners released from Canada, which is herewith presented, that the provinces, counties & towns, to which the prisoners released belonged, were annexed to their respective names, which for the greater security of the conquering party were in the handwriting of the respective prisoners. Your Committee therefore cannot but consider gen^l Burgoyne's refusal to give descriptive lists of the non commissioned officers & soldiers belonging to his army, when connected with his former conduct, & ill grounded assertion on this occasion in an alarming point of view; more especially when they consider that, nine days previous to this refusal, he had without just cause given declared in a letter to general Gates, that the public faith plighted in the convention of Saratoga was broken on the part of these States.

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This breach of public faith is of a most serious nature, pregnant with alarming consequences, & deserves greater attention, as it is not dropped in a hasty expression, dictated by sudden passion, but is delivered as a deliberate act of judgment, committed to writing, & sent to the general with whom he made the convention. And if credit is to be given to gen. Burgoyne's account of himself in his letter to general Heath of the 23rd Nov. he cannot be considered "of so light a character as to have acted in a serious matter of state upon a sudden impression".

The reason on which he grounds this charge is, that the officers & included in the convention have not since their arrival in Massachusetts Bay been accommodated with quarters agreeable to their respective ranks. On which, Your Committee beg leave to observe, that though from the sudden & unexpected arrival of so large a body of troops, the concourse of strangers in & near Boston, the devastation & destruction occasioned by the British army not long since blocked up in that town, & by the American army which besieged them; & considering that the officers were not to be separated from their men, & that the troops could not be quartered with equal convenience in any other place within the limits pointed out & described in the convention, as there are not a sufficient number of barracks in any other part of that State; though from these & many other ^{unavoidable} circumstances, the accommodation of general Burgoyne & his officers might not be such, as the public could wish, or he expect, yet his charge of a breach of the public faith on this account is not warranted either by the letter of the preliminary articles agreed on, between himself & gen. Gates on the 14. of October, or by the spirit of the convention signed on the 16. of the same month: since by an examination of these articles it will appear, that the stipulation, with respect to the quartering of officers, was not to be construed in that rigorous sense in which general Burgoyne affects to consider it, but on the

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contrary, that it was "agreed to, as far as circumstances would admit."

Your Committee forbear to lay any stress on the attempt of the enemy to alter the place of embarkation from the port of Boston to that of Rhode Island or the Sound, so contiguous to the port of New York, which is well as that of Rhode Island, is at present in their possession; on the seemingly inadequate number of vessels, (being only 26 transports sent to Rhode Island as appears in a letter from general Pigot to general Burgoyne dated 5 Dec^r.) for an army consisting of 5642 in a winter's voyage to Europe or on the improbability of the enemy's being able on so short a notice to victual such a fleet & army; for a voyage of such length; since the declaration of lieutenant general Burgoyne that the public faith is broken, is of itself sufficient to justify Congress in taking every measure for securing the performance of the convention, which the laws of nations in consequence of this conduct will justify.

These facts & opinions, Your Committee in a matter of such high moment to the honor & safety of these States, esteem it their duty to report specially; & considering that general Burgoyne has not fully complied with the convention of Saratoga, particularly in not delivering up the cartouch boxes & accoutrements; that he has expressly & without just foundation charged these States with a breach of public faith; that in consequence of this declaration, whilst in our power, he may deem himself & the army under him, absolved from their compact, & may therefore have refused compliance with a measure naturally resulting from the convention, & which only tended to render his officers & men insecure; in case the convention on their part was not complied with; considering farther, that from the distance between America & Great Britain, there is no opportunity of accommodating this dispute in any reasonable period of time, with the sovereign of the State, in behalf of which this convention was made; & that the

the operations of gen. Burgoyne's army in America would not only defeat the main object of the convention, but prove highly prejudicial to the interest of these States, Your Committee submit the whole to the consideration of Congress, in order that such measures may be adopted as are consistent with the safety & honor of the United States".

Whereupon Congress came to the following resolutions;

Resolved, That as many of the cartouch boxes, & several other articles of military accoutrement annexed to the persons of the non commissioned officers & soldiers included in the convention of Saratoga have not been delivered up, the convention on the part of the British army has not been strictly complied with.

Resolved, That the refusal of Lieut. gen. Burgoyne to give descriptive lists of the non commissioned officers & privates belonging to his army subsequent to his declaration that the public faith was broke, is considered by Congress in an alarming point of view; since a compliance with the resolution of Congress could only have been prejudicial to that army in case of an infraction of the convention on their part.

Resolved, That the charge made by Lieutenant gen. Burgoyne in his letter to major gen. Gates of the 14. Nov. of a breach of public faith on the part of these States is not warranted by the just construction of any article of the convention of Saratoga; that it is a strong indication of his intention, & affords just ground of fear, that he will avail himself of such pretended breach of the convention, in order to disengage himself, & the army under him of the obligation they are under to these United States; & that the security which these States have had in his personal

Honor, is hereby destroyed:~

Resolved therefore,

That the embarkation of Lieut. gen. Burgoyne, & the troops under his command be suspended, till a distinct & explicit ratification of the convention of Saratoga, shall be properly notified by the court of Great Britain to Congress.

Attest

Chas Thomson J. J.

By order of Congress

Henry Laurens,
President.