

WEEKLY ERA.

THURSDAY, MARCH 6, 1873.

FURTHER FROM ALAMANCE.

The Facts of Recent Ku Klux Outrages Established.

MESSRS. MURRAY & GANT CONVICTED.

Ladies of the County Alarmed.

THE OLD THREATS OF DEATH! DEATH! DEATH!!

K. K. K.

To the Editor of the Era:-

I see that Colonel Gant and Mr. Murray have risen to a question of privilege in reference to an article in Saturday's *Era* signed M.

Now whatever Colonel Gant may say, the facts in the article referred to are nevertheless true, as can and will be attested by as good citizens as live in the State. There are other outrages that have been committed by this same gang that were not mentioned in said article. I have been told by good men that the ladies in the section referred to are so alarmed that they are afraid for their husbands to leave their houses to attend to the ordinary business of their farms.

This crowd has frequently in the last few weeks, in the night time, visited and so terrified peaceful citizens as to drive them from their homes. They on one occasion went to the house of ——, a quiet and peaceful citizen, and used every means to decoy him from his home, and threatened his life. —— There are other instances that can be shown if the Superior Court Clerk will furnish you with certified copy of the records. It will be seen that the Grand Jury has taken notice of some of them.

Col. Gant reminds me of the representative of this county in the years of 1869-'70 when outrage upon outrage was being committed he wrote over his own name long communications and had them published in the Raleigh *Sentinel* testifying to the good feeling that then prevailed, and solemnly declaring that the reports from Alamance were simply radical lies.

The public now know who lied. Col. Gant, in denouncing the —— in the article referred to, tends to deceive the Legislature, or he has acted hastily, and his constituents will hold him responsible for misrepresenting matters, or for not investigating the matter more thoroughly before he used ugly words.

The people look to their Representatives for wholesome laws such as will protect them in their person and property. And when they adopt the most feasible plan for bringing to the notice of the law givers, anything that will aid them in doing right, they will be slow to forget the motive that brings them to their feet, and when they arise to hear nothing but what will encourage these lawless men, Ah! boys go on, we will denounce those Radical liars and the people's Representatives will be deceived.

Now Col. Gant, keep your temper, you are an old man. Don't in your declining years, after having performed your duty nobly as foreman of the Grand Jury in Alamance county, do an act that your children's children will regret. Rather lay aside the prejudice of your nation and take a noble stand for your country, and then you will have the approval of good conscience, and your constituents will say well done good and faithful servant.

M.
February 25th, 1873.

MEMOIR Of the Union Cause in North Carolina, together with a Review of the Rise of the Republican Party.

Having determined to publish the above MEMOIR, I earnestly request the assistance of all who may feel themselves interested in having a truthful narrative given to the world. Knowing the natural prejudices which are within as well as around me, I have approached the topic with the greatest consideration, and will endeavor to discharge it faithfully.

The MEMOIR will open with the year 1860 and close with 1866, embracing a period in our history where the facts can now be obtained, but which are liable to perish within the next decade, if not promptly collected and preserved.

The author will deal impartially with men. There is no desire to take away one laurel to add to another's fame, or to detract the services of any one, that his contemporaries may receive present or future applause. Necessary imperfections will occur, but the MEMOIR will always be open to just criticism and a fair correction.

I especially appeal to those whom I may hereafter address in a less public form, to give me their aid in obtaining such information as may be necessary for the work; and I furthermore request the Press of the State to give the project a fair hearing, before any of them hasten to condemn.

SUPREME COURT DECISION.

Legislature vs. the Governor's Appointments

The people ex. rel. Nichols et al., vs. McKee et al.

The theory of our State government is "that all political power is vested in and derived from the people." Con. Art. 1, Sec. 2. The Constitution is their grant of powers; and it is the only grant which they have made. "And all powers not therein delegated remain with the people." Art. 1, Sec. 27. This last clause will not be found in the former Constitutions of the State. The Constitution then proceeds to divide the government into three departments: Legislative, Executive and Judicial, and makes a grant of powers to each department, under its appropriate head, and directs that they shall be "forever separate and distinct from each other." Neither is superior or inferior to the other, but each has its appropriate functions, and in the exercise of these independent and supreme. To the Legislative department is granted the power of making laws; to the Executive department the power of executing laws; and to the Judicial, the power of expounding the laws.

