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For the National Intelligencer.

Appointments by the President.

[CONTINUED.]

The remaining objections to the late appointments of the President apply to the case of *Ray Greene*.

The circumstances attending this case are understood to be these:

Ray Greene was a Senator of the United States during the last session, when the new judiciary arrangements were made, and continued a Senator, in the actual discharge of the duties of a Senator, until the 4th day of March. By these new arrangements, *Circuit* judges, additional to the then existing *District* judges, were created. Among the last nominations made by Mr. Adams, at the close of the session, was that of *Mr. Greene*, who was named for the place of *district* judge of Rhode Island, then held by *Benjamin Bourne*, named at the same time for the place of *circuit* judge.

By the constitution two descriptions of office are created; those, a removal from which takes place at the pleasure of the President; and those which are held during good behaviour. The first description embraces all offices but such as are judicial; the last embraces judicial offices alone.

With respect to judicial offices the constitution says: *Art.* III. *Sect.* 1.—"The judges, both of the supreme and inferior court, shall hold their offices during good behaviour."

It is afterwards provided that in case of misdemeanor, they shall be tried by impeachment; and removed from office *only* on the conviction of the Senate.

From this statement it follows that all officers, excepting judiciary officers, being removable at any moment by the President, he can at any moment make a vacancy, which is actually made by commissioning an individual to fill a place, at the time of nomination occupied by another.

But with regard to *judges* a different rule exists. Judges hold their offices independent of the pleasure of the President. The places, to which they are once constitutionally appointed, are theirs beyond any executive control. Until they formally resign, or by some voluntary act of theirs vacate their office, it continues to be absolutely held by them. The President and Senate may name and commission a successor, but the nomination and the commission will be altogether nugatory, without the consent of the existing officer.

Now, when Mr. Greene was nominated *district* judge of Rhode Island, was that office vacant? Clearly it was not. Mr. Bourne had long been and still was judge. He had not resigned, he had not signified his intention to resign, and no one could signify it for him.

It is true that he was appointed to what was called a superior office. But, granting the new appointment to be superior to the old (which, however, is very questionable from the precariousness of its tenure) still Mr. Bourne may have had strong reasons for keeping the office which he had for some time held, and which he was likely to hold as long as he chose, in preference to accepting one, which, though more emolumentary, might be vacated in a short period, by a repeal of the law which established it. Such reasons are not merely theoretic; they have *in fact* influenced the decisions of several *district* judges nominated in the same way to *circuit* appointments. Does it not clearly appear from these facts that there was no vacancy in the office of *district* judge of Rhode Island, and that there being no vacancy, of course Mr. Adams, not possessing the power of making one, could not, without flagrant absurdity, fill an office not vacant.

The Constitution says, "The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

We have seen above that until the period of the 4th of March, Mr. Bourne actually held the office of district judge. It now appears that Mr. Greene actually held the office of Senator. Until this period, then, Mr. Greene could not be district judge, as holding the office of Senator, the provisions of the 6th Sect. of the 1st. Art. of the Constitution declare that, "No person holding any office under the United States shall be a member of either House during his continuance in office."

It is clear then that Ray Greene was not district judge antecedent to the 4th of March, because being Senator, he was disqualified from holding any other office, and because Mr. Bourne being the judge, until he resigned there could be none other.

Did these reasons require any further illustration, it would be easy to furnish it by an appeal to the *argumentum ad absurdum*, in case a different construction should be given to the Constitution.

For supposing the appointment of Mr. Greene be just, it would follow inevitably, in case Mr. Bourne refused to give up his office of district judge, that two commissions for the same place would exist and be of force at the same time; or it would follow, that the President possessed the power, which the Constitution absolutely denies, of removing from office a judge; the first inference is absurd, and the last is in direct violation of the Constitution.

Could the President of the United States, bound by the solemn obligations of an oath to support the Constitution, be expected in the first acts of his administration openly to violate it?

But further; the case has not yet been stated in all its strong colours.

We all of us, fellow citizens, recollect the degrading spectacle which the late administration exhibited in the last moments of its existence, in those moments, which I trust we shall never forget, as they furnish irresistible proofs of the mad career of ambition unrestrained by a responsibility to the people.

