

SENATE OF THE UNITED STATES. Wednesday, Feb. 3, 1807. JUDICIARY SYSTEM.

[As we entered the Senate Chamber at a late hour we shall not attempt to give all the Speeches in succession. This is the less necessary from the great length at which the debate has been already detailed. But the two following speeches we have thought it important to publish, as they present views in some measure new, and certainly deeply interesting.]

Mr. Brakenridge said, that he did not expect to have risen again on this subject, more especially at so late an hour; (about 5 o'clock) but that he would beg leave to answer a single argument which had been much pressed to-day, and he would promise to detain the house but a few minutes.

I did not expect (continued Mr. B.) to find the doctrine of the power of the courts to annul the laws of congress, which they considered unconstitutional, so seriously insisted on.

Indeed I do not think it relevant to the subject before us; but as it has been insisted on, I shall not, I presume, be out of order in replying to it. It is said that the different departments of the government are intended by the constitution to operate as checks on each other; and that this power is lodged with the courts to check the legislature. If this be even true, without enquiring into the policy and wisdom of this deposit of sovereign control, in the courts, I would ask, who checks the courts if they violate the constitution? Would they not by this doctrine have the absolute direction of the government? To whom are they, under the constitution, intended for by gentlemen, responsible? But I deny the power, and ask gentlemen to point out that part of the constitution which grants it. I can find no such power. Is it not remarkable, that if the courts possess this high power, it should not appear in the letter of the constitution & implication only? And is it not truly astonishing, that the constitution should, in its abundant care to separate and accurately define the powers assigned to each department, have omitted an explicit declaration, on so important a power, as that of the courts to nullify all the acts of Congress, which in their opinion, were contrary to the constitution.

Never were such high and transcendent powers in any government, much less in one like ours, composed of powers specially given and defined, claimed or exercised by construction only. The doctrine of construction is not warranted by the letter of an instrument, is dangerous in the extreme. Let men once loose on constructions and implications, and at what point will you stop them? Is the *Albatross* of English judges, in discovering the latent meanings and intentions of law makers, meanings not expressed in the letter of the laws, to be adopted here in the constitution of the constitution? Once admit the doctrine, that either judges or legislators are to be indulged in these allusions and wild constructions, to enlarge their own powers, or to control those of others, then I would join the gentlemen in the opposition in declaring, that the constitution would indeed be in danger.

To make the constitution a practical system, the power of the courts to annul the laws of congress cannot possibly exist. My idea of the subject, in a few words, is: That the constitution intended a separation only of the powers vested in the three great departments, giving to each the exclusive authority of acting on the subjects committed to each: That each are intended to revolve in his sphere of their own orbit, and are responsible for their own motion only; and are not to direct or control the course of the others: That those for example who make the laws, are presumed to have an equal and mutual, and interrelated in the constitution, are equally bound by oath to support it, and have an equal right to give a construction to it: That the construction of one department of the powers particularly vested in that department is of as high authority at least, as the construction given to it by any other department; that it is in fact more competent to that department to which powers are exclusively committed, to decide upon the proper exercise of those powers, than any other department, to which such powers are not intrusted, and who are not consequently under such high and responsible obligations for their constitutional exercise; and that therefore, the legislature would have an equal right to annul the decisions of the courts founded on their construction of the constitution, as the courts would have, to annul the acts of the legislature, founded on their construction.

Although therefore, the courts may take upon them to give decisions which go to impair the constitutionality of a law and which for a time may obstruct its operation; yet I contend, that such law is not the less obligatory, because the organ, through which it is to be executed, has refused its aid. A pertinacious adherence of both departments to their opinions would soon bring the question to an issue which would decide, in whom the

sovereign power of legislation resided, and whose construction of the constitution as to the law making power ought to prevail.

If the courts have a right to examine into and decide upon the constitutionality of laws, their decisions ought to be final and effectual. Are gentlemen then prepared to admit that in case the courts were to declare your revenue, impost and appropriation laws unconstitutional, that they would thereby be necessarily blotted out of your statute book, and the operations of your government consequently arrested? It is making, in my opinion, a mockery of the high powers of legislation. I feel humbled by the doctrine, and can offer my protest against it. Gentlemen are not aware of what dangerous lengths it may be extended. Let them therefore, consider well before they insist on an assumption of power by the judiciary, which goes to place the legislature at its feet. Let not so humiliating a condition be admitted, under an authority resting merely on implication and construction. It may invite a state of things, which we are not justified by the constitution in presuming will happen, & which, should it happen, all men of all parties, must deplore.

M. Morris.—I rise to congratulate this house and America, that we have now, this late, reached the true point on which his decision turns. Here I knew we would come. Are we then prepared for a consolidated government of these states? If the doctrine advanced by gentlemen prevail, if it be true, then is there no legislature in America but that of the United States. All the arguments used by gentlemen in the course of the debate went to this end. Now happily the conclusion is avowed.—They ask how you justify this power of deciding on the constitutionality of the laws? They ask, is it in the constitution? They derived it from a higher authority than the constitution; the constitution of man—the organization of human nature. You pass laws; the judges declare their application to individual cases; their decision is final. It must be final. Thence the right of the judges to pronounce on the laws.

