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CONGRESS,

House of Representatives,

FRIDAY, March 19.

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. BAYARD's Speech concluded.)

I beg that it will be understood, that I mean to give no opinion as to the regularity of granting a commission for a judicial office, upon the probability of a vacancy, before it is actually vacant. But I shall be allowed to say, that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office, as relating to the date of the commission. The officer is allowed his salary from that date, upon the principle that commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse; but where there was a suspician of abuse, I presume the government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect in the case of a commission, for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant from the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time. From the moment, therefore, that you consider the office of circuit judge filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission; if the contingency does not happen, the grant is void. If this reasoning be found, it was not irregular in the late administration, after granting a commission to a district judge for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge. I now return, sir, to that point of the charge which was personal in its nature, and of infinitely the most serious import. It is a charge, as to which we can only ask, *is it true?* If it be true, it cannot be excused; it cannot be palliated; it is vile profligate corruption, which every honest mind will execrate. But, sir, we are not to condemn till we have evidence of the fact. If the offence be serious, the proof ought to be plenary. I will consider the evidence of the fact, upon which the honorable member has relied, and I will shew him, by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the senate, Mr. Read of South Carolina, and Mr. Green of Rhode-Island, who voted in favor of the law of last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the President, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more charity, in the case which I am about to mention, and he will for once admit that public men ought not to be condemned upon the loose conclusions drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the Presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Viaginia. In that scene I had my part, it was a part not barren of incident, and which has left an impression which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member, what his reflections and belief will be, when he observes, that every man on whose vote the event of the election hung, has since been distinguished by Presidential favor. I fear, sir, I shall violate the decorum of parliamentary proceeding in the mentioning of names, but I hope the example which has been set me will be admitted as an excuse. Mr. Charles Pinckney, of South Carolina, was not a member of the house, but he was one of the most active, efficient and successful promoters of the election of the present chief magistrate. It was well ascertained, that the votes of South-Carolina were to turn the equal balance of the scales. The zeal and industry of Mr. Pinckney had no bounds. The doubtful politics of South-Carolina were decided, and her votes thrown into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed minister plenipotentiary to the court of Madrid. An appointment as high and honorable as any within the gift of the executive. I will not deny that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or services of Mr. Charles Pinckney. In the house of representatives, I know what was the value of the vote of Mr. Claiborne, of Tennessee. The vote of a state was in his hands. Mr. Claiborne has since been raised to the high dignity of governor of the Mississippi territory. I know how great, and how greatly felt, was the importance of the vote of Mr. Linn, of New-Jersey. The delegation of the state consists of five members; two of the delegation were decidedly for Mr. Jefferson, two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of the district conferred upon him. Mr. Lyon, of Vermont, was in this instance an important man. He neutralised the vote of Vermont. His absence alone would have given the vote of a state to Mr. Burr. It was too much to give an office to Mr. Lyon—his character was too low. But Mr. Lyon's son has been handsomely provided for in one of the executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew, the consequence of this gentleman. His means were not limitted to his own vote—nay, I always considered more than the vote of New-York within his power. Mr. Livingston has been made the attorney for the district of New York—the road of preferment has been opened to him—and his brother has been raised to the distinguished place of minister plenipotentiary to the French republic. This catalogue might be swelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed further, it might be supposed that I myself harbored uncharitable suspicions of the integrity of the chief magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my design alone to banish from the mind of the honorable member from Virginia. It would be doing me great injustice to suppose, that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present chief magistrate; or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made. My motive is of an opposite nature. The late President appointed gentlemen to office, to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure. This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present executive, leaving scarcely an exception, has appointed to office, or has by accident indirectly gratified every man who had any distinguished means in the competition for the Presidential office, or deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they had derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from any suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the committee, who entertain his suspicions as to the conduct of the late executive, to review the ground of those suspicions, and to consider, that in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence in the purity and fairness of the executive conduct.