A crowd of appointments were made at the last hour. Every great or small office was filled. On the very last day of the session, at the last hour, bordering on midnight, names were proposed by the President, and agreed to by the Senate. In every instance party men were appointed; and even from this description of citizens, time was not allowed to make the best selection. All was hurry, and implicit confidence. Every thing proposed by Mr. Adams was deemed to be right, and was instantaneously confirmed. The period of *evil days* approached, and too much *good* could not be done before their arrival! The inevitable consequence was that men unfit for office were in many cases appointed, and in others men who would not accept their appointments.

In the case of Mr. Greene the substance was aimed at, while the form was neglected. It is understood that the commission, intended for him, *calls him a circuit judge, instead of a district judge*. It is said to be signed by John Adams.

In this state the nomination stood when Mr. Jefferson entered upon the duties of his office. What was he to do, what could he do?

He could not surely let the commission go forth with all its imperfections on its head; and if he had, it would not have availed Ray Greene, who could not have produced it in court as his credentials. It would have been altogether a dead letter.

Could the President grant a new commission to Mr. Greene? If he had cancelled the old one, and given a new one, by what authority could he do this, but by the authority of the Constitution, which empowers him to fill vacancies occurring during the recess? And in doing this, would not the very point have been settled, which has been settled in the appointment of Mr. Barnes, viz. the existence of a vacancy? Most assuredly it would. And it follows that they, who condemn the President for commissioning Mr. Barnes, recommend a line of conduct, which differs from that which he has actually pursued *only* as to the person appointed, while it fully establishes the principles on which he has acted.

It is presumed that, when all these considerations are fully and coolly examined, no citizen, who is not prejudiced by party feeling beyond all cure, can doubt the correctness of the principles, which appear to have guided the President.

But there remains an additional consideration, which, corroborated by the foregoing ones, cannot fail to make a strong impression upon the mind of every citizen who feels the necessity of guarding the constitution from invasion. That Constitution expressly declares that "no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time."

The design of this Article was to prevent Senators and Representatives from creating offices for themselves. Any act, then, of theirs, whereby an office is created for their own occupancy, is a *literal* violation of the constitution. But is not the Constitution, *in spirit*, as much violated, when legislators create offices, it may be with the express view, of having them filled by the occupants of then existing offices, that these last may be filled by themselves? Is not the end accomplished by the one mode, as bad, and as great an infringement of the principles of the Constitution, as that accomplished by the other? If there be any difference in the degree of transgression, is not that the greater, which in addition to the impropriety of the object, pursues means covered, evasive, and insidious?

It has been truly said that the liberties of a free people are not to be subdued by open and avowed efforts to subvert them, but by stratagem, by subtle artifices, by secret invasions of rights.

In this picture Ray Greene stands a conspicuous figure. *He was a Senator.* It was his vote, united with the vote of a few other Senators and Representatives, which passed the law, whereby permanent offices were carved out for themselves by themselves.

Ought we not to felicitate ourselves on this barrier which the constitution has wisely raised against one of the most dangerous kinds of corruption that can befal a republican government? Should we not be careful to preserve it from destruction, as our best, and often our only safe-guard against violated rights; and is it not a subject of unmixed gratulation that they, who were the first to invade the Constitution, have been also among the first to realise the futility of the attempt?

A FRIEND TO IMPARTIAL JUSTICE.

WAR DEPARTMENT,
April 20th, 1801.

Notice is hereby given,

THAT separate PROPOSALS will be received at the office of the Secretary for the Department of War, until the expiration of the 30th day of June next ensuing, for the supply of all RATIONS, which may be required for the use of the United States, from the first day of October 1801, until the thirtieth day of September 1802, both days inclusive, at the following places, viz.

First. At Pittsburg; at Fort Franklin; at Le Boeuf, at Presquisle; at Niagara; at Oswego; at Detroit; at Fort Wayne; at Michilimackinac; at the Falls of St Mary's; and at the Grand Portage on Lake Superior.

Second. At Forts Washington, Vincennes, and Massac; at the Cantonment near the mouth of the Ohio, and at any post or place on the east side of the Mississippi River, between the mouths of the Ohio and Illinois Rivers; and at any place or places where troops are or may be stationed, marched or recruited within the state of Kentucky.

Third. At Knoxville, Tellico, South West Point, and any place or places where troops are or may be stationed, marched or recruited within the state of Tennessee; at Bear Creek on the Tennessee River, and at any place in the Chickasaw or Choctaw country between Bear Creek and Natchez; at the Chickasaw Bluffs; at Nachez; at Fort Adams and its dependencies, and thence to the Mobile River.

