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CONGRESS
OF THE UNITED STATES.
HOUSE OF REPRESENTATIVES.

Tuesday, Feb. 16.

Debate on the bill received from the Senate, entitled "An act to repeal certain acts respecting the organization of the courts of the U. States."

Mr. THOMPSON—I find the opinions I entertain, so extremely adverse to the sentiments yesterday expressed on this subject, by the honorable gentleman from North Carolina, (Mr. Hence [illegible]) who opened the debate and the honorable gentleman from Pennsylvania (Mr. Hemphill) whose great ingenuity I feel pleasure in acknowledging, that I feel myself impelled to offer to the consideration of the committee a few observations in reply to the arguments offered by those gentlemen. But Mr. Chairman, whilst I pay the tribute of my respect to the eloquence and ability with which the gentleman from North-Carolina has displayed in the dissolution of this subject, I must pray that honorable gentleman to pardon me when I declare myself unable to follow him, when soaring on the wings of fancy and imagination across the Atlantic, and presenting to our view in the most vivid colours which his image can paint, the spirit of innovation wresting morality and good order from her throne. Nor will I pretend, sir, that my humble genius will enable me to pursue him, when he forces this disorganizing spirit of innovation to mount the whirlwind and ride on the storm. For, sir, with so high talents as I am enlightened with, I have no objection to going into the consideration of the question before this committee, and pursuing the order which the gentleman has said the gentleman has proposed to suggest, as the most natural one in which the subject can be divided—that is to say—The power of the legislature to pass, and lastly, the expediency under the existing state of things, of passing the bill now on your table.

Under these two heads I will endeavor to meet, as far as I shall be able to recollect them, the most important observations which have been used by the gentlemen, and I will beg leave in the first place to call the attention of the committee to the 8th section of the 1st article of the constitution, which has been very slightly touched on by the gentleman from North Carolina, and which has been attended to, with much ingenuity by the gentleman from Pennsylvania. By this section the legislative powers of congress are defined. Congress shall have power, says the constitution, to levy taxes, to borrow money, to coin money, and among a variety of other powers, "To constitute tribunals inferior to the supreme court." It is an axiom in politics, that a ordaining power always embraces a repealing power; if congress have a right to constitute courts they have a right to modify and to annul the courts so constituted; this is not an option merely discretionary power to be exercised, or not exercised, as congress shall think conducive to the public welfare; the granting a power does not oblige the exercise of that power; but where the exercise of power make the laws resulting from that constitutional exercise of power, irrepealable and irrepealable. The same constitution giving this power, gives various other powers as I have already shewn; yet it has never been contended that the laws passed under these conceived powers are irrepealable. Still, on a party of reasoning with a reference to this particular section of the constitution, that the laws relating to the judiciary establishment of the United States are irrepealable, so that the various laws passed under these granted powers, relating to your revenue, to your army, to your navy, to your mint, be irrepealable. But every gentleman knows that laws relating to those powers have been passed, have been annulled, and have been repealed; and in like manner has the law establishing the judiciary system. Without carrying you through the tedious detail of the 25 or 27 laws, which have been passed upon this subject, it will be quite sufficient for my purpose to notice the law of the 1st session of congress; the 25th section of which begins in these words: "And be it further enacted, that circuit courts of the United States heretofore established shall cease and be abolished." We travel then to a wilderness, Mr. Chairman, untrodden by human footsteps, our immediate predecessors are at no pains to me, are the pioneers who point out to me the path we should pursue for the benefit of our country. They have not only abolished the circuit courts, but reorganized the whole system—they have instituted new courts and new judges, and they have vested the duties of the judges of the supreme court. To say that a subsequent legislature has not right to repeal a law of the precedent legislature, is to proclaim such precedent legislature infallible.—Are they are more just, more wise, more competent to the exercise of their functions than any legislature which shall follow them. It is a contradiction to the progress of knowledge, and of the improvements which may result from experience—it is a denial of the utility of frequent elections; because that legislature which had attained the acme of perfection was to be permanent and unchangeable. The law passed at the last session, which I have just now stated having modified the courts of the United States, includes the power of modification to be in the legislature. But, sir, even this concession, such as it is, is now by the arguments of gentlemen, so clogged with appendages, so qualified by expositions, that it will with one breath, the power of modification is admitted, with the very next breath power is withheld, it is rendered useless; for, says the gentleman from North Carolina, a subsequent legislature of the government has been elected, called the judiciary, not holding their offices during pleasure, but during good behaviour, and they never power attempts to deprive them of their offices violates the constitution. It is admitted then congress have power to modify the laws; but it is said that they have power to abolish the offices of the judges.

