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CONGRESS
OF THE UNITED STATES.
HOUSE OF REPRESENTATIVES,
Monday, March 1.

DEBATE

On the bill received from the Senate, entitled "An Act to repeal certain acts respecting the organization of the courts of the United States."

Mr HILL said the few observations he had to make, he would have offered before to the committee, could he have done so, without interfering with other gentlemen, better qualified to do justice to the subject.

The best exertions of his humble talents, would at all times prove unequal to a question of such magnitude as the one under consideration Vain indeed then must prove the attempt after the subject had been so well considered, and the arguments so entirely exhausted.

He had determined to express his opinion by the vote merely. He lamented the impulse which obliged him to forego his determination: an impulse created by illusions too direct to be mistaken.

His respect for the legislature of the state from which he came, also required he should assign his reasons, for the conduct he should pursue. That legislature had recommended to the representatives of that state to vote in conformity to the bill on the table. However great his respect for that legislature—however much he was inclined to obey its requisitions, yet, when he found that respect conflicting with important duties—when those requisitions are opposed to obligations, sacred obligations which imperiously direct another course, he could not hesitate in his decision. His conduct must be consistent—he voted for the law proposed to be repealed, under the full persuasion that it was expedient, he could not vote for the repeal, because he was equally persuaded it was expedient; because he did not consider himself authorized so to vote. He stated that when he came into congress, he came with the conviction full on his mind, that the judiciary was a distinct, important, independent branch of the government; that to be efficient it ought to be well organized; that the then organization was defective, greatly so; that he knew from experience it was greatly defective: having been for several years an officer of the United States, in their established courts, he had an opportunity of acquiring this knowledge by experience: that to a reform of the then existing system, the only alternative which presented itself was a resort to the courts of the several states. Considering it a solecism in the science of government, that one government should intrust the administration of its laws, to the officers of another, over whom it had no control; believing that no responsibility attached on the state judiciaries, which would oblige them to perform duties imposed on them by the general government, and knowing the jealousy of the state governments, which had been frequently evidenced against an amalgamation of national and state authorities, the necessity of a reform presented itself with great force.