It is true that their several functions sometimes shade into each other as do the colors of the rainbow, but still they are distinct—where the Governor appoints and the Senate confirms; or where the Governor fills vacancies in the judicial department. It follows that it is not true, as contended for upon the argument, that the Legislature is supreme, except in so far as it is not expressly restrained. However that may be in other governments or however it may have heretofore been in this State, it is plain, that since the adoption of our present constitution the Legislature, just like the other departments, is under the control of the Governor and Senate, unless otherwise provided for. This being so, it is indispensable to good government that each department should confine itself strictly to the exercise of its legitimate functions. And then, however they may shade into each other, there will be harmony. It is only where the powers are brought in conflict that they become tangled and dangerous.

The first question is, to which of the departments has the constitution granted the power of appointment to office? If the constitution does not in express terms grant the power to any one of the departments, and we have to solve the question by construction or implication, then we would have to consider whether the duty in any given case, is a legislative, or an executive, or a judicial one; but if there is an express grant, then, of course, that must govern.

Under the first constitution for the State the Legislature was the general appointing power. It elected the Governor, his council and other Executive officers, the officers of the military, the Judges of the courts, justices of the peace, &c. The Governor had no appointing power, except to fill vacancies when the Legislature was not in session. Under the present constitution there is an entire change. The people have reserved to themselves the election of almost all the officers in the State. There are still some of the officers, which for convenience, are otherwise appointed or elected, or chosen, as the case may be, and we proceed now to enquire to which of the departments the power is given.

1. We will first consider, what express grant of appointing power is made to the Legislature. The clause of Representatives shall choose their own speaker and other officers.

"Art. II, Sec. 20. The House of Representatives shall choose their own speaker and other officers, and also a speaker of the House in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor."

The foregoing are all the grants of power of appointment to the Legislature under the second article which is the legislative article. And it will be observed, that even these are not grants to the Legislature as a body, but only to each branch to choose its own officers. Under the third article, sec. 10, "The Governor shall nominate and by and with the advice and consent of the Senate, appoint all officers, &c., and no such officer shall be appointed or elected by the General Assembly."

Except the foregoing, there is no other express grant of appointing power to the Legislature, and that the section last quoted is only the power of one branch, to confirm or reject the nominations of the Governor; with an express prohibition to the General Assembly as a body, in regard to all officers. So, it is plain, that there is not only no express grant of power to the legislative department to appoint to office, but there is an express prohibition.

2. In the second place we will consider, what express grant of appointing power is made to the Executive Department.

"Article IV, Sec. 1. The Governor shall nominate and by and with the advice and consent of a majority of the Senators elect, appoint all officers whose offices are established by this Constitution, or which shall be created by law, and whose appointments are not otherwise provided for and no such officer shall be appointed or elected by the General Assembly."

That section, read without any verbal criticism, would seem to make the Governor the general appointing power, and to exclude the Legislature altogether.

Sec. 13 enumerates the principal Executive officers, and provides, that "If the office of any of said officers shall be vacant by death, &c., it shall be filled by the appointment of the Governor."

The foregoing grants all the express grants under the said Executive article. But under article IV, which is the judicial article, section 31, it is provided, that "All vacancies occurring in the offices provided for by this article of the constitution, shall be filled by the appointment of the Governor, unless otherwise provided for." &c. And, under article VII, section 11, the Governor was authorized to appoint Justices of the Peace in each county, until elections could be held.

From the foregoing it is plain, that the general appointing power is given to the Governor, with the concurrence of the Senate; and that the power to fill vacancies, not otherwise provided for, is given to the Governor alone; and that, whether the Legislature is in session or not, and without calling the Senate.