Make an end to which you are going. The constitution says "No bill of attainder or ex post facto law shall be passed. No capital or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another. No title of nobility shall be granted by the United States."

Now standing these constitutional prohibitions, suppose a majority of the two houses, and the president pass such laws. A capitation tax, other than that prescribed by the constitution, is imposed. The citizen refuses to pay it. The courts are in the power of the legislature, and they are compelled to enforce its collection.—The honorable member says, the legislature shall decide supremely. A capitation tax then may be laid, and must be enforced in violation of the constitution.—Is this the state to which we are come? If this doctrine be sustained, is there any possible mode of avoiding this conclusion? The moment the legislature determine they are supreme, they become so.

I saw the end to which the arguments of gentlemen went. I would not throw it out to the people. But I begged them to pause and consider before they acted. Before they virtually produced a system of consolidated government. If these prohibitory regulations are gone, where is the safety of the states?

When it was found absolutely necessary to enlarge the powers of the general government, it was said it was dangerous to confer them lest they might swallow up the liberties of the country; and when abroad in the public service, I felt a degree of pain at some things that took place at home, lest too much power should be conferred upon the general government. Why? I knew that if these states were consolidated under one government, we could no longer remain a republic. Attachment to a republican government as the best, having had an opportunity to compare it with other systems, I wished it to remain inviolate. I knew that if the states were once destroyed, the government would soon become, not a mild monarchy, but a despotism.

It may be said the courts are bound by an oath to support the constitution. But when it is once established that you are the constitutional interpreters of the laws, they shall be bound by your constructions.

Mr. Morris concluded by observing that in periods of peace the state governments were deemed most precious; but that when war came, and foreign danger threatened, the national government would be clung to; and that from that moment, if the constitution now contended for prevailed, the national government would be supreme. He, therefore, called upon every gentleman in that body, to say whether he was ready to place the states at the feet of the general government. For this part he entered his protest against it.

EVENTS IN ST. DOMINGO.

The late events in the French colony of St. Domingo are of great magnitude and importance. The congregation of Cape-Francois

Leogane, Aux-Cayes, Petit Ance, and even the plantations in the country, the new clothing of the troops of Toussaint, the fortification of the strong holds in the mountains, the destruction or expulsion of all the whites, the refusal to receive general Le Clerc as commander and governor, the determination in favour of the Americans, with every antecedent & concomitant circumstance, prove a pre-concerted, deliberate and determined plan of conduct on the part of the various colored people. While we sincerely lament the sufferings, which providence has ordained or may yet dispense to our fellow creatures of every complexion, in that fine but desolated country, we trust the Americans will exhibit a marked delicacy and prudence, in conformity with the unquestionable dispositions of the government, on this sad and awful occasion.

While we deplore the immense sacrifices of property & of human happiness & lives which have arisen and may arise out of the calamitous posture of affairs in St. Domingo, we doubt not that our government and countrymen will consider this momentous case as it may affect the concerns of the United States. It appears highly probable that there will be sudden, violent and complete temporary revolution in the agriculture and exportations of that noble colony. That teeming soil, which in 1789 brought forth more than two hundred millions of pounds weight of sugar, and coffee and cotton and indigo, besides many other valuable though less important articles, will probably for a time be devoted to the production of corn, yams, plantains, bananas and melons. The destruction of plantations, houses, pores, mills, planting implements and utensils, and the scattering of horses, mules, mearcats and the laboring class, will destroy the means and suspend the habits of agricultural industry. Productive labor cannot be expected from so deranged and agitated a population and country.

The first reflection which arises is the probable failure of that supply of molasses which we drew from French St. Domingo. In 1789 its whole produce was little different from four millions of gallons. If we drew from it, half the annual quantity in a few years it will make a vast difference to the American consumers of molasses in substance and of molasses spirit. This article cannot be suddenly imported in the West-Indies and South America.

Of their production of sugar, we took a proportion which must have been immense, for besides our own large consumption, it appears that we exported of sugars of all kinds, in the last year ninety seven millions of pounds weight. It is however true, that we drew much sugar from other sources; and though the long voyage forbids the importation of molasses from India, sugars may be imported from thence.

Similar reflections occur as to other articles produced by the colony of St. Domingo.

It is a fortunate circumstance, that the demands of America for sugar and coffee, (extended for a course of years into several countries east of the Cape of Good Hope) has awakened their attention to the sugar and coffee cultivation. It will be well for our merchants, supercargoes and captains, industriously to spread, in those eastern regions, a knowledge of our great and increasing demand for every species of tropical productions. Extraordinary measures might well be considered, on such an occasion, by our commercial institutions. Doubtless the wisdom of the government will not be unexercised under present circumstances.

