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National Intelligencer.

SENATE
OF THE UNITED STATES.

FRIDAY, Jan. 8, 1802.

DEBATE

On Mr. Breckenridge's motion to repeal the act passed last session for a new organization of the JUDICIARY SYSTEM.

[Continued]

After Mr. Brackenridge closed his remarks there was a considerable pause, when the President again read the resolution, and enquired if the house was ready for the question.

Mr. OLCOTT, of New-Hampshire, thought the subject was of so much importance as to merit further consideration. The arguments of the gentleman from Kentucky, however ingenious, had not convinced him that the law ought to be repealed. It had not risen like a mushroom in the night, but the principles on which it rested had been settled after mature reflection. He thought it would be extraordinary before any inconvenience had been discovered, to set such a law aside. For these reasons Mr. O. moved the postponement of the consideration of the question.

Mr. COCKE, of Tennessee. This act is said to be entirely experimental, and it is further said, that no inconveniencies had arisen under it. He thought serious inconveniences had arisen. The inconvenience of paying 137,000 dollars a year was truly serious; and it was an inconvenience which ought to be got rid of as soon as possible. It was expected that gentlemen opposed to the resolution would come forward with their arguments against it. If, however, they had no arguments to use, he thought his friend from Kentucky had brought forward reasons so cogent and experimental that the house must be convinced of the propriety of the repeal.

Mr. DAYTON, of New-Jersey, trusted it was not the disposition of the mover to press a decision to-day. He thought it would be improper to postpone the discussion, as gentlemen would thereby be precluded from offering their opinions on the subject. He hoped the motion for postponement would be withdrawn, that other gentlemen might have an opportunity to speak.

Motion withdrawn.

Mr. JONA. MASON, of Massachusetts, said it would be agreed on all hands that this was one of the most important questions that ever came before a legislature. Were he not of this opinion he would not have risen to offer his sentiments. But he felt so deep an interest in the question, and from the respect which he entertained for the district of country he represented, he deemed it his duty to meet the subject, and not be satisfied with giving to it his silent negative.

It was well known, and he presumed it would be readily agreed to, that no people on earth, for the last twenty-four years, had been so much in the habit of forming systems of government as the people of the United States. Nor had any people been so fortunately situated for cool and correct deliberation. In the constitutions they had formed, it would appear that there had been an uniform concurrence in the establishment of one great prominent feature, and also in the application of one uniform principle to that feature. That the legislative, the executive and the judicial should form the three great departments of government, and that they should be distinct from and independent of each other. —And the more the proceedings and sentiments of the people were examined, the more clearly would it appear that all the new and additional checks created, had been applied to adjust the relative weakness or strength of the several departments of government. The same principle had been observed in the old world, whenever an opportunity presented for forming a constitution, having for its object, the protection of individual rights. It accorded too with the uniform opinions of the most celebrated historians and politicians, both of Europe and America; with the opinions and practices of all our legislatures. Nor had Mr. Mason ever heard any one hardy enough to deny the propriety of its observance.

He well recollected that among the great grievances, which had roused us into an assertion of our independence of England, it was declared in the instrument asserting that independence "that the crown had the appointment of judges dependent on its will and favor."

From all these circumstances he concluded that the people of America, when they formed a system for their federal government, intended to establish this great principle; and the conclusion would be confirmed by an examination of the constitution, which in every section recognized or referred to it.

The constitution, in the construction of the executive, legislative, and judiciary departments, had assigned to each a different tenure.—The President was chosen for four years; the Senate for six years, subject to a prescribed rotation biennially; the House of Representatives for two years; and the judiciary during good behavior. It says to the President, at the expiration of every four years, you shall revert to the character of a private citizen, however splendid your talents or conspicuous your virtue. Why? Because, you have assigned to you powers which it is dangerous to exercise.—You have the power of creating offices and officers.—You have prerogatives.—The temptation to an abuse of your power is great. Such has been the uniform experience of ages. The constitution holds the same language to the Senate and House of Representatives:—It says, it is necessary for the good of society that you also should revert at short periods to the mass of the people, because to you are consigned the most important duties of government, and because you hold the purse strings of the nation.

