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CONGRESS OF THE UNITED STATES,

House of Representatives.

Wednesday, February 24, 1802.

DEBATE

On the bill received from the Senate, entitled "An Act to repeal certain acts respecting the organisation of the courts of the United States.

Mr. Goddard. Mr. Chairman, the bill on your table having been so long before the committee, and the principle of the first section, now under consideration, having been so fully and ably discussed, that I should content myself with a silent vote, if the subject was of less importance. To this course I should be more inclined, as gentlemen on the other side of the House, have already expressed an opinion that nothing new could be offered to the committee; and manifested an uneasiness, that the debate should be further protracted.

But, sir, the man who deems this subject as important as I do, as one, involving the dearest and best interests of our common country, will seek rather for an apology for silence, than for speaking.

Before I enter upon a distinct consideration of the two questions, involved in this discussion, I hope the committee will pardon me, for adverting to the history of this bill, in this House. When the bill first came from the senate, a motion was made, to refer it to a select committee, which had been appointed in this House, on the subject of the judiciary system of the United States. That motion I then supported, with an anxious hope, that it might prevail. The gentleman from Virginia, (Mr. Giles) being Chairman, and myself a member of that committee, I felt extremely solicitous there to meet, to lay aside all party feelings or prejudices; to banish all considerations, when or how, the act now proposed to be repealed, was passed; to confine ourselves to the enquiry whether the existing system does not afford to the citizens of the United States, a fairer chance to obtain prompt and speedy justice in their courts, than the former system, now proposed to be revived. But, sir, the chairman of that committee, then told us, that a great *constitutional* question had been raised; that such questions were improper for the consideration of select committees; that a *fortunate period* had arrived for its discussion; that it was proper to be considered, only in committee of the whole; and that it *must* be decided.

On a subsequent occasion, when a motion was made to postpone the consideration of this bill, to a future day, the solicitude which I had felt, to avoid an unnecessary decision, of the fatal question was revived; and dormant hopes returned fortified by petitions from respectable sources, informing us, that the present organization of the courts, in one circuit at least, was not only superior to the old system, but absolutely *necessary* to the attainment of justice in that circuit. Animated with a hope, excited by those petitions; deeply impressed with a sense of the dangerous and deadly blow, which I then was, and still am, persuaded the repeal of this law will give to the constitution, I then expressed a wish, which, although it drew upon me from one gentleman, a charge of an intention to delay, and embarrass the business of the session, was the honest effusion of my heart, that an opportunity might still be given, to ascertain, whether the act proposed to be repealed, is not what its title imports, "an act for the more convenient organization of the courts of the United States." That our enquiries might still be confined, exclusively to that question, and if the result of such enquiries should prove to us, that the courts as organized by the act now proposed to be repealed, were throughout the United States, what those petitions prove them to be, in the third circuit; an useless, a dangerous discussion, of the other question, might be avoided. We were then told, sir, by another gentleman from Virginia, (Mr. Randolph.) that a great constitutional question had been raised, raised let me add, by the gentlemen who support the bill, and that it *must* be decided. That gentleman then told us what that question was. Whether the judiciary is a *coordinate* or subordinate branch of our government? Defeated in both these attempts, we are at length brought to a consideration of the important principles contained in the first section of the bill on your table.

After the repeated declarations of the two gentlemen from Virginia, that the great constitutional question *must* be decided, although in doing it, a judicial establishment may be abolished, which is *necessary* to the administration of justice, those who oppose the passage of the bill might be excused from directing any remarks to the question of expediency. Yet, sir, lest silence on that question should by some others, be construed into an admission, that the new system, is not preferable to the old, now to be restored, I will first take the liberty to submit a few remarks on that question.

I am induced to believe, that there must exist between the several gentlemen from Virginia, who have spoken on this subject, and myself, some radical difference of opinion, as to what is a due administration of justice, in courts of law. One gentleman from Virginia, (Mr. Thompson) expressed his astonishment, at what he was pleased to call, this *immense establishment*. To prove its inutility, he declared, that he came from a state where justice was 'truly and speedily' administered, and produced to the committee a document to shew, that there were now pending before a court in that State, in which only one old man sat as judge, no less, than two thousand, six hundred, and twenty seven causes, undecided!