The circuit courts as formerly established, were directed to be holden by the judges of the supreme court, and the district judges in their respective districts. By this arrangement six judges were required to ride over this vast country twice in each year—to hold courts as often in every state, and this in addition to the duties required of them as judges of the supreme court—the consequence was that with all their exertions these judges found themselves unequal to the performance of those duties; and nothing but a reliance on the wisdom of congress, which cherished the hope of a new arrangement, retained them in office. Under this establishment the lapse of terms would unavoidably occur; it did occur frequently, and occasioned great injury, to all concerned in the courts. Another evil was the want of identity, and the resulting want of consistency of decision, in those courts—productive of delays and uncertainties, which could not fail to depreciate the character of the judiciary however upright and independent the judge—that was an important defect also which allowed the same judge to decide on your appeal, who had pronounced judgment in your cause in the inferior court. These and many other important reasons which had been or might be adduced, had decided his mind in favor of a reformation in the judiciary system. Accordingly in the first session of the sixth congress, he had given his vote for a more convenient organization of the courts of the United States, and in the last session he pursued the same course. Actuated by a wish to promote the due administration of justice; to elevate the character of the American judiciary, and to insure the independence of the judges, as the safeguard of the constitution, he had invariably given his support to the law proposed to be repealed—he believed it to be expedient, he was satisfied it was constitutional—he still had the same impressions, and when he adored, that not a doubt existed in his mind, that a violation of the constitution is involved in the proposed repeal, he should be justified in voting as he should vote on the present occasion. But, he is told that the constitution has already been violated; that the law proposed to be repealed violated the constitution; that this assertion was groundless, Mr H. apprehended had been clearly demonstrated. But supposing it was full, would that justify a second violation? He knew that in some languages it was taught that two negatives made an affirmative; but he had yet to learn the principles in morals which establishes that two wrongs will make one right. If gentlemen really believe the constitution has been violated, let it be for them an example to deter; let us unite our efforts to heal the wound, and join in deprecating the attempt that would enlarge it. But how has the constitution been violated? By the repeal, it is said, from the judges of the supreme court and the district judges, the right of holding the circuit courts; let us examine this. It will be objected, that previous to the law at the last session, there was no circuit judge—the duties of the circuit court were imposed on the judges of the supreme court and the district judges; to relieve those judges from this imposition was one object of this law; another object was to make an arrangement that should not require the judges to perform greater duties than they were able to perform—Is it not a strange doctrine that the lessening the burthens of office, the diminution of the duties required to be performed by a judge, should be considered as an infraction of his rights? But the last law imposed on some of the judges other duties which might be considered in lieu of some of those from the performance of which they were relieved: for instance, by certain provisions in the law, the judge of North-Carolina district is required to hold nine district courts in each year, and at three places in the district; previously he held but four district courts, and those at the same place; that judge might have supposed himself aggrieved by these provisions of that law; but it had not been suggested that he considered his rights infringed by being relieved from other duties. As he was instrumental in making this arrangement, as to the courts of that district, Mr. H. hoped, he might be indulged in explaining the reasons which had induced him to think these provisions necessary, and as the law on the table went to their repeal, he should not be considered out of order. The state of North Carolina has an immense extent of seacoast. The chief sea ports are Edenton, Newbern and Wilmington. The first and the last are at the distance of 200 miles the one from the other; Newbern about 100 miles from each. The residence of the judge is the interior of the country, near 200 miles from Wilmington, the place of most trade, and about 100 miles from of the other ports; the objects of the jurisdiction of the district courts are chiefly causes of admiralty and maritime jurisdiction.—The court to be useful and convenient could only be made so, by bringing the judge, at fixed periods of time, to the commercial points of his district.—The difficulty of instituting a suit in the district court of North-Carolina, and the inconvenience of attending it there, amounted nearly to a prohibition of the process of individuals: and, Mr. H. said, he knew demands had been relinquished and declared abandoned rather than encounter these obstacles.—For these reasons the provisions on this subject were introduced into the last law, at his motion.—And although much benefit may not yet have been experienced by the new arrangement, he had no doubt that great advantage would result therefrom eventually; he stated, that he had been informed, to a late term of one of those courts, near thirty suits had been instituted. He was thus furnished with another reason against the bill on the table; for an amendment which should retain the benefit of these provisions of the last law was inhibited, by the consideration that the imposition of duty would thereby be too great on the judge of that district, who will have the duties of the circuit court again imposed on him. Mr H. had listened with great attention and weighed with due deliberation all the arguments which had been offered on this important question; his conviction of the expediency and unconstitutionality of the proposed repeal was thereby enforced.—When he found the last argument, the one most relied on by the advocates of the repeal, on the constitutional point, was derived from a distinction, a fancied distinction; a distinction without a difference, between a removal of a judge from office and the taking away the office of a judge; when it is acknowledged on all hands, that we have no power to remove the judge from the office; yet it is held that the thing may be effected by taking the office from the judge; he must be excused in declaring his belief, that such arguments, analyze or examine them as you will; whether opposed by "boys" or contested by men, would alike be found to be but "shadows" indeed.

He considered the judicial power of the United States as a vested power; a power vested in the judge constitutionally appointed; it is vested by the constitution and cannot be taken away by law.—It was vested by the people in the majesty of their power, and cannot be divested by any power inferior to that of the people, in the exercise of their sovereignty.

The constitution declares that "the judicial power shall be vested in one supreme court and in such inferior courts as Congress may from time to time ordain and establish."—The constitution arranges the different branches of government; to each department a distinct article is appropriated, vesting power and defining its limitation. By the first article the legislative power is vested in the Congress of the United states, but subject to a limited veto of the President. By the second article the executive power is vested in the President of the United States; and the third article vests the judicial power in the judges of the United States, who "shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." The three branches of government are thus made distinct and independent of each other. By what authority is it that one or two departments can put down the third department? Where is it to be found; is it found by construction? Then construction makes it as competent for the judges and the legislature to declare they have the right to divest the President of the executive power, as the legislature or the executive, or both, to declare they have the right to divest the judges of the judicial power. To his mind it appeared clear and certain that no such right as the one claimed did exist.

The members of both branches of the legislature and the President are periodically elected, and their continuance in office limited and defined by the constitution; they depend on the people in the exercise of their exclusive franchise for their continuance in office. The judges, who are to hold their offices so long as they behave well depend only on God and their own conduct for their continuance in office.