To the judiciary: What is the language applied to them? The judges are not appointed for two, four, or any given number of years; but they hold their appointments for life unless they misbehave themselves. Why? For this reason. They are not the depositaries of the high prerogatives of government. They neither appoint to office, or hold the purse-strings of the country, or legislate for it. They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be disposed to pervert their power to improper purposes. What are their duties? To expound and apply the laws. To do this with fidelity and skill requires a length of time. The requisite knowledge is not to be procured in a day. These are the plain and strong reasons which must strike every mind, for the different tenure by which the judges hold their offices, and they are such as will eternally endure wherever liberty exists.

On examination, it will be found that the people, in forming their constitution, meant to make the judges as independent of the legislature as of the executive. Because the duties which they have to perform, call upon them to expound not only the laws, but the constitution also; in which is involved the power of checking the legislature in case it should pass any laws in violation of the constitution.—For this reason it was more important that the judges in this country should be placed beyond the controul of the legislature, than in other countries where no such power attaches to them.

Mr. Mason challenged gentlemen to exhibit a single instance, beside that lately furnished by Maryland, of a legislative act, repealing a law passed in execution of a Constitution, under which the judges held their offices during good behavior. In truth, no such power existed, nor was it in the power of any legislature, so circumstanced, by a single law to dash them out of existence.

The opinion of Mr. Mason, therefore, was that this legislature have no right to repeal the judiciary law. For such an act would be in direct violation of the Constitution.

The Constitution says:—"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. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

Thus it says, "the judges *shall hold* their offices during good behaviour." How can this direction of the Constitution be complied with, if the legislature shall, from session to session, repeal the law under which the office is held and *remove the office*. He did not conceive that any words, which human ingenuity could devise, could more completely get over the remarks that had been made by the gentleman from Kentucky. But that gentleman says, that this provision of the Constitution applies exclusively to the President. He considers it as made to supersede the powers of the President to remove the judges. But could this have been the contemplation of the framers of the Constitution, when even the right of the President to remove officers at pleasure, was a matter of great doubt, and had divided in opinion our most enlightened citizens. Not that he stated this circumstance, because he had doubts. He thought the President ought to have the right; but it did not emanate from the Constitution; was not expressly found in the Constitution; but sprang from legislative construction.

Besides if Congress have the right to repeal the whole of the law, they must possess the right to repeal a section of it. If so they may repeal the law so far as it applies to a particular district, and thus get rid of an obnoxious judge. They may remove his office from him. Would it not be absurd still to say, that the removed judge held his office during good behaviour?

The Constitution says, "The judges, shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." Why this provision? Why guard against the power to deprive the judges of their pay in a diminution of it and not provide against what was more important, their existence—

Mr. Mason knew that a legislative body was occasionally subject to the dominance of violent passions; he knew, that they might pass unconstitutional laws; and that the judges, sworn to support the constitution, would refuse to carry them into effect; and he knew that the legislature might contend for the execution of their statutes. Hence the necessity of placing the judges above the influence of these passions; and for these reasons the Constitution had put them out of the power of the legislature.

Still, if gentlemen would not agree with him as to the unconstitutionality of the measure proposed, he would ask, was it expedient? Were there not great doubts existing throughout the United States? Ought not each gentleman to say, though I may have no doubts or hesitancy, are not a large portion of our citizens of opinion, that it would violate the Constitution? If this diversity of sentiment exists, ought not the evils under the judiciary law to be very great before we touch it? Ought we not to aim at harmonising instead of dividing our citizens? Was not the Constitution a sacred instrument; an instrument ever to be approached with reverence; an instrument which ought not lightly to be drawn from its hallowed retreat, and subjected to the flux and reflux of passion. But where is the evil complained of? This system was established only last session: scarcely had it been yet organised; scarcely had we tried it on its very threshold; where then the necessity of being so pointed, as to destroy a system scarcely formed three days ago? Does not this manifest precipitation? Will it not manifest more magnanimity, more rationality to abide by it until we try it; instead of taking up a pen and dashing it out of existence?

