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FOR THE NATIONAL INTELLIGENCER.

No. II.

On the Election of PRESIDENT.

The event, which I contemplated as probable in my laſt number, has been verified by facts officially aſcertained. Mr. Jefferſon and Mr. Burr have each an equal number of votes; and the Houſe of Repreſentatives, voting by ſtates, will be called upon to exerciſe the conſtitutional power with which it is inveſted, of deciding which of the two ſhall be Preſident.

In my laſt number I pointed out ſome of the motives which might rationally be ſuppoſed to influence the members of the legiſlature in preferring Mr. Burr to Mr. Jefferſon. My preſent object is to preſent ſome of the conſequences likely to enſue from ſuch a preference; I ſay *some* of them; for were I to enumerate the whole, I ſhould pourtray a picture too gloomy for any eye to contemplate without horror.

From the remarks I have made, it muſt be manifeſt to every unprejudiced mind, that Mr. Burr, if elected Preſident by Congreſs, would not poſſeſs the confidence of the people. Not that I think his talents or integrity unworthy of the proudeſt diſtinctions that republicaniſm can confer. I am ready to acknowledge that his reputation has not only ſurvived, but in all probability will ultimately ſurvive the loud clamours of party reſentment. But being ſelected by the people for the Vice-Preſidency, and not the Preſidency, in the exerciſe of the duties of the firſt ſtation he would enjoy their entire confidence, while in the exerciſe of the duties of the laſt place, he would entirely be deſtitute of that band of union, which, in a republican government, can only proceed from the decided preference of the people, expreſſed in a conſtitutional form. It is in vain to ſay that the Houſe of Repreſentatives would expreſs this national preference. The aſſertion is not true. Not a citizen of America is ſo ignorant as not to know that every vote given to Mr. Jefferſon was as Preſident, and every vote given to Mr. Burr was as Vice Preſident. Now ſhould the Houſe of Repreſentatives, *votingly states*, ſelect a man not intended by the people, can the people be made to believe that ſuch a ſelection carries with it any regard to the public will? Will they not, on the contrary, view it as an undoubted evidence of hoſtility to that will?

In this view of the ſubject, two circumſtances ought to be held in view; firſt, that the Houſe of Repreſentatives choſen two years ago, as it at preſent ſtands on the verge of political diſſolution, is not the Repreſentative of the people at this time; and. ſecondly, placing this conſideration aſide, if it were contemplated as the Repreſentative of the people, ſtill, voting by ſtates, it would be the repreſentative, not of the people, but of the ſtates only.

There cannot be a doubt but that the ſame votes that carried, by a larger majority than has ever appeared ſince the diviſion of parties, a republican Preſident, would, if applied to the election of repreſentatives at the ſame period, alſo have carried them. The courſe of elections for the enſuing Congreſs, were other proof wanting, is demonſtrative of this fact. For from thoſe elections for members of the Houſe of Repreſentatives in the enſuing Congreſs, that have already taken place, viz. from New-Hampſhire, Rhode Iſland, Maſſachuſetts, Connecticut, New-York, Vermont, Pennſylvania, Delaware, North Carolina, South Carolina, and Georgia, thirty-five of the members choſen are republican, thirty-five federal; and one for Vermont not yet elected; and if we give, in reference to thoſe ſtates whoſe members are not yet elected, the whole delegation of New-Jerſey, conſiſting of five members, half of Maryland, conſiſting of four members, and one member from Virginia, which the votes on the Preſidential election ſhew is all that can be expected from that ſtate, to the federal party, which conſtitute a larger number than there is any probability of their obtaining; inaſmuch as New-Jerſey is doubtful, as Maryland is rapidly republicanizing, and as Virginia is acquiring a ſentiment of growing unanimity, the votes in the next Congreſs will then ſtand: *Federal 45—Republican 50*; and one from Vermont doubtful.

From this view, it appears that the *real representatives of the people* hold opinions abſolutely in colliſion with their *present nominal representatives*; and that the former, without making any allowance for the accommodation of federal members to a change of times, have a majority over the latter; who, in the preſent Congreſs, can ſcarcely be conſidered as poſſeſſing a majority, inaſmuch as more than half their favourite meaſures have been defeated.

But, when, *secondly*, it is conſidered, that the H. of Repreſentatives are to *vote by states*, a few plain facts will incontrovertibly ſhew that any vote of preference to Mr. Burr cannot reſt on even a colourable expreſſion by that body of the public ſentiment.

To *make* a choice of a Preſident the concurrence of 9 ſtates is required.

To *defeat* an election of a Preſident the concurrence of 8 ſtates is required.

In the firſt inſtance, 9 ſtates forming an abſolute majority of all the ſtates, an election is thereby effected.

In the latter inſtance, 8 ſtates being for one individual, and 8 for another, the reſult would be no election.