I wish to enquire, Mr. Chairman, by what tenure judges hold their offices—"The judges both of the supreme and inferior courts, shall hold their offices during good behaviour." Const. art. 3, sec. 1. Gentlemen from North-Carolina acquiesce, if they hold during good behaviour, how then are we to pull down the constitutional support with which they are entrenched? How to use he (gentleman's own expressions) are the judges to be hurled from their offices? There is no gentleman, Mr. Chairman within the walls, who would more sincerely wish the judiciary to possess a due and proper independence than myself; but although I do not admit the right of the legislature, to hurl these judges from their offices, yet I must contend and ever shall contend for the right which congress possess to abolish an office, or in other words to repeal a law creating an office, whenever it shall be plainly proved to them that such an office is unnecessary, and oppressive. They may hold their offices during good behaviour, if their offices exist; must certainly the moment the office is legally destroyed, that is the moment the law establishing the office is repealed, there must be an end of the tenure. Those sages who formed the constitution, Mr. Chairman, never contemplated a priviledged order of men in that society for whose happiness they formed that instrument. The exposition which is not given to it, is very different indeed from that which was intended by them.—I have read, & have heard, sir, that this is a government of experiment. That in the annals of nations it has no [illegible]—No prototype—The effects of this particular department of the government were not better understood than the effects of the other departments of the government—it was to be tested by experience the touchstone of truth; if one system in its operations did not answer the expectation of the legislature ample room was allowed for the introduction of some other, and for the abolition of the former; hence come the expressions of "this time to time ordain and establish"—What says the constitution? "The judicial power of the United States shall be vested in one supreme court, and such inferior courts as congress shall from time to time ordain and establish" Congress may this, or Congress may not from time to time ordain and establish courts. But if they establish courts, so likewise may they abolish courts. Into what a variety of absurdities shall we be plunged, if we reject this reasonable interpretation? The right to modify the law being conceded but not the right to deprive the judges of their offices, our country would exhibit a spectacle which it never has yet and I hope never will exhibit—officers without offices—judges without courts—A privileged order out of the reach of the constitution (for being deprived of their offices, they cannot be impeached) drawing money from the treasury & rendering no services for their salaries. Thus the meaning of that constitution which declares, that "the judges during their continuance in office shall receive a compensation for their services—a compensation?" But suppose Mr. Chairman, they perform no service—Suppose there be no service for them to perform, what then is to be their compensation? Will the judge say to the legislature, increase my duties, make them proportionate to my salary, and I will perform them? Not so, Mr. Chairman—an increase of salary is never objected to; a diminution of duty is never objected to; but if duties are increased, salaries must also be increased. If I understand the word compensation, it signifies something given for a something performed. But if there be no duty performed (and if there be no office there can be no duty) then there ought to be no compensation. In the English langua e there is such a word as sinecure. This is a word, Mr. Chairman, which as yet we not practically understand. This is a word abhorrent to the spirit of our constitution. Yet, sir, if the construction of the constitution, which is now contended for, be admitted, this will be a word which we shall soon practically feel, and practically understand. We shall have a set of men receiving the public treasures, not in consideration of public services, but without any service whatever being performed; or in other words we shall lay the foundation of a sinecure system, the consequences of which will be inestimable, and the effects of which will be indubitably destructive.

But, Mr Chairman, I will shew you a precedent & a recent one too, where the legislature put a different construction upon the constitution: I will shew you a precedent where a federal congress, over immediate predecessors, did not hesitate to exercise the power we contend for; by the 27th Sec. of the law of the last session, which I have had occasion before to advert to, the circuit courts are abolished. Then that congress not only thought themselves justifiable, in touching the judges of the inferior courts, but of the supreme court likewise; for you will find that the same law which constituted the supreme court, allotted to the judges of that court, particular and express duties or offices, that is to perform the duties of a judge of the supreme court, as is in that law defined, and to perform the duties of a judge of the circuit court as is likewise defined in that law; and in abolishing the circuit courts, half the office of the judges of the supreme court were abolished.

Perhaps, Mr Chairman, that congress has as great a right to abolish the whole office as half the office; but whether that was an infraction of the constitution, or whether it would be an infraction of the constitution to abolish the office of a judge of the supreme court, I will not now detain you to enquire because it appears to bear but little upon the immediate subject before us, it not being the intention of the bill, as I understand it, to interfere with the offices of the judges of the supreme court further than to restore them to that firm, that rightful, that constitutional ground, on which they stood previously to the passage of the law of the last session, and to all the duties and immunities of which I most sincerely wish to see them restored.