I return again to the subject before the committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this house. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight by gentlemen on the other side. It is said, that if the courts are sanctuaries and the judges cannot be removed by law, it would be in the power of a party to create a host of them to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the ligimate exercise of it; as well might it be urged, that a subsequent congress had a right to reduce the salary of a judge, or of the President, fixed by a former congress, because, if the right did not exist, one congress might confer a salary of 500,000 or 1,000,000 dollars, to the impoverishment of the country. It will be time enough to decide upon these extreme cases when they occur. We are told, that the doctrine we contend for, enables one legislature to derogate from the power of another. That it attributes to a former a power which it denies to a subsequent legislature.

This is not correct. We admit, that this congress possesses all the power possessed by the last congress. That congress had a power to establish courts, so has the present. That congress had not, nor did it claim the power to abolish the office of a judge while it was filled. Though they thought five judges under the new system sufficient to constitute the supreme court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee, than district judges, they did not lay their hands upon the offices of the district judges. We therefore deny no power to this congress which was denied to the last. An honorable member from Virginia, (Mr. Thomson) seriously expressed his alarm, lest the principles we contend for, should introduce into the country a privileged order of men. The idea of gentlemen supposes, that every office not at will, establishes a privileged order. The judges have their offices for one term; the President, the senators and the members of this house for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees, that the President, the Senators and the Members of this House belong to privileged orders. I shall give myself no trouble to deny, that the judges fall under the same description; and I believe, that the gentleman will find it difficult to shew, that in any other manner they are privileged. I did not suppose, that this argument was so much addressed to the understandings of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression by the honorable member from Virginia, to whom I last referred, that the position that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed which was described in glowing language to have inflicted a gaping wound on the constitution, and to have stained with its blood the pages of our statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our statute-book, the blood with which they were stained. It will be an easy talk to shew to you the constitution without a wound, and the statute book without a stain.

It is, sir, the 27th sec. of the bill of the last session, which the honorable member considers as having inflicted the ghastly wound on the constitution, of which he has so feelingly spoken. That section abolishes the ancient circuit courts. But, sir, have we contended, or has the gentleman shewn, that the constitution prohibits the abolition of a court when you do not materially affect or in any degree impair the independence of a judge. A court is nothing more than a place where a judge is directed to discharge certain duties. There is no doubt, you may erect a new court and direct it to be holden by the judges of the supreme or of the district courts. And if it should afterwards be your pleasure to abolish that court, it cannot be said, that you destroy the offices of the judges by whom it was appointed that the court should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at York-Town, in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined that the office of any judge was affected. Let me suppose that a state is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case, will it be said, that the office of the judge is destroyed, or his independence affected? The error, into which gentlemen have fallen on this subject, has arisen from their taking for granted, what they have not attempted to prove, and what cannot be supported. That the office of a judge and any court in which he officiates are the same thing. It is most clear, that a judge may be authorised and directed to perform duties in several courts, and that the discharging him from the performance of duty in one of those courts, cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put. There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the supreme and of the district courts. The judges of these two courts were associated and directed to perform certain duties; when associated and in the performance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is, that the judges of the supreme and district courts are discharged from the performance of the joint duties which were previously imposed upon them. But is the office of one judge of the supreme, or of the district courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behaviour? On this point it was further alledged by the same honorable member, that the law of the last session inflicted another wound on the constitution, by abolishing the district courts of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the legislature to avoid the infringement of the offices of those judges. I believe the gentleman went so far as to charge us with appointing by law those judges to new offices.

The law referred to, establishes a circuit, comprehending Kentucky, Tennessee and the district of Ohio. The duties of the court of this circuit are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the legislature had done, with respect to all the district judges, what they have done with respect to those of Kentucky and Tennessee, I am quite certain, that the present objection would have appeared entirely groundless. Had they directed, that all the circuit courts should be held by the respective judges within the circuits, gentlemen would have clearly seen, that this was only an imposition of a new duty and not an appointment to a new office.

It will be recollect, that under the old establishment, the district judges of Kentucky and Tennessee were invested generally, with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains, his office both nominally and substantially exists, and he holds it now as he did before, during good behaviour. I will refer gentlemen to different provisions in the late law, which will shew beyond denial, that the legislature carefully and pointedly avoided the act of abolishing the *office* of those judges.

(*For a conclusion see last page.*)