On a former occasion, which has been alluded to, I took the liberty to suggest as a reason for confining ourselves to an enquiry into the expediency of the measure only, that the organization of the courts as it now exists, was calculated to carry justice home to every man's door; another gentleman from Virginia, declared, that to be the very reason why he would vote for a repeal of the law, intimating that we had too much *federal justice*. I must believe, that those gentlemen take as the basis of their opinions, the position, that suits at law are evils in community, and infer, that the organization of courts, which is best calculated to deter citizens from applying to them, is the best. Hold out to the citizens a prospect of an endless continuance of the evil, and they will not involve themselves in it. For, sir, what prospect of justice, can that suitor promise himself, who sees that 2627 causes, which have been accumulating for ten or twelve years, must be decided, by one venerable old man, before his can be attended to?

This administration of justice may suit the *state of society* in Virginia; but it is not such as the people of the United States meant to provide for themselves, under that happy form of government, which they have adopted. In looking into the sixth article of the amendments to the constitution, which have been adopted by the people, I find this expression of the *public will*. "In all criminal prosecutions, the accused shall enjoy the right to a *speedy* and public trial, &c."

If, sir, the old system is to be revived, what, let me ask, will be the condition of persons accused of crimes? And who may not be accused? It is acknowledged by those who advocate the repeal, that under that system, owing to the vast distance which judges were obliged to travel, the rising of rivers, impassable roads, and various inevitable accidents, judges could not, and frequently did not, arrive in time to hold a court. The same thing, owing to the same causes, will happen hereafter. What will be the consequence? Persons accused of crimes, and confined in your gaols, to wait their trials, must continue perhaps in the confinement of a dungeon, six months longer, before they can have an opportunity of having their guilt or innocence, ascertained before a court of law. What under this system becomes of the right of the accused to a *speedy* trial, sacredly guaranteed to him by the constitution? If innocent you punish him. If guilty, you inflict a double punishment, one before and one after conviction. This consideration alone in a free country, ought to outweigh all arguments, arising from the trifling additional expence, to which we are subject, by the act proposed to be repealed. But, however important, the speedy administration of justice, in criminal prosecutions, that alone was not all which the citizens intended to secure to themselves when they adopted this constitution. The speedy administration of justice, in *civil actions*, was *then* deemed important.

The convention of the state of Virginia, when this constitution was adopted, proposed certain amendments to it, and among others a bill of rights. In that bill of rights I find the 12th article expressed in this manner: "That every freeman ought to find a *certain* remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property or character. He ought to obtain right and justice freely without sale, completely and without denial, *promptly and without delay*; and that all establishments or regulations, contravening these rights, are oppressive and unjust." The convention of North-Carolina, copying after Virginia, adopted precisely the same amendments. Both these states *then* thought that all establishments or regulations, contravening the right, of obtaining justice *promptly and without delay*, were oppressive and unjust. Those amendments were proposed to the constitution of the United States, and regarded the attainment of justice in the courts of the U. States. Those states were not *then* afraid of a too prompt administration of *federal* justice. *Now*, a system which has confessedly been formed to prevent courts being holden, and to postpone suitors from term to term, without trial, and which from the very nature of its organization, will often produce that effect, is to be restored, and one which all agree is calculated to ensure a speedy trial, is to be abolished.

I am not disposed to dwell long upon this subject, not having been a member of this house when the act now to be re*pealed* passed. Sir, when I heard the objections to the old system, and the advantages of the new one, so fully stated by the gentleman from Delaware (Mr. Bayard) when I found that the plan of separating entirely the supreme from the circuit courts originated as early as the year 1790, and was then recommended to Congress, by the then attorney general, Mr. Randolph, as appears by the report read yesterday, by the gentleman from North-Carolina (Mr. Huger.)—When as that gentleman has truly observed, that the document before us contains only the business done by the judges of the supreme and district courts in the circuit courts, and not the business of their own particular courts also. When I reflect on the appellate jurisdiction of the supreme court, and the extreme absurdity of subjecting, in another place, the determination of the same men to the revision of themselves; might I not rationally indulge the hope, that gentlemen must have been satisfied that the judicial establishment, as it now exists, does furnish to the citizens a much fairer chance for the attainment of justice than the old one, and that they would have suffered the constitutional question to have slept for the present?