"The judges shall hold"—What? "their offices" says the constitution. How then can the allusion be sustained that the constitution is not infringed, when that is taken from the judge which the constitution declares, the judges shall hold? Has not the taking the office from the judge precisely the same operation as the removal of the judge from the office? Surely this will not be denied. Is not then the provision in the constitution as certainly contravened by the one as the other procedure? The framers of the constitution appear to have been jealous, anxiously jealous of all interference with the independence of the judges: not satisfied with guarding them from a direct removal from office, they endeavoured to provide against indirect means whereby the removal might be effected, hence the provision which forbids a diminution of the salary of a judge. But, say gentlemen, compensation has a relation to services so intimate, that unless one is performed the other shall not be paid, that when the office is abolished, no services can be performed; consequently no compensation is demandable, and thus the difficulty is avoided. This to be sure is a most convenient kind of casuistry; an argument not expected to be heard in this house; subterfuges which could not fail to attach disgrace on individuals surely must be unworthy government. To what does the argument amount—Does it amount to more than this? (asked Mr. H.) I engage a man for a stipulated sum to perform for me a certain service, and while in pursuance of his contract he is engaged in the work, in order to avoid the payment of the sum stipulated, I disable him from performing the service—would this be warrantable, could I justify it? Most unquestionably no. It is of the highest importance the judges should be independent; they are intended to stand between the legislature and the constitution, between the government and the people, they are intended to check the legislature. Should the legislature surmount the barrier of the constitution it is the duty of the judges to repel it back within the bounds which limit its power. Were they not independent, would they be equal to this duty? Could they perform it—dare they perform it, if on the legislature they were dependent? But, it is said with a government of responsibilities like ours the uncontrolable power of the judges is incompatible. Sir, no such power is claimed for the judges; their office and duty is to prevent the exercise of unauthorised power; they are not without responsibility—they may be controled—the constitution provides the means. The tenure of their office, is their good behaviour—when that ceases, their term expires—and whether they behave well or ill, is not for them, but the legislature to judge and decide. And here is the constitutional check on the judges; this house may impeach, and the senate convict from office a judge. If he behaves ill, a judge may thus be removed, and the legislature is restrained from an unwarrantable use of this power by its own responsibilities. Mr. H. declared himself without a doubt on the constitutional point in question.

Much had been said concerning the manner in which the law proposed to be repealed had been passed. A gentleman from Virginia, (Mr Giles) who had been one early in the debate, had taken occasion to mention by name certain locofocos, and alledged that their votes carried this Law. A recurrence to the journal of the day, would show the fact to be otherwise, unless the gentleman meant to suggest, that the votes of those senators would have been the reverse of what they were, but for the prospect of their subsequent appointments. He would not suppose the gentleman intended this, it would be acting on the characters of those senators motives too corrupt for that gentleman to charge on others in their absence. The same gentleman with great emphasis has marked the time when the Presidential approbation of this law was announced to this house, the 13th day of February when this House was engaged in the choice of President! And then the gentleman directs his attention to the circumstance of some of the members of this House being afterwards appointed to office. As to the time when this approbation was announced, whether combined or not with the circumstance of the subsequent appointments, Mr H. declared his incapacity to discover what impression the gentleman thereby intended to make. He could not have supposed it had any influence on the passage of the bill, for that was a retrospective relation, which could not exist. Did the gentleman mean to suggest, it had, or was intended to have any influence on the pending election? This was a suggestion unfounded. It was never understood at least within his knowledge, that the late President directly or indirectly interfered with this house in the choice of his successor; nor did he ever hear that the late President espoused the cause of either the one or the other of the candidates for the suffrages of the states in this House; equally difficult is it to discover the relationship, which the subsequent appointments bear to the subject of this election. Wherefore were those appointments mentioned? Did the gentleman mean to suggest that the members of this House who were distinguished by the President in his subsequent nominations, were actuated by the prospect or promise of such appointments? He was unwilling to believe the gentleman did—such a suggestion would be unworthy any man who did not feel himself liable to be actuated by such motives—and should such suggestion be made existing facts would not sustain it—the conduct of the members alluded to, would prove it to be groundless, and the majority in this House on that occasion, was too decided to countenance a belief, that such means could be necessary.