4. In the third place we are to consider what appointing power is expressly given to the Judiciary. It seems that the only power expressly granted to the Supreme Court, is to appoint its clerk; and to the Superior Court, to fill vacancies in their clerkships.

Reading the whole constitution, and without any hypercriticism, it is plain, that such officers as are not elected by the people at the polls, and most of them are so elected, are to be appointed by the Governor, the Senate concurring, except the immediate officers of each branch of the Legislature, and the immediate officers of the Supreme Court; and that all the officers are to be filled by the Governor alone, except such as are otherwise specifically provided for. And the Legislature has no more right to appoint the Directors of the Asylums, than the Governor has to appoint the clerks of the Legislature.

Insane Asylum—Wesley Whitaker, Esq.; G. B. Barnes, Esq.; G. W. St. John, Esq.; Dr. T. L. Banks, C. L. Harris, J. F. Hood, G. W. Brodie, T. George Walton, Henry Walser and W. R. Myers.

Institution for the Deaf and Dumb and the Blind—John Nichols, J. N. Bunting, F. L. Lee, Handy Lockhart, Albert S. Allen, Wiley D. Jones.

Penitentiary—Gen. Alfred Dockery, G. W. Welker, John R. Harrison, Jacob S. Allen, Wiley D. Jones.

Our conclusion is, that the Legislature has no power to elect or appoint any officer in the State, except its own officers. Nor has it the power to provide for the appointment, or election, of any officer, whose office now exist, or which may hereafter be created; so as to take the appointment away from the Governor and Senate, or other appointing power; or the election away from the people. Nor can the constitutional rights of the Governor, or the people be evaded by letting the *bill* stand.

The Deaf and Dumb Asylum was one of the public institutions of the State at the time of the adoption of the constitution in 1868, governed by a Board of Directors. The 14th Article, Sec. 5, of the constitution continues them in office until other appointments should be made by the Governor. The Governor made other appointments, who were in office 21st January, 1871. At which time the General Assembly passed an act abolishing the Board of Directors, and providing for a "Board of Trustees." We assume that the General Assembly had some sufficient evidence for changing the name of the Board, but left the Board, the office, to be filled by the Governor.

Art. III, Sec. 7. This last clause will not be found in the former Constitutions of the State. The Constitution then proceeds to divide the government into three departments: Legislative, Executive and Judicial, and makes a grant of powers to each department, under its appropriate head, and directs that they shall be "forever separate and distinct from each other." Neither is superior or inferior to the other, but each has its appropriate functions, and in the exercise of these independent and supreme.

The Legislature is granted the power of making laws; to the Executive department the power of executing laws; and to the Judicial, the power of expounding the laws.

It is true that their several functions sometimes shade into each other as do the colors of the rainbow, but still they are distinct—where the Governor appoints and the Senate confirms; or where the Governor fills vacancies in the judicial department.

It is the power of the Legislature to make the permanent existence of a charitable institution for the unfortunate, and penal institutions for the punishment of criminals: can these be created without a board of directors? And is not such a board an office, a lodgement and position of the government? And are not the directors officers, taking part in the government?

The statement of the case is enough. We do not propose to follow the argument farther; because the constitution not only makes them officers, but in express terms calls them officers—which seems to have been overlooked by the learned counsel.

Art. III, Sec. 7. "The officers of the Executive Department and of the public institutions of the State, shall report to the Governor," &c. And note, that this is under the Executive Article of the Constitution.

The question is, has the Legislature the power to fill the office by the appointment of the defendants? We have already seen that there is no express grant of the power to the General Assembly. No such grant is to be implied, unless it be in regard to some appointment necessary to the exercise of its legislative functions, as its own officers. And to make it plain, the Board of Directors was created by the General Assembly.

It is the duty of the Governor to fill the office, to be appointed by the General Assembly.

The method they adopted is new. One evening last week twenty-two of them, of various ages and conditions, took their knitting and repaired to the billiard room. The Utica (N. Y.) Herald says that the ladies of Savona, Steuben county, have undertaken to break up billiard playing in their village. The method they adopted is new.

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