



NORTH-CAROLINA STATE GAZETTE.

“Beware the Plow of Fair deliv'ring Peace, Unwarp'd by Party Rage to liv'like Brothers.”

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Judiciary Establishment.

Mr. WRIGHT, of Maryland, said it must be agreed that this subject was of great importance from its effect upon our revenues. If the repeal of the act of last session was constitutional, he presumed there could be little doubt of its expediency, from the documents on our tables. Has the constitution vested the legislature with a power over the subject of the resolution? If so, then should a law, which had been the effect of a flux of passion, be repealed by a reflux of reason. He believed that it had been introduced at the period of an expiring administration. It had been resisted by the republican side of the Senate; and he trusted that now on the return of reason, it would be repealed.

An allusion had been made to the legislature of Maryland, which had repealed a law respecting the Judiciary. Mr. W. here quoted the constitution of that State, whose provisions, so far as respected the tenure of the office of a Judge, corresponded with those of the constitution of the United States. The legislature of that State had been of opinion, and correctly too, that they did possess the power to repeal a law formed by their predecessors. And the Legislature of the United States possessed the same power. This they had already determined by the very act of last session, which, while it created a number of new judges, abolished the offices of several district judges.

It was clear that the constitution meant to guard the officer and not the office. Will it be said, that what the Legislature makes to-day, they cannot annihilate to-morrow? Even as to the Judges of the Supreme court, had not the law first constituted six, and was it not now reduced by law to five? And if Congress has power to reduce the number of the Superior, have they not the same power to reduce the number of the Interior Judges? Are we to be eternally bound by the principles of a law, which ought never to have been passed?

Why the expression in the constitution, "The judicial power shall be vested in such inferior courts as Congress may, from time to time, ordain and establish," if it had been intended, as is now contended, that the office being once bestowed, no change can be made.

If the case of those, who have accepted these offices be considered as a hard one, may it not be said, that they knew the constitution, and the tenure by which their offices were to be held. In our regard for individual interest, we ought not to sacrifice the great interests of our country; and was it not demonstrable, that if 21 Judges were sufficient when 1000 suits existed, they were equally so when there were no more than 700.

The gentleman from Massachusetts was wrong in stating that Maryland was the only State that had repealed a law creating judiciary offices. Virginia, if he was not misinformed, had done the same thing. But we wanted not these precedents. Our own archives furnished us with abundant precedents. We had reduced the judges of the Supreme court from six to five, we had annihilated two districts. The very gentlemen opposed now to the repeal of the law, had voted for these measures. Thus it appeared, that though the constitution justified the measure then, it prohibited it now!

Believing the judiciary law of last session had arisen from a disposition to provide for the warm friends of the existing administration; believing that great inconveniences had arisen under it; believing its expence to be oppressive; and believing that if one legislature had a right to pass it, another legislature had the same right to repeal it; he trusted that, however a

preceding legislature might have been governed by passion, the present legislature would, by repealing it, shew that they were governed by reason.

Mr. MORRIS, of New-York. Mr. President, I am so very unfortunate, that the arguments in favour of the motion have confirmed my opinion, that the law to which it refers, ought not to be repealed. The Hon. Mover rested his proposition on two grounds.

1. That the judiciary law passed last session is unnecessary, and

2. That we have a right to repeal it, and ought to exercise that right.

The numerical mode of argument made use of to prove this, is perfectly novel, and common is my tribute of admiration. This is the first time I ever heard the utility of courts of Justice estimated by the number of suits carried before them. I have read that a celebrated monarch of England, the great Alfred, had enacted such laws, established such tribunals, and organized such a system of police, that a purse of gold might be hung up on the highway, without any danger of being taken. Had the hon. gentleman from Kentucky existed in those days, he would perhaps have attempted to convince old Alfred, that what he considered as the glory of his reign, was its greatest evil. For taking the infrequency of crimes as a proof that tribunals were unnecessary, and thus boldly substituting effect for cause, the gentleman might demonstrate the inutility of any institution, by a system of reasoning the most fallacious.

But, if with this poor measure of ability which it has pleased God to give me, I march on that ground which I have been accustomed to deem solid, I should say, that in so far as the terror of our judicial institutions prevented the perpetration of crimes, in that same degree are those institutions useful. This would be my mode of reasoning, but for the wonderful discovery of the hon. mover of the resolution.

We have been told of the great expence of the Judiciary---that it amounts to 137,000 dollars. And thus attributing the whole expence of the establishment to this particular law, it has been assumed in argument, that to repeal the law, would be to save 137,000 dollars. If the other arithmetical calculations of the gentleman are equally incorrect, his inferences will be entitled to but little attention.