Other members on this and other occasions had undertaken to make their allusions, to express their insinuations on the subject of these appointments; discovering a disposition to ascribe improper motives to gentlemen on this floor. Mr. H. said for his part he was no motive monger, and although gentlemen differed from him in political sentiments, he was disposed to appreciate properly their views; they were as much entitled to suppose themselves correct as he was; and he was willing to believe that gentlemen generally were disposed to do right. He would however caution the members who are inclined to criminate to be certain before they did so that the means of recrimination were not at hand. He might say, that inducements to put down the present judges, were to be found in the wishes of gentlemen to advance themselves or make places for their friends on the bench of the United States. He might say that the proposed repeal, had numerous advocates, because it was a measure which emanated from the executive, because his smiles are courted; his favour hoped for; his power to grant appointments regarded. He might also say that 'if republicanism' as it is called,' did save this house when the British Treaty came into it,' that treaty had brought into this house many foes to the constitution; for the energies of that government which enforces the payment of debts long withheld, are not likely to find friends or admirers among the coerced debtors; these things he might say. He would not however make the charges because it was possible they might not be well founded. He disdained such motives himself, and reprobated the practice of imputation too sincerely to pursue it.

Mr H. would inform the other gentleman from Virginia, (Mr. Randolph) who had alluded to a gentleman from N. Carolina on that floor as a commissioned judge; that the member alluded to never had such commission presented to him, of course he had never the opportunity to accept or reject it; he apprehended that it would be admitted that the acceptance of a commission was necessary to make an officer, and that member held his seat here by an authority equal to that by which the seat of any other member was held—the free suffrages of a large and respectable majority of the freemen of the district he represents is his authority, the gentleman from Virginia has certainly been greatly misinformed as to the member from North-Carolina. If he alluded to the same member when he assimilated certain characters, as to their political tendencies to that of his Pensacola Hero, his informer had grossly deceived him. The fact or sentiment of an anti-revolutionary adherence to the enemies of his country, never had attached, nor ever should attach, on the character of the member alluded to. The fact was directly the reverse—that member had not ceased to lament that his ability had not equalled his inclination to serve his country in her glorious conflict for liberty & independence; during that time he was but a boy; the only one of his family who was able, did share in the toils, the perils and the glory of the conflict, and was found among those who gathered laurels at the springs of Eutaw.

The gentleman from Virginia was also mistaken as to the fortuitous circumstances relating to the salary of the district judge of North Carolina, at the last session. That was not a fortuitous occurrence—it was designed—that gentleman's friend from North-Carolina was one of a committee appointed to report all the salaries of the officers; and as Mr. H. had understood, opposed in the committee the measure of augmentation generally, and especially the increase of the salary of the North-Carolina judge, and as to that judge prevailed in the committee. In the house, to the surprise of his co-members of that committee, the same members moved an amendment to their report whereby that judge's salary should be included among those which were to be increased—the design was obvious—the circumstances being known, the amendment was rejected.

Mr. H said the member alluded to lamented not that he possessed the good opinion of the late administrations; it was his pride to have been so distinguished. The suggestion was unfounded which had been made by some, that favoritism was exemplified by the appointment of that member by the late President. The relationship of affinity or any consanguinity between the President or any part of his family, and that member did not exist, he had not that honor, but he had filled an office before to the same department, under a commission conferred by the first President. To have been thus distinguished by the preceding presidents, that member considered as highly honorable to himself. But it seems sufficient reason with some to excite their irritation and display their irascibility; the motives and feelings of that member are therefore to be assailed; the system is to be sacrificed; and the means are disregarded by which the offering is to be made, the well turned period of pointed invective, the gross terms of mere vulgarity; the keen knife of the skilful surgeon or the edgeless tool of the clumsy operator are instruments alike acceptable. But he would take leave to say, that the character of that member is fortified by a barrier of integrity which defies the malice and machination of his enemies, happily possessed of mens conscia recti, he disregards the imputations which have been made; thus shielded, the shafts of malice however directed, fall harmless at his feet, or are repelled with accumulated force on those who use them. Mr. Hill concluded with expressions of regret that he had exhausted any part of the time of the committee in observations extraneous to the subject under consideration; but impelled as he had been he hoped to be excused, he would return to the question before the committee and close his remarks with one additional observation, that, believing, as he did believe, the essence of civil liberty to be security, and that this blessing would only be ensured to ourselves and our posterity by the government of laws duly administered by upright and independent judges; it was his duty to withhold his support from any measure which might possibly contravene this all important principle; he should therefore give his vote for striking out the first section of the bill on the table.