But, sir, we are compelled to consider whether the bill on your table can pass without a violation of the constitution. Before other considerations are attended to, I hope I may be permitted to present to the committee one argument, derived from the progress of the bill itself.

A gentleman from Massachusetts (Mr. Bacon) told us some days past, that on this subject the constitution speaks a plain and intelligible language. Let me enquire where gentlemen have found this *plain* and *intelligible* language.

One gentleman taking for granted the position to be proved, and reasoning *ab inconvenienti*, has found it in the evil consequences, resulting from establishing a different doctrine "*an army of unimpeachable judges with salaries and without offices!*"

Another has found it in a distinction between the supreme and inferior courts, derived from the words, "*may*" and "*shall*."—Another, in the words "*from time to time.*"

Another in that clause of the constitution which authorises Congress to establish tribunals inferior to the supreme court, supplying the word, "*abolish*" omitted by the convention which framed the instrument.

Another in a discovery that misbehaviour is no *crime* in a judge for which he can be impeached; and therefore, the legislature must, *ex necessitate rei*, possess the power of removing judges from office.

Another has found this language in the *will of the people*, not literally expressed in the written constitution, but in their elections, in a change of rulers; believing, I presume, that the *vox populi* is *vox Dei*, and that *human* must yield to *divine* laws and constitutions.

Another in the tyranny which will be established, if you suffer the judges to test the laws by the constitution.

Another in the words "*to promote the general welfare*," in the preamble to the constitution.

Another in the exposition of the word "*hold*," connected with that clause of the constitution which authorises the President to grant commissions.

And last of all, the gentleman from Virginia (Mr. R.) abandoning all these, has found it in the "*quo animo*," as he expressed it, with which you give your vote.—Erecting in every man's mind a tribunal before which, to test the constitutionality of measures.—The doctrine is, believe that you do not violate the constitution, and it is not violated! This last position, whatever are its merits, has not novelty to recommend it. "As a man thinketh so is he," has been taken for the basis of many false speculations before this time.—Instead of finding this plain language in any one part of the constitution, ought not the various grounds which have been taken by the friends of the bill to teach gentlemen to distrust the soundness itself of the doctrine which they wish to support? Shall I be told in answer to this, that those who oppose the bill have taken grounds as various in their opposition? No, sir, we uniformly grounded our arguments on two plain and unequivocal sentences in the constitution. "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." Those who oppose, are indeed obliged to follow those who support the bill, in their devious course, and find arguments to answer the *constructions* by which these words, which are truly *plain and intelligible*, are attempted to be done away. But having been apprised by the gentleman from Virginia, that the great constitutional question to be decided is, whether the judiciary is a co-ordinate or a subordinate branch of our government; and whether it is competent for the courts to decide upon the constitutionality of laws? And this bill having been brought forward at a period which gentlemen are pleased to call fortunate, for that purpose, I hope I shall be excused for requesting the attention of the committee for a few moments to this question. One gentleman from Virginia (Mr. Randolph) having said that he was not disposed to contend about the terms coordinate and subordinate, I am willing to substitute others. Is the judiciary a distinct and independent branch of the government, ordained and established by the constitution as such? In examining this question I may be permitted to enquire, whether it is competent for the judges to pronounce on the constitutionality of your laws? One gentleman from Virginia (Mr. Giles) seemed disposed to wave this enquiry, probably in consequence of the sentiments of a different kind, avowed by his friend from Massachusetts (Mr. Bacon) yet it deserves to be considered; and that gentleman could not suffer it to pass in silence, but charged a claim of such power to the judges as one of their crimes.