The reason that the suits depending were not so numerous, arose from the nature of the old establishment. That establishment had no parallel. It carried with it the seeds of its own dissolution. No set of judges could be found physically hardy enough to execute it. Such was the labour of their duties, that they were denied time for study or improvement. Besides a case was heard at one term by one judge, and postponed for consideration to the next term. At that term another judge appeared, and all the arguments were to be gone over anew; and the same thing might happen again and again. Was this the way to extend justice to our citizens? Was not the delay equivalent to a denial of justice? It was a fact that three-fourths of the time of the judges had been taken up in travelling.

It may be true, that the number of suits in the federal courts is lessened; and if the internal taxes are to be swept away, it may be still more lessened as far as depends upon that source. But is it possible, that suits will go on diminishing as the gentleman seems to think? Is reason so predominant? Is the millenium so near at hand? On the contrary is not our commerce increasing with great rapidity? Is not our wealth increasing? And will not controversies arise in proportion to the growth of our numbers and property? Controversies, which will go to federal tribunals as soon as the judiciary system is fully established. By the documents quoted by the gentleman from Kentucky, it appears, that more business has been lately done in the federal courts, than in any other antecedent time, except in one or two counties in Pennsylvania.

Besides, (said Mr. Mason,) even if there be not a great pressure of business, had we not better pay the paltry sum of 30 or 40,000 dollars for a system too broad, than have one that is too narrow? Is it not a melancholy consideration, that in many of the European States, the costs are equal to the principal contended for? It would be honorable to the United States to exhibit a different example. It would be honorable to them to hold out an example, even if confined to foreigners, of prompt and efficacious justice, though at the expence of 100,000 dollars. Such an example would be a cause for national triumph, and our people would exult in it.

Inasmuch, therefore, as to render the judges respectable, it was necessary to make their appointments permanent, as time, labour, experience and long study, were required to perfect any man in a knowledge of the laws of his country; inasmuch as it has been thought good policy, that the judges should be well paid; and that they should be so placed as to be divested of all fear, and neither to look to the right or to the left; inasmuch as they should be so placed as to render them independent of legislative as well as of executive power; he hoped this law would not be repealed.

These were the reasons, which Mr. Mason assigned as those which would influence his decision. He acknowledged, that he had not entered the House prepared to offer his sentiments; but as the question was about to be put, he had thought it best to offer them, such as they were, rather than to give a silent vote on a subject of such great importance.

Mr. WRIGHT, of Maryland, said it must be agreed that this subject was one 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 table. 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 state of Maryland, which had repealed a law respecting the judiciary. Mr. W. here quoted the constitution of that state, whose provisions, he observed, 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 of repealing a law formed by their predecessors. And the legislature of the U. States possessed the same power. This they had already determined by the very act of the 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 inferior judges? Are we to be eternally bound by the follies 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 those 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 1200 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 this 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 the 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 honorable mover has rested his proposition on two grounds.

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

2dly. 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 commands 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 organised such a system of police, that a purse of gold might be hung up on the high way without any danger of being taken. Had the honorable 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 by taking the unfrequency 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, Sir, if with that 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 made by the honorable mover of the resolution.

We have been told of the great expence of the judiciary—that it amounted to 137,000 dollars. And thus attributing the whole expence of the establishment to this particular law, it has been affirmed in argument that to repeal the law would be to save 137,000 dollars. If the other arithmetical arguments of the gentleman were 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 be actually done.

The expence arising under this law, that it is proposed to repeal, amounts to thirty thousand dollars, exclusive of fifteen thousand dollars estimated for contingent expences, making together 45,000 dollars. But let us not stint the allowance; throw in a few thousands 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 laid 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