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DEBATE
ON THE JUDICIARY ACT.

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 subject 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 that determination: an impulse created by allusions 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 ano[illegible] course, he could not hesitate in its d[illegible]ns. His conduct must be consistent—he voted for the law proposed to be repealed, under the full persuasion that it was expedient, he could not vote for the repeal, because he was equally persuaded it was inexpedient; because he did not consider himself authorised 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 controul; 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 court as formerly established, were directed to be holden by the judges of the supreme court, and the district judges of their respective districts. By this arrangment 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 that establishment the lapse of terms would unaviodably 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 favour 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 several 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 ensure the independence of the judges, as the safeguard of the constitution, he had invariably given 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 added, 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, sir, it is said 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 suppose it was fact, would that justify a second violation? he knew that in some languages it was taught that two negatives make one affirmative; but he had yet to learn the principles in morals which establishes that two wrongs make one right. If gentlemen really believe that the constitution has been violated, let it be to 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 detaching, 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 recollected, that previous to the law of the last session, there [illegible] circuit judge [illegible] 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. It is 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 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 N. Carolina district is required to hold nine district courts in each year, and at three different places in the district; previously he held but four district courts, and those in 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 sea coast. The chief seaports are Edenton, Newbern and Wilmington. The first and last are at the distance of two hundred miles from each other; Newbern about 100 miles from each. The residence of the Judge is in the interior of the country, near 200 miles from Wilmington, the place of most trade, and about one hundred miles from 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 at one of those courts, near thirty suits had been returned.

He was thus furnished with another reason against the passage of the bill on the table: to an amendment which would 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 inexpediency and unconstitutionality of the proposed repeal was thereby enforced—When he found the best 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 the 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, analize or examine them as you will; whether opposed by "boys" or contested by men, would alike be found to be b[illegible] "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, 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? The 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 elective franchise for their continuance in office. The judges who are to hold their offices so long as they behave well depend 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 assertion be sustained that the constitution is not infringed, when that is taken from the judge which the constitution declares, the judge 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 an interference with the independency 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 limitation of the salary of a judge. But, say gentlemen, compensation has 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 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 to—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 bring 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 uncontroulable 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 controuled—the constitution provides the means. The tenure of their office, is their good behaviour—when that ceases, their term expires:—& 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 eject 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. himself was 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 up early in the debate, had taken occasion to mention by name certain senators, 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 attaching on the character 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 announed, 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. 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 altho' gentlemen differed from him in political sentiments, he was inclined to appreciate

(For a conclusion see last page)