But Mr. Chairman, the gentleman from Pennsylvania has informed us, it is acknowledged that the law of the last session is constitutional; in this I can by no means agree with that gentleman. There is one section in that law, sir, which to my humble opinion is a flagrant violation of the constitution. By the 28th section of that law, the district courts of Kentuckey and Tennessee are abolished. Had our predecessors stopped at this point we should have no cause on this day to charge them with a violation of their charter, they would have done no more in principle than we now contend we have a right to do. But they went further—they usurped a power in my opinion, not given them by the constitution, they usurped a power exclusively vested in the president and senate. By the 7th section of the same law, the judges of the district courts of Kentuckey and Tennessee, are appointed circuit judges in fact, not indeed in name, but in reality the duties of the circuit judges of the sixth circuit are assigned them.—The district courts of Kentuckey and Tennessee are abolished, and I wish to be informed if they are not circuit judges to all intents and purposes, and I wish further to be informed, if they are not circuit judges appointed by the legislature, and in direct violation of that article of the constitution, which has in the most express term, vested this power in the president and senate—sir, did I apprehend the gentleman from Pennsylvania a right, when I understood him to say the name of a judge does not define or constitute the duty of a judge?

This is indeed a melancholy exemplification.—Shall I be told that by the law they are stiled district judges? How long, Mr. Chairman, are we to be imposed on by sound, how long are we to be entangled with the cobwebs of sophistry. But, sir, the gentleman from North-Carolina has warned us, solemnly warned us, against a violation of the constitution. Was that gentlemen a member of this house, when the law which I have just been speaking of passed? I perceive by your journals that he was—why then, sir, were not these acclamations, which he now experiences, with such exquisite sensibility, awakened? Why were they not awakened a year ago, when he might perhaps have prevented an actual violation of the constitution? I ask the honorable gentleman, sir, when with a sacrilegious hand this vital wound was inflicted on the constitution, if he raised no plaintive cry of fame, oh! [illegible] constitution of my country? Yesterday, sir, the gentleman informed us if the bill on your table should pass he would heave no sigh, he would drop no tear over the expiring constitution. When that law passed, did he heave no sigh did he drop no tear? Oh no, sir, very different was the conduct which was then pursued. With cool, with cruel deliberation, the devoted victim was immolated and the blood which issued from the gaping wound will forever stain the pages of your statute books.

Mr. Chairman, the expediency of the law now under consideration, and the propriety of adopting a measure of this nature, at the present time, have been so fully and so satisfactorily discussed in the senate, not many days ago, that to this point I shall apply but few observations. Coming from a state where justice is administered with promptness and frugality, I confess that the stupendous fabric of the federal judiciary excites my astonishment. I had, sir, supposed, that the document which has been furnished by the executive, would be a full and compleat answer to any thing he could be said on this division of the subject; but, sir, the gentleman from Pennsylvania, has informed us that if he undecided causes of the state of Maryland were added, the aggregate number of depending causes in the courts of the United states would, probably amount to fifteen hundred, and the enquiries if it is practicable for the courts, also the repeal of the law of the last session, to determine this number of causes, scattered over the United States. Sir, when I call my eyes across the Potomack, and call to my recollection the system of jurisprudence established in my country, I cannot hesitate a moment in giving him an affirmative answer.

I have not, Mr. Chairman, nor was it possible for me to procure, documents from the district courts of my state to shew to the committee the number of suits which are depending in them. But, sir, when I reflect how often I have seen a venerable citizen of that state, respectable for his great learning, respectable for his irreproachable life, and respectable for his years (being aged I believe full seventy) who is judge of the high court of chancery there, devoting his days and his nights to the avocations of his office, in the plain garb of a common citizen, dispensing justice and satisfaction to the multitudes of citizens whose causes are tried before its tribunal; when I reflect on the number of decisions which are made in his court in the course of a year; and when I overlook a document which I have now in my possession from the clerk of that court, and which I shall presently offer to the view of this committee, I can have no difficulty in pronouncing the sincere opinion which I entertain that he performs more duty, and perhaps with greater ability, than the whole judicial corps of the United States. [Read the document from the clerk of the high court of chancery of Virginia.]