Of this sum it appears from a report of the Secretary of the Treasury, that 45,000 dollars are for the contingent expences of juries, witnesses, &c. which serves in some measure to shew that it is expected much business will actually be done.

The expence arising under this law that it is proposed to repeal, amounts to 50,000 dolls. exclusive of fifteen thousand dollars estimated for contingent expences, amounts to 45,000 dollars. But let us not limit the allowance; throw in a few thousand dollars more, and let the whole be stated at 51,000---apportion this sum among the people of the United States, according to the census lately taken; and you will find that each individual will pay just one cent. And for this insignificant saving of a cent a man, we are called upon to give up all that is valuable to a nation.

One of the great purposes of a government, is to secure the people from foreign invasion. To be ready to repel such invasion requires a great revenue, and many officers become necessary to collect it. Such an invasion, however, may or may not take place. If I judge from certain documents now before us, those who administer our affairs have but little apprehension of that event. If then there be little or no such danger, or if the people be sufficiently secured against it, what else have they a

right to ask for in return for their money expended in the support of government? They have a right to ask for the protection of the law in proper courts of justice, to secure the weak against the strong, the poor against the rich, the oppressed against the oppressor. And is this little they ask, to be denied? Are the means by which the injured can obtain redress, to be curtailed and diminished? Much may be feared from armies---they may turn their swords against our bosoms, they may elevate a chief to despotic power. But what danger is to be apprehended from an army of Judges?

Gentlemen say, recur to the ancient system. What is that system? Six judges of the Supreme Court to ride the circuits of America twice a year, and sit twice a year at the seat of government. Without enquiring into the accuracy of the statement made by the gentleman respecting the courts of England, in which I apprehend he will find himself deceived; let me ask what would be the effect of the old system here? Cast an eye over the extent of our country, and a moment's consideration will shew, that the first magistrate, in selecting a character for the bench, must seek less the learning of the judge, than the agility of the post-boy. Can it be possible, that men advanced in years, for such alone can have the maturity of judgment fitting for the office, that men who from their habits of life, must have more strength of mind than of body; is it, I say, possible, that such men can be running from one end of the continent to the other? or if they could, can they find time to hear and decide causes? I have been told by men of eminence on the bench, that they could not hold their offices under the old arrangement.

What is the present system? You have added to the old judges seven districts, and sixteen circuit judges. What will be the effect of the repeal desired? Will it not be a declaration to the remaining judges, that they hold their offices, subject to your will and pleasure? And what will be the result of this? It will be that the check established by the constitution, withheld for by the people, and necessary in every contemplation of common sense, is destroyed. It had been said, and truly too; that governments are made to provide against the follies and vices of men. For to suppose that governments rest upon reason, is a pitiful solecism. If mankind were reasonable, they would want no government. Hence checks are required in the distribution of power among those who are to exercise it for the benefit of the people. Did the people of America vest all powers in the Legislature? No. They had vested in the judges a check intended to be efficient; a check of the first necessity, to prevent an invasion of the constitution by unconstitutional laws; a check which might prevent any faction from intimidating or annihilating the tribunals themselves.

On this ground, said Mr. Morris, I stand to assert the victory mediated over the constitution of my country; a victory mediated by those who wish to prostrate the constitution, for the furtherance of their own ambitious views. Not of him who recommended this measure, nor of those who now urge it; for on his uprightness and their uprightness I have the fullest reliance; but of those in the back ground, who have farther and higher objects. These troops that protect the outworks, are to be first dismissed. Those posts which present the strongest barriers, are first to be taken, and then the constitution becomes an easy prey.

Let us then, secondly, consider, whether we have constitutionally a power to repeal this law. (Here Mr. Morris quoted the 3d article, and first section of the constitution.)

I have heard a verbal criticism about the words shall and may, which appeared the more unnecessary to me, as the same word shall, is applied to both members of the section. For it says, "the judicial power, &c. shall be vested in one Supreme Court, and such Inferior Courts as the Congress may, from time to time, ordain and establish." The legislature had therefore without doubt the right of determining, in the first instance, what inferior courts should be established. But when established, the words are imperative, a part of the judicial power shall vest in them. And the judges shall hold their offices during good behaviour." They shall receive a compensation, which shall not be diminished during their continuance in office. Therefore, whether the remarks be applied to the quantum of compensation, or the tenure of office, the constitution is equally imperative. After this exposition, gentlemen are welcome to any advantage which may be derived from the criticism on shall and may.