Either of theſe reſults might be aimed at. If the firſt be aimed at, then may the ſtates of New-Hampſhire, Rhode Iſland, Vermont, New Jerſey, Delaware, South Carolina, Georgia, Kentucky and Teneſſee, who have in the aggregate only 25 Repreſentatives, carry a Preſident againſt the ſtates of Maſſacuſetts, Connecticut, New York, Pennſylvania, Maryland, Virginia and North Carolina, who have in the aggregate 81 repreſentatives.

If the laſt be aimed at, then may 8 ſtates, who have only 19 Repreſentatives, defeat in the election of a Preſident, the remaining 8 ſtates, who have 87 repreſentatives.

Can ſuch a reſult as this be deſired by any man of political integrity? By any man, who conſiders the harmony of the union as, the anchor of individual happineſs and national tranquility?

But to bring this ſerious view nearer home, let us conſider, how the preſent queſtion would be affected by the relative ſtrength of parties in the preſent Congreſs.

Thoſe ſtates, a majority of whoſe repreſentatives is *republican*, are *eight* in number; viz. New York, New-Jerſey, Penſylvania, Virginia, North Carolina, Georgia, Kentucky and Tenneſſee, the aggregate of whoſe repreſentatives is 62.

Thoſe ſtates, a majority of whoſe repreſentatives is federal, are *six* in number; viz. Rhode Iſland, New Hampſhire, Maſſachuſetts, Connecticut, Delaware, South Carolina, the aggregate of whoſe repreſentatives is 34.

Thoſe ſtates, whoſe repreſentatives, being equally divided, would have no efficient vote, are Vermont and Maryland.

Now can any rational man pretend that an obſtacle thrown in the way of Mr. Jefferſon's election to the Preſidency by ſix ſtates entitled to 34 votes, againſt eight ſtates entitled to 62 votes, can or will be conſidered by the people as an expreſſion of their will, when there is not a ſingle poſſible view in which it can be contemplated, that does not demonſtrate it as ariſing from either a criminal indifference to the national feeling, or a premeditated determination to inſult it.

Every thought which I devote to the ſubject ſtrengthens my convictions of the improbability of the exiſtence of any ſerious deſign by the members of our federal councils to invade the ſpirit of that ſacred inſtrument, which they profeſs, and I hope ſincerely, to reſpect, or to ſubvert the fair and decided expreſſion of the national feeling. Many of the remarks, which I have made, and others which will follow, ought not in equity to be conſidered as actually applied to them, as ſuch application can only be eventual on the occurrence of an act which every ſentiment of honor, and hope of patriotiſm forbid me to aſcribe to men, choſen by the people themſelves, as the guardians of their rights, and the protectors of their liberties.

ARISTIDES.

CONGRESS OF THE UNITED STATES.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, December 31, 1800.

The houſe went into a committee of the whole, on a bill for continuing in force "an act laying duties on licenſes for ſelling wine, and foreign diſtilled ſpirituous liquors by retail, on property ſold by auction, and on carriages."

Mr. Morris in the chair.

Mr. Varnum moved to limit the duration of the bill to two years from the 1ſt of March 1801.

The motion was ſupported by Meſſrs. Varnum, Randolph and Nicholas, and oppoſed by Mr. Griſwold.

On the queſtion being taken, there appeared 39 ayes, and 39 noes. The chairman declaring himſelf in the negative, it was loſt.

Mr. Bird diſliked that part of the bill which gave to the judicatories of the ſeveral ſtates the right of taking cognizance of ſuits for duties payable under it. He declared himſelf averſe to this inveſtment of judicial power, on the ground of expedience; but ſaid that he ſhould not on this occaſion oppoſe the bill for that reaſon. But he deemed the judicial power as delegated by the bill, to be unconſtitutional. The bill muſt be amended, before it could obtain his vote. He therefore moved ſo to amend the 1ſt ſection, as to confine all judicial power exerciſed under the bill to the federal courts.

The conſtitution expreſsly declares that "the judicial power ſhall extend to all caſes, in law and equity, ariſing under this conſtitution, the laws of the United States, &c." If the judicial power extended to *all cases*, ſurely it muſt extend to the preſent caſe. The conſtitution further declared "that the judicial power of the United States, ſhall be veſted in one ſupreme court, and in ſuch inferior courts, as the congreſs may from time to time ordain and eſtabliſh."—It was ſelf-evident that the ſtate courts could not be embraced by the expreſſion *one supreme court*. And as to the expreſſion, *inferior courts*, he would aſk whether the ſtate tribunals could come within its meaning. It was evident to him that they could not, as they were not appointed by congreſs; as no cauſe of error lies from the ſtate to the federal courts, or writ of *mandamus*. It followed that they were not included in the true meaning of the term *inferior* courts; they were neither ordained or appointed by congreſs.