Altho' proving this does not, I admit, prove that the judges of your courts are by the constitution rendered independent of the legislative power; yet it furnishes a strong reason for giving to that instrument, if it will bear it, such a construction as will make them so. Judges dependant on the legislature for their continuance in office; for the continuance of their offices; or for a continuance of their salary, cannot be expected to decide against the wishes of those on whom they depend. Gentlemen ask where we find in the constitution a power given to the judges, to decide against the constitutionality of laws? I answer in the sixth article, these words, "This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme* law of the land." The judges are not only sworn to support the constitution, but their oath of office binds them to judge "*agreeably to the constitution and the laws.*" The expression *supreme law* of the land, imports inferior and subordinate laws. What are those laws unless acts of Congress? The expression respecting laws made pursuant to the constitution, necessarily implies, that laws may be made, which will not be pursuant to that instrument. Such are not the supreme law of the land. They are not law. Shall not the judges, when called upon to decide, if in their opinion a bill should be passed by Congress against the constitution which assumes the *form* of a law, declare it, I will not say *null & void*, if gentlemen dislike those terms, but to be *no law*? Not being made pursuant to the powers delegated to Congress, by the constitution. In the case of Vanhorne vs. Dorrance, decided in the circuit court for the district of Pennsylvania, reported in Dallas's Reports, judge Paterson is made to say—"What is a constitution? It is the form of government delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; it contains the *permanent will of the people*, and is the supreme law of the land; it is paramount to the power of the legislature; and can be revoked or altered only by the authority that made it. The life giving principle, and the death doing stroke must proceed from the same hand. What are legislatures? Creatures of the constitution; they owe their existence to the constitution; they derive their power from the constitution; it is their commission; and therefore all their acts must be conformable to it, or else they will be void. The constitution is the work and will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature, in their derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move.—In short, the constitution is the sun of the political system, around which all Legislative, Executive, and Judicial bodies must revolve. Whatever may be the case in other countries, yet in this, there can be no doubt, that every act of the legislature, repugnant to the constitution, is absolutely void." In another part of the same case, the same learned judge speaking of an act of the legislature of Pennsylvania, upon the constitutionality of which he was then deciding says, "If this be the legislation of a republican government, in which the preservation of private property is made sacred by the constitution, I ask, wherein it differs from the mandate of an Asiatic Prince? *Omnipotence in legislation is despotism.* According to this doctrine we have nothing that we can call our own, or are sure of for a moment; we are all tenants at will, and hold our property at the mere pleasure of the legislature. *Wretched situation! Precarious tenure!* And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free!" Before I lay aside this case I will take the liberty to read the remarks of the same judge respecting tribunals of justice. "The rights of private property are regulated, protected and governed by general known and established laws; and decided upon by *general, known and established tribunals*; laws and tribunals *not made and created on an instant exigency, or on an urgent emergency, to serve a present turn, or the interest of a moment.* Their operation and influence, are equal and universal; they press alike on all. Hence security, and safety, tranquility and peace.—One man is not afraid of another, and no man afraid of the legislature." In another case reported in the same book, judge Iredell, speaking of Congress says, "Upon this authority, there is, that I know, but one limit; that is, that they shall not exceed their authority: if they do, I have no hesitation to say, that an act to that effect would be *utterly void*, because it would be inconsistent with the constitution, which is a fundamental law, paramount to all others which we are not only bound to consult, but sworn to observe." In the case of Bull and wife against Calder and wife, as well as in several other cases, the same doctrine is maintained by the judges of the supreme court. And, sir, it is to this doctrine that we owe our liberty, which consists in security to our persons, our property, and reputation. And will the gentleman from Virginia impute the maintaining of this doctrine to the judges as a crime? Is this the question to be decided? Are we to shew our control over the courts; to repeal this law, and put down the judges? Let it be remembered, that in these decisions the judges were not claiming power, as the gentleman from Virginia has been pleased to express it, but solemnly deciding between citizen and citizen the rights of private property.—And let us arrogate as much wisdom as we please to ourselves, who, let me ask, are most competent to decide correctly, important questions arising under the constitution, our judges or our legislators? Legislatures will in violent times enact laws manifestly oppressive, unjust and unconstitutional, and that too, under the specious pretext of relieving the burthens of the people. Such laws it is the business of judges, elevated above the influence of party spirit, to control.—Let me mention an instance. Previous to the adoption of this constitution, and during the time of the paper money system of the state of Rhode Island, an act was passed by the legislature of that state, subjecting to a penalty, any person who should refuse that money, then in a very depreciated state, for articles offered for sale in market; and a new and summary