Separate PROPOSALS will also be received as aforesaid for the supply of all rations which may be required for the use of the United States from the 1st day of January 1802, until the 31st day of December in the same year, both days inclusive, within the several states herein after mentioned, viz

Fourth. At Point Peter; at Fort Greene at Fort Wilkinson; at Fort Pinckney; at Fort Johnston; at Fort Moultrie in Charleston Harbor; at Fort Johnton, Cape Fear, and at any place or places where troops are or may be stationed, marched or recruited within the states of Georgia, South Carolina, and North Carolina.

Fifth. At Fort Norfolk; at Harper's Ferry; at Fort M'Henry; at the City of Washington, and at any place or places where troops are or may be stationed, marched or recruited within the states of Virginia and Maryland.

Sixth. At Wilmington; at Fort Mifflin at the Laboratory near Philadelphia, and at any place or places where troops are or may be stationed, marched or recruited within the states of Delaware and Pennsylvania, excepting Pittsburg, Fort Franklin, Le Boeuf, and Presquisle, in the state of Pennsylvania.

Seventh. At Trenton; at Fort Jay; at West Point, and at any place or places where troops are or may be stationed, marched or recruited within the states of New-Jersey, and New-York, excepting Oswego and Niagara in the state of New-York.

Eighth. At Newport; at New-London, any at any place or places where troops are or mad be stationed, marched or recruited within the states of Rhode-Island and Connecticut.

Ninth. At Fort Independence, Boston Harbor, at Salem, at Marblehead, at Portland, at Portsmouth, at Bennington, and at any place or places where troops are or may be stationed, marched or recruited, within the state of Massachusetts, New-Hampshire and Vermont.

A ration is to consist of eighteen ounces of bread or flour, or when neither can be obtained, of one quart of rice, or one and a half pound of sifted or boulted Indian meal, one pound and a quarter of fresh beef, or one pound of salted beef, or three quarters of a pound of salted pork; and when fresh meat is issued, salt at the rate of two quarts for every hundred rations; soap at the rate of four pounds, and candles at the rate of a pound and a half, for every hundred rations.—The proposals will extend to the supply of rum, whiskey, or other ardent spirits, at the rate of half a gill per ration and vinegar at the rate of two quarts for every hundred rations. The price of the several component parts of the ration, as well as of substitutes and alternatives, must be specified.

The rations are to be furnished in such quantities as that there shall at all times, during the term of the proposed contracts, be sufficient for the consumption of the troops at Michilimackinac, Detroit, Niagara, and Oswego, for six months in advance, and at each of the other posts on the Western waters for at least three months in advance, of good and wholesome provisions, if the same shall be required. It is also to be permitted to all and every of the commandants of fortified places, or of posts, to call for at seasons when the same can be transported, or at any time in the case of urgency, such supplies of like provisions in advance, as in the discretion of the commandant shall be deemed proper. It is to be understood that the contractor is to be at the expence and risk of issuing the supplies to the troops, and that all losses sustained by the depredations of an enemy, or by the means of the troops of the United States, shall be paid for by the United States, at the price of the article captured or destroyed, on the depositions of two or more persons of creditable characters, and the certificate of a commissioned officer, ascertaining the circumstances of the loss, and the amount of the articles for which compensation shall be claimed.

The privilege is to be understood to be reserved to the United States of requiring that none of the supplies which may be furnished under any of the proposed contracts, shall be issued until the supplies which have been, or may be furnished under contracts now in force, have been consumed, and that a supply in advance may be always required at any of the fixed posts on the sea board or Indian frontiers, not exceeding three months.

HENRY DEARBORN,
2awt30J *Secretary of War.*

TO BE RENTED,

THE store lately in the tenure of Doctor Gallaspy and Co. Its situation for business is preferable to any other in the City, being on the Pennsylvania Avenue, between the President's House and the Capitol, and within a few yards of the spot on which is to be immediately erected the market house.

JOSIAS W. KING.
At the Capitol.

May 29, 1801. eptf

For sale or Rent,

THE house and lot at present occupied by Mr. John Dempsey, situated near the Capitol Building, on lot No. 6, in square 759; this lot fronts 55 feet on East Capitol street, and 75 feet on Second street. Possession may be had the first day of August next, and for terms apply to the subscriber.

SAMUEL N. SMALLWOOD.
Washington, May 29, 1801. 1m