And what, Mr. Chairman, is the compensation which this venerable citizen receives? Five hundred dollars—no more—compare this with the sum which supports and decorates the fair composite column, which we are informed is one of the strong pillars of our government; and to touch which we are told will occasion the beautiful fabric to tumble in the dust. Have we not state courts diffused in abundance over every commonwealth composing this union? Are they not competent to the decision of all cases of controversey between citizen and citizen? Where then was the necessity of the law of the last session which ramified and increased these courts? But, sir, the honorable gentleman from North Carolina has found another state for them; he has told us, the people when they established this constitution did not delegate the power of legislation to the house of representatives alone. They established the senate as a check upon the house of representatives, knowing the violent impulses which often actuate popular assemblies, they gave the president too the power of negative laws. When a law had passed these various branches of the government, it became necessary to erect a third department, called the judiciary, not holding their offices during pleasure, but during "good behaviour"—Did I comprehend the argument of gentlemen when I supposed it went to the establishment of this department, as a check upon the legislature, and did I comprehend the argument of the gentleman from Pennsylvania when he cited judge Patterson's charge, which I have not seen but from which, as he read, I noted these words "I hold it to be the duty of the court in such case, to declare the law null and void." If I have not misunderstood the gentleman, I confess my eyes are now opened. I begin to feel some of these apprehensions which, have been so strongly talked about, & which heretofore I have not been accustomed to experience. No, sir, from a fear of usurpation of power on the part of the legislature—for they are biennially responsible to their constituents for the sacred observance of the charter of their rights; not, sir, from a fear of usurpation of power on the part of the executive, for the term of his service is limitted to four years, and therefore he is liable to lose his office in case of an infraction of the constitution on his part; but from a desire which I fear this check department of the government has to grasp at all power—Give the judiciary the check upon the legislature, allow them the power to declare your laws null and void, allow the common law, a system extending to all persons and to all things, to be attached to the constitution, as I understand it is contended; and in vain have the people placed you upon this floor to legislate; your laws will be nullified, your proceedings will be checked. As long as the office exists the judge holds it during good behaviour; he is then independent. Being independent, and not having that degree of responsibility attached to his office which is attached to the legislature or to the executive, the powers granted by the constitution are to be strictly construed; nothing is to be left to implication; nothing to construction, the letter is to determine the extent of their power, and I conceive it never was intended they should transcend it.—I have, sir, looked into the constitution with a scrutinizing eye, to discern, if possible, whence these pretensions are derived. There are but two clauses of the constitution, which can even give a pretence for the power which is contended for. The first is as follow: "The judicial power of the United States shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority."—To declare a law null and void is certainly not such a case, either in law or equity, arising under the constitution, as was contemplated to be embraced by the paragraph I have cited. It will be in vain to say, that without such a construction the constitution cannot be satisfied. I am not now to learn that there are two descriptions of cases which will be fully sufficient to satisfy the terms there expressed in their utmost extent, as where cases shall arise between citizens of different states, or between citizens and foreigners which are to be decided either by state laws or by foreign laws; or where cases shall arise between citizens of the same state in consequence of an unconstitutional exercise of power on the part of the state in emitting and making bills of credit a lawful tender. The other clause of the constitution is as follows: "This constitution and the laws of the United States which shall be made in pursuance thereof, &c. shall be the supreme law of the land and the judges in every state shall be bound thereby."—It is certainly from the words with which it concludes, was intended as an instruction or direction to the judges of the state courts; and if they were transgressions would more fully communicate the intention with the preceding in this form, "The judges in any state shall be bound by this constitution, &c." Is there any reasonable person, sir, after this explanation will say, that by either or by both these clauses a power is given to your judiciary to declare your law null and void? They may, to be sure, for a while impede the passage of a law, by a section against its constitutionality; yet notwithstanding the law is in force, is not nullified and will be acted upon whenever there is a change of opinion.—The legislative, executive and judicial departments should be kept separate and distinct.—This I agree to, it has become an axiom in politics that they should—Yet I enquire will this be the case, if you allow to the judiciary the power to annul your laws, and concede that the common law is attached to the constitution? I am persuaded you hereby concentrate all power in one department. The common law is the constitution; and the court may, if they please, declare it void.

But I have not heard it explained whether the common law simply without statutory amendments—or the common law with statutory amendments—or with what statutory amendments is to be attached to the constitution? I believe it is intended they have a right to apply such parts of it as are applicable to the constitution. The common law extends to all persons and all things. The judges have the right of adopting this law, of such parts as they deem applicable; they can annul your laws. If these powers are really contended for on the part of the judiciary, and if these powers should ever be conceded they would without doubt possess an unlimited and uncontrollable power of legislation. I am free for my own part to declare that I had rather live under the government of a lenient despot than such a government of judges. And if those powers are really contended for I feel no hesitation in informing you, Mr. Chairman, that this is the tree where despotism lies concealed. And this too is the suspicious moment, when those branches should be pruned away, which of late have vegetated with extraordinary luxuriency. But, sir, nurture it with your treasure stop not its ramification, and suffer me seriously to enquire what will be the consequence? It will overshadow your extensive republic, your soil will become too sterile for the plant of liberty; your atmosphere will be contaminated with its poisonous effluvia, and your soaring eagle will fall beneath its sway.

(To be continued.)

REPEAL OF TAXES.

The Committee of Ways and Means, who were instructed to enquire into the expediency of repealing the laws laying duties on stills and domestic distilled spirits, on refined sugars, licences to retailers, sales at Auction, pleasurable carriages, stamped vellum, parchment and paper, and postage on news-papers, of the 8th instant,

REPORT,

THAT the whole amount of revenue arising from those duties, exclusive of postage on newspapers, as appears by the statements laid before the House, by the Secretary of the treasury, on the early stage of the session, did not exceed for the year 1800, 911,000