

The National Intelligencer,

A N D

WASHINGTON ADVERTISER.

VOL. L. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, NEW-JERSEY AVENUE, NEAR THE CAPITOL. No. XXXI.

FIVE DOLLARS PER ANNO.

MONDAY, JANUARY 12th, 1861.

PAID IN ADVANCE.

CONGRESS OF THE UNITED STATES.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, JANUARY 7, 1861.

The House again resolved itself into a committee of the whole on the JUDICIAL BILL, Mr. Morris in the chair.

A considerable number of amendments were offered by Mr. Harper, and approved.

Mr. DENNIS moved an addition to one of the sections, in the form of a proviso, declaring that nothing contained in the bill should be construed to repeal for any act for securing debts on bills, &c. as well as in the courts of the several States a jurisdiction in certain cases therein mentioned.

He made this motion, not with any reference to his own decision, but to try the sense of the committee on the constitutionality of the power thus delegated; by a question from New York (Mr. Bird).

He had himself no doubt of the constitutionality of the power. Under our present system of government, as well as under the confederation, it had been exercised in analogous cases. The old Congress had expressly vested in the State courts the jurisdiction over admiralty cases.

The constitution has empowered Congress to establish judicial courts, which might be made the sole organs of decision in certain specified cases; but it had not prescribed that they should absolutely be the exclusive organs. He recollected that in the convention of Virginia, that ratified the federal constitution, the advocates of it urged, as an argument for its adoption, that though Congress had the right of establishing independent judiciaries, it was not probable that they would extensively exercise the right; but that they would devolve judicial powers on the State tribunals.

As to the expediency of delegating judicial powers to the State courts, it presented a more difficult enquiry. It was certainly a kind of clumsy affair. Under all other governments the judicial authority was at least co-extensive with the legislative; and in many governments it went beyond it, it is a decision on cases under the law of nations.

Besides Mr. Dennis differed no way of compelling State judges to perform their duty, and there appeared to be peculiar hardships in obliging courts and juries supported by particular counties to perform federal duties.

Mr. HARPER had a little doubt of the constitutionality as he had of the expediency of this delegation of power. At present we are not under the necessity of establishing a judicial system as extensive as the powers of Congress. If we were constitutionally obliged to do this, we should be compelled to cover the whole ground, and to institute a great number of new courts.

It is true, that we cannot enforce on the State courts a matter of duty to the performance of the acts we confide to them; but we give them the power, and until they refuse to exercise it, we have no cause to complain.

He did not believe this proviso necessary. But as some gentlemen thought it was necessary, he would vote for it.

Mr. BIRD declares himself still of opinion, that the delegation of judicial powers to the State courts was unconstitutional. This is denied by the gentleman from Maryland. The argument he makes use of is, that the delegation of judicial powers to the State courts was unconstitutional. This is denied by the gentleman from Maryland. The argument he makes use of is, that the delegation of judicial powers to the State courts was unconstitutional. This is denied by the gentleman from Maryland.

was alleged, was not a question of right, but of expediency. If it were a question of right, then must the question of right be superior, supercede the minor question of expediency.

Some gentlemen seemed to think, that as soon as Congress pass a particular law, there exists a right and a duty in the State courts to execute it. But our own practice disproves this; for all our laws on the subject actually give power to the State courts; the expression is, they may have jurisdiction in certain cases.

It had been asked, whether the laws of the U. States, did not bind the State judges. He answered, that they bound them as citizens, but not as judges. Even the gentleman from South-Carolina admits that there is no obligation imposed upon them to do it. This furnished a strong argument of the inconsistency of gentlemen, as the judges were neither bound to execute our laws, or punishable for omitting to execute them.

Further, the institution of a judiciary, co-extensive with the other branches of the government, was a vital part of the administration of all just plans of civil polity. On the judiciary depended the fair administration of justice. It was an organ of essential use and necessity. It was not to be taken from the system, it formed a part, independently of all other systems. As well might the organ of one human body expect to derive support from the organ of another disconnected body. The federal judiciary, to maintain support from State tribunals, so thought the framers of the constitution; and a contemporary commentator on it has declared that a judiciary co-extensive with the States is a vital part, and not to require amendment to support it.

Mr. BIRD then went over the record found with that taken by him in a former article, to which we refer the reader. He concluded by declaring, that from the point was better cleared of constitutional objections, all arguments of expediency were perfectly futile.

The simple question was, whether the Congress of the United States had or had not the constitutional right of transferring to the State judiciaries the power which is vested in the federal courts, by the laws of the United States. It is difficult this question he should not consider the consequences resulting from the decision, for although the consequences might be his, yet others do not. Mr. BIRD represented that the judiciary of the United States might be made co-extensive with the State judiciaries, if this power was not admitted, yet if the constitution was written, it must be understood. The constitution could not be bent as convenience might require. The decision therefore must be made by the instrument itself.