But another criticism, which, but for its serious effects, I would call pleasan, has been made, the amount of which is, that you shall not take the man from the office, but you may take the office from the man; you shall not drown him, but you may sink his boat from under him; you shall not put him to death, but you may take away his life. The constitution secures to a judge his office, says he shall hold it, that is, it shall not be taken from him, during good behaviour; the Legislature shall not diminish, though their bounty may increase his salary; the constitution provides perfectly for the invariability of his tenure; but yet we may destroy the office which we cannot take away, as if the destruction of the office would not as effectually deprive him of it as the grant to another person. It is admitted, no power derived from the constitution can deprive him of his office, and yet it is contended, that by repeal of the law that office may be destroyed. Is not this absurd? It was said, that whatever one Legislature can do, another can undo; because no legislature can bind its successor, and therefore whatever we make we can destroy. This I deny, on the ground of reason, and on the ground of the constitution. What, can a man destroy his own children? Can you annul your own compacts? Can you annihilate the public debt? When you have by law created a political existence, can you, by repealing the law, dissolve the corporation you had made? When by your laws you give to an individual any right whatever, can you by a subsequent law rightfully take it away? No. When you make a compact, you are bound by it. When you make a promise, you must perform it. Establish the contrary doctrine, and what follows? The whim of the moment becomes the law of the land; your country will be looked upon as a den of robbers; every honest man will fly your shores. Who will trust you, when you are the first to violate your own contracts? The position, therefore, that the legislature may rightfully repeal every law made by a preceding legislature, when tested by reason, is untrue; and it is equally untrue, when compared with the precepts of the constitution; for what does the constitution say? "You shall not make an ex post facto law." Is not this an ex post facto law?

Gentlemen say the system of last session is mere theory. For argument sake it shall be granted; and what then is the language of reason? Try it, put it to the test of experience. What respect can the people have for a legislature, that without reflection, merits but to undo the acts of its predecessors? Is it prudent, is it decent, even is the law were unwise, thus to com-

mit our reason and its? Is it not highly dangerous to call upon the people to decide which of us are fools; for one of us must be?

And what would be the effect of this repeal on the injured man who seeks redress in a court of justice, and whom by this action you shall have deprived of his right? You have saved him a miserable cent, and you have perhaps utterly ruined him.

But the honourable mover of the resolution has told us, not only what is, but what is to be. He has told us not only that suits have decreased, but that they will decrease, and relying on his pre-conception, informs us that the internal taxes will be repealed; and grounds the expediency of repealing this law on the annihilation of these taxes. Thus, taking for granted the non-existence of a law that yet exists, he infers from its destruction, and the consequent cessation of suits under it, the inutility of the judiciary establishment. And when he has carried his point, and broke down the judiciary system, he will tell us perhaps that we may as well repeal the internal taxes, because we have no judges to enforce the collection of them.

But what will be the effect of these repeals, and of all the dissolutions from office? I impeach not the motives of gentlemen who advocate this measure. In my heart I believe them to be upright. But they see not the consequences. We are told the States want, and ought to have more power. We are told that they are the legitimate from which the citizen is protection. Their just suppose, to enforce our judges appointed by State supported by State Salary, too for promotion to State influence or dependent upon State patronage. There are some honourable gentlemen now present, who sat in the Convention which formed this constitution. I appeal to their recollection; have they not seen the time when the fate of America was suspended by a hair? My life for it, if another convention be assembled, they will part without doing any thing. Never in the flow of time was there a moment so propitious, as that in which the Convention assembled. The States had been convinced by melancholy experience; how inadequate they were to the management of our national concerns. The passions of the people were lulled to sleep---State pride slumbered---the constitution was promulgated---and opposition was formed; but it was in vain. The people of America bound the States down by this compact.

One great provision of this compact, a provision that exhibited the sublime spectacle of a great State bowing before the tribunal of justice, is gone! Another great bulwark is now to be removed. You are told you must look to the States for protection; your internal revenues are to be swept away; your sole reliance must be on commercial duties; in this reliance you will be deceived. But what is to be the effect of these changes? I am afraid to tell you---I will leave it to the feelings and consciences of gentlemen. But remember, the moment this union is dissolved, we shall no longer be governed by votes.

Examine the annals of history, look into the records of time, see what has been the ruin of every republic! The vile love of popularity. Why are we here? To save a people from their greatest enemy; to save them from themselves; what caused the ruin of the republics of Greece and Rome? Demagogues, who by flattery gained the aid of the populace to establish despotism. But if you will shut your eyes to the light of history, and your ear to the voice of experience---see a trail what happened in your own times. In 1789, it was no longer