Further, the conſtitution preſcribed, that the judges ſhould receive *fixed salaries* payable by the United States, and hold their offices during *good behaviour*. This direction of the conſtitution precluded all other but federal courts.

Beſides theſe conſtitutional injunctions, which on his mind were irreſiſtible, on a view of the expediency of the delegated powers, it would appear that extenſive and great inconvenience attended the exerciſe of it. Under the juriſprudence of the ſeveral ſtates, ſuch a variety of laws and mode of procedure exiſted as produced the greateſt embarraſſments. Beſides, it was not unfair to ſuppoſe in the ſucceſſion of events the occaſional exiſtence in particular ſtates, of a ſpirit of hoſtility to ſome meaſure of the federal government.

On the whole, Mr. Bird ſaid, that he conſidered congreſs as equally incompetent to transfuſe into the ſtate courts, the right of judging on caſes that occurred under the conſtitution and laws of the federal government, as they were to transfuſe executive or legiſlative power, derived from that conſtitution, into the hands of the executive and legiſlative organs of the ſtate government.

Mr. Dennis was ſo impreſſed with the importance of a full and fair diſcuſſion of the point ſubmitted to the houſe by the gentleman from New-York, that he recommended a ſuſpenſion of any conſideration of it, until the judiciary bill came before them. Then the queſtion might be met directly. He therefore moved that the committee riſe, report progreſs, and ſit again, which was accordingly done, and leave to ſit again granted.

On motion of Mr. H. Lee the houſe went into a committee of the whole on the bill in relation to

THE TERRITORY OF COLUMBIA.

Mr. Morris in the chair.

M. Randolph moved to ſtrike out the firſt ſection, which is in theſe words:

"Be it enacted by the Senate and "Houſe of Repreſentatives of the United States of America in Congreſs "aſſembled—That the laws of the ſtate "of Virginia as they exiſted on the firſt "Monday of December in the year "1800 ſhall be and continue in force "in that part of the Diſtrict of Columbia "which was ceded by the ſaid ſtate to "the United States, & by them accepted for the permanent ſeat of government; and that the laws of the ſtate "of Maryland, as they exiſted on the "ſaid firſt Monday in December, ſhall "be and continue in force in that part "of the ſaid diſtrict which was ceded by "that ſtate to the United States, and "by them accepted as aforeſaid."

Mr. H. Lee ſaid, that he was far from conſidering this bill as an act of ſupererogation. The conſtitution had prohibited the ſtates of Virginia and Maryland from legiſlating for the territory; and it now became a queſtion, whether the exiſting laws of thoſe ſtates were in force; which queſtion might come before the judiciary. To obviate all doubts, this bill in the ſhape of a declaratory one was reported.

Mr. Nicholas. This bill is not in my opinion merely an act of ſupererogation, but an act of immenſe miſchief. I do not agree with my colleague in the conſtruction he gives the conſtitution. He is of opinion, that the powers given to congreſs on this ſubject *must be exercised* by them. I think differently. Theſe powers are like many others conferred, which *may* or *may not* be exerciſed. It had never been contended, that we are obliged to carry into execution all the powers with which we are inveſted. It is true, that we have nearly exhauſted the letter of our charter, in the extent to which we have gone. But this fact furniſhed no reaſon for going ſtill further.

A conſtruction contrary to that contended for had been given by Congreſs in the exerciſe of their power. The act of acceptance paſſed by Congreſs confirming the ceſſions made by Virginia and Maryland expreſsly declares "that the operation of the laws of the ſtate within ſuch diſtrict ſhall not be affected by this acceptance, until the term fixed for the removal of the government thereto, *and until Congrest shall otherwise by law provide.*"

Great force was attached to that part of the conſtitution that gave Congreſs *exclusive legislation* over the territory. But the ſame clauſe of the Conſtitution gave the ſame power over forts, magazines, arſenals, &c. Yet this power had never yet been aſſumed by Congreſs. The poſſeſſion of the right had heretofore been conſidered as ſufficient; the exerciſe of it was reſerved until peculiar circumſtances ſhould occur, which rendered it neceſſary.

I believe the committee are not prepared to ſanction this bill. To ſanction it would be to place the inhabitants of the territory in a ſituation for which they would not be thankful. It would impoſe upon them all the laws of Virginia and Maryland, as they exiſted on the 1ſt Monday of December, without thoſe improvements which experience may ſuggeſt.

If this bill paſſed, it would leave a conſiderable portion of the inhabitants of the territory without any judicial authorities to which they could appeal. There were parts of Fairfax, Montgomery, and Prince George Counties, which would have no courts to which they could apply.

Another conſequence that would reſult from the conſtruction attempted to be given

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