It is a dictate of the most obvious policy to the West-Indian, Mexican, and South American colonies to turn their utmost attention and exertions to the production of all those articles (cotton excepted) which were raised in St. Domingo upon to great extent. To them and to their government no hint from us will be necessary, as their nearness and intelligence will afford them quick and perfect knowledge of circumstances, which the remote inhabitants, on the Indian Seas, may learn with difficulty and delay. But even to the best informed of the island and southern colonies the remark will be useful. As the production of sugar, coffee, cocoa, ginger and pineapples, will require more persons than they can make up, to supply the demands of Europe and America, they will find it their true interest to leave to the U. States of America the cultivation and production of cotton and indigo. Our duty is obvious, as it regards both the quality and quantities of these two productions of our soil.

England was not signed; though this "defensible event" as the Paris papers express it, was hourly expected.—The British Government had two frigates at Plymouth who were ordered to hold themselves in readiness to carry the intelligence, as soon as it should be known, to the Cape of Good Hope and the East and West-Indies.

Governor Wall, whose apprehension we mentioned some time ago on a charge of murder, committed while he was in possession of his office in the year 1765, was tried at London on the 14th January, found guilty, and sentenced to be hanged.

The following are the principal articles in the papers we have received:—

PARIS, 21st January.

"They write from Amiens, under date of the 16th instant, that Lord Broome, son of Marquis Cornwallis, is expected to return from London where it is said, he has carried the project of the Definitive Treaty."

"Many people are extremely impatient for the signing of the Definitive Treaty; and yesterday a report was in circulation that it had received the final ratification of the King, and has been carried to France to receive that of the First Consul. They report also, that Lord Hervey, Sec. of Lord Hawkebury, was going to Amiens, charged with important explanations on several points which had occasioned delays in the progress of the negotiations. We hope his powers will be sufficiently extensive for settling all differences and bringing this important business to a speedy conclusion.

"According to letters from Cadiz, it appears that Admiral Lincolns has received orders to sail for the West-Indies with the squadron under his command, to co-operate with the expedition to S. Domingo.

BREST, 21st January.

The Breuvian division being repaired and provisioned, will shortly set sail for its destination.

Le Zèle and Le Tourville, will soon be ready to put to sea. In its sail, two more ships will be equipped, le Fougeux and le Ker duable.

Letters from Toulon, received yesterday, mention, that Admiral Ganteaume's squadron will speedily depart; his division is now anchored in the great road, only waiting a favourable wind to set sail—each ship carries from 400 to 500 troops. [Courier de Brest.

STUTTGARD, 17th January.

The news respecting the assassination of the Pacha of Belgrade is confirmed. The Janisaries have divided his treasures amongst them; have respected his Haram, and chosen their chief for Governor of the town. These troubles have engaged the court of Vienna to collect some troops in the neighbourhood of Sembo, to protect the hereditary States.

The committee of commerce and manufactures, in Congress, to whom was referred the petition of the manufacturers of gunpowder, of hats, of types, of brushes, and of stone ware, have recommended that the following articles (in addition to those already free) be admitted free of duty, on importation, viz. burst-stones, unwrought, bristles, regulus of antimony, saltpetre, sulphur and rags; and that a duty of twenty per cent ad valorem be imposed on fur hats, brushes, stone ware, printing types, saddles, cannon, ball, glass bottles and glass ware of all kinds; on gunpowder, five cents per pound; on glue, three cents per pound; on untared cordage, two cents per pound; on untared cordage, or yarns, two and a half cents per pound; on soap, three cents per pound; on candles of tallow three cents per pound; on window glass ten by twelve, or under, two dollars per hundred feet; on all above that size, three dollars per hundred feet; on anchors, two cents per pound; on spikes and bolts of iron, two cents per pound; on cut, flat or rolled iron, one cent per pound; and one dollar per barrel on all pickled fish, and one dollar per quintal on dried fish imported from any foreign nation.

NOTICE.

ALL persons are hereby forewarned from running any lines on my land lying between and adjoining the lands of captain John M. Farlane and Mr. Simon Sellers, in New-Hanover county—or hunting on, or travelling over any part hereof, with dog or gun, after this notice, under the penalty of the law. EDWARD NUTON. Federal-Point, March 24, 34

TO BE LET.

THE House, Lot, and appurtenances occupied at present by Mr. Thomas Heatly; formerly well known as a tavern and boarding house. Possession will be given on the 15th May. Apply to March 18. A. J. DE ROSSET

NEW-YORK, March, 16.

French papers to the 14 February, inclusive, were received at the office of the Mercantile Advertiser last evening by the brig Clío from Bourdeaux. They are filled principally with local circumstances, interesting only in the interior of the Republic.

Buonaparte has arrived at Lyons, to attend the deliberations of the Councils. He has been every where received with the liveliest demonstrations of joy; and is represented as devoting much of his attention to the revision of commerce & manufactures. He has signified his determination to visit most of the principal cities of France for this express purpose.

The Definitive Treaty of Peace with