The constitution provided that the judicial power of the United States should be vested in one Supreme court and such inferior courts as the Congress might from time to time ordain and establish; and also that the State judges should exercise such powers as Congress might confer on them. — Mr. N. said the clause in the constitution requiring inferior courts was equally imperative with that requiring Supreme courts, with this difference only, that the former court was limited to one, but the details of the inferior courts were left to Congress. The expression inferior courts was a technical expression, as well understood by every lawyer as the word inferior. It meant a court possessed of subordinate powers within the same judicial system, and necessarily implied a superior court capable of controlling an undue exercise of those powers. That the State legislatures might, with much propriety be called inferior to the federal legislature, or the executive of any State be called a subordinate officer of the President of the United States, as the State courts could be considered inferior courts of the United States.

The words in the constitution were, "inferior courts as Congress may ordain and establish;" and it was not sufficient to justify giving the power to try causes ar-

ising under the constitution, &c. you must have made them courts of the United States; for there was no essential difference between ordaining and establishing courts and transferring power to courts already ordained and established. The obvious meaning of the constitution was that the judicial power of the United States should be confided to courts established and organized by their own government. Besides, Mr. Nott observed it was required that the judges should hold their offices during good behavior; but this was not the case in the several States; in some, he said, they held their commissions for a limited time; in others during the pleasure of the legislature, and in others they could not hold them after a certain period of life. There was another objection, he said, to this mode of appointing officers of the United States. The constitution had provided that the President should appoint all the officers of the United States, not otherwise appointed by the constitution, except Congress should by law provide otherwise, as mentioned in the law clause of the constitution. The judges were not, however, of that description of officers contemplated by the constitution, the appointment of them Congress might vest in some other department, and if they were, that power would yet be exercised by Congress. This in effect would be to divert the President of the power given him by the constitution of appointing all officers, and to exercise it ourselves.

The objection, contended for would be further obviated by a reference to the second section of the third article of the constitution, expelling the cases to which the judicial power of the United States should extend. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies in which the United States shall be a party; to controversies between two or more States, between a State and citizen of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State and a citizen thereof, and foreign States, citizens, or subjects.

It is said there was a marked difference between the words of the constitution relating to the catalogue of cases enumerated in the first part of that section, and those in the latter part. It is said that word all was prefixed to each of the cases mentioned, down to the words admiralty and maritime jurisdiction inclusive, but was omitted in all the subsequent cases. He could see no reason why that word was added in the former part of the section and omitted in the latter, except it meant that there was no case of the former description to which the judicial power of the United States should extend, in fact that the courts of the United States should have exclusive jurisdiction of all those cases, and in the latter their jurisdiction should be concurrent with the State courts.

It is further to be observed, he said, that the first description of cases here enumerated, were such as had received their birth from the constitution and laws of the United States, and could not have existed previous to the establishment of the government, or be such as immediately involved the rights and interests of the general government; but that the latter were such as the individual States might have jurisdiction of, previous to that pe-

riod. He presumed the State courts were not vested with more power under the present constitution than they were before, unless given them by the constitution; nor are they divested of any, unless by the law instrument, or by Congress, in pursuance of the power therein given to them. And he had seen no part of the constitution that delegated this power to the State courts, or that authorized Congress to do it. It appeared to him that the meaning of the constitution was to give to the courts of the United States exclusive jurisdiction over cases arising under the constitution, or laws of the United States, and also over all cases in which the State courts were not competent, and to refer to the individual States, the exclusive jurisdiction over their own local concerns; and that in cases involving their own interest and the rights of others, they might have concurrent jurisdiction.

It was acknowledged by the gentleman from Delaware, (Mr. Bayard) that Congress had no power to compel the State judges, the judges were bound to obey all the acts of Congress. Other gentlemen had observed, that this doctrine would go to deny that the stamp act, or any similar act, was binding on the State judiciaries. On this Mr. N. observed, that the State courts were bound to do all the constitutional laws of Congress. Which abstract was binding on the State judiciaries. On this Mr. N. observed, that the State courts were bound to do all the constitutional laws of Congress. Which abstract was binding on the State judiciaries. On this Mr. N. observed, that the State courts were bound to do all the constitutional laws of Congress. Which abstract was binding on the State judiciaries.

Mr. N. said, wherever a duty is enjoined by law, a person who is guilty of the non-performance of that duty incurred the penalty annexed, and that penalty could be recovered no other way than by indictment, or some other proceeding under the law itself. And how would gentlemen frame an indictment in a State court, to embrace a case that had occurred under a law of the United States? It was essential in every indictment, to lay the offence to have been committed against the law of the State, and to conclude against the peace and dignity of the same. But surely gentlemen would not contend that an offence against the law of the United States was an offence against the law of an individual State, or against its peace and dignity.

The gentleman from Delaware (Mr. Bayard) had observed that penalties incurred under the revenue laws were not considered as crimes, but were recoverable in actions of debt. But said Mr. Nott, merely changing the action or the mode of recovering the penalty incurred under the revenue laws, the tribunal before whom it is to be tried. It was still a case arising under a law of the United States, and although a debt, it was one in which the defendant must answer on oath. (Continued on last page.)