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FEDERAL MISREPRESENTATION, No. XV.—DETECTED.

The annals of party malice cannot boast a production of more unqualified falsehood than the following letter of a member of congress written May 2, 1802, and addressed to Savanna (Geo.) It is extracted from the Charleston Times.

Besides the false opinions and inferences with which it is replete, it contains 29 palpable violations of truth, (which it has been deemed sufficient, without comment, to state numerically) all of which must have been known by the writer to be untrue. It is to be regretted that his name does not appear, that it might be held up to general infamy. Base is the head that can conceive, or the heart that can harbour such calumnies;—and unfortunate the cause that requires them!

SAVANNAH, May 21.

Extract of a letter from a member of Congress at Washington, dated May 2, 1802.

"We shall adjourn to-morrow; [1] contrary to the wishes of the President, and owing [2] to those of the eastern democrats. [3] Monsieur Pichon has notified to the President, that a French fleet will soon be in the Chesapeak, and want aids in money or provisions, and, although the rising of Congress previous to their arrival, would afford to Mr. Jefferson an excellent pretence for giving them nothing, yet, [4] dreading all responsibility, he desires congress to be in session when they come, and to decide upon their demands. The ministerialists from the east and north wish to be at home; whilst the 5 Virginians are willing to continue in session all the summer; this large delegation have divided themselves [6] into classes of threes and fours, and they in turn go home for ten and fifteen days, at the expiration of that term, they return ready, and indeed anxious for a long session. Mr. Giles, who is now absent, has allowed himself this kind [7] of indulgence repeatedly through the session, and was each time absent a fortnight.

"It is well ascertained, that the [8] repeal of the judiciary has electrified the people north of this, and by every mail we learn that the measures of the present administration are meeting [9] in New-England with the contempt and indignation they deserve. No doubt now [10] remains that a total change will take place in the political views of all the states north of the Potomac, (Pennsylvania excepted) within two years. Georgia and S. Carolina being frontier states, possessing much wealth & but small internal means of defence, ought to feel much interest in preserving our national constitution, and defending it against the innovations of the projecting and ambitious philosophers of the ancient dominion, and I hope they will not be far behind their eastern friends in this renovation. All difficulties which formerly existed respecting your western country, will, I trust, be dispelled by a negociation lately concluded between the government and the Georgia commissioners. The state of Georgia will be satisfied because she receives an ample compensation—the Yazoo claimants will also be satisfied, and the government after compensating and quieting them, and selling as much land as will furnish a fund for paying Georgia, will have a large surplus of territory.—But above all, the United States will have, what in fact is all they desired, the jurisdiction of the country. General Cobb and Colonel Hitchborn, from Massachusetts, the agents of the Boston Yazoo company, have been here all the winter, lodging with the attorney general Lincoln, and they say the Yazoo companies in Boston and Connecticut will be perfectly satisfied with the arrangement which have been made.—A committee was appointed so long ago as the 14th December, to enquire whether monies drawn from the treasury had been faithfully applied to the objects for which they had been appropriated, and the same regularly accounted for. It was not the [12] intention of the ministerialists to do any thing than raise the committee; but at a grand caucus held here last week, [13] at which governor M'Kean, Duane, Mr. Livingston and Monsieur Gallatin were present, it was decided the committee ought to make a report, and construct it so as to make it appear there had been a great misapplication of money. Their ingenuity and wickedness were furnished with the means of attemping this by the invariable practice [ONE truth] of the past administrations of applying the surplus of one appropriation to meet the deficiency in some other—that is to say, where 10,000 dollars had been appropriated for the military establishment, and 10,000 for the naval, and there were only 3,000 required for the army, and the surplus of 2,000 used in the navy department to supply a deficiency there of that sum, so that although 10,000 dollars had been especially appropriated for the military establishment, 8,000 only had been applied to its maintenance, and 12,000 towards the navy, instead of 10.

"On this base a most infamous report has been made; but the imposition attempted is too bare faced to succeed with a large portion of the public. Mr. Stoddert, the late secretary of the navy, was directed by law, to build a certain number of sloops of war and schooners, which he did at the ports of Boston, Portsmouth, New-York, Philadelphia, Norfolk, Baltimore, and Washington.—The appropriation was made for building these vessels, but the law made no mention of purchasing sites and navy yards. The secretary found that enormous rents were asked for land to build these public vessels on; and as individuals owning them were anxious to speculate upon the public wants, and as it would be necessary to improve the grounds where vessels were built, by running up store houses on them, to shelter articles of a perishable nature, which should be wanted in equipping vessels; and it would also be necessary to build wharves on some of these grounds—he (the secretary) determined that it would be politic and wise, to purchase instead of leasing lands, and as the appropriation made for building vessels was so superabundant [14] as to leave a surplus sufficient to buy these lands, he employed gentlemen of respectability in the different towns where vessels were to be built, to purchase suitable sites for the government, without letting it be known that they were bought for the public.

"By this arrangements, lots were purchased for less money than would be paid in three years for rent, had they been rented; and they can now be all sold for more than they cost [15.] With a knowledge of these facts, the committee have had the impudence, as it relates to the public and the cruelty, as it regards Mr. Stoddert, to report him as having expended large sums of money without being authorised by law. Mr Stoddert will, I hear, make a publication of facts, shortly, which will cover Messrs. Giles, Randolph [16] and Nicholson (who composed the committee) with shame and disgrace. All persons who have accounts unsettled at the treasury, although their vouchers are now on file to the proper offices, and wait the convenience of the comptroller and auditor to receive a final settlement, are reported as public defaulters [17.] At the caucus, Dr. Eustis opposed this infamous trick, [18] and gave it as his opinion, that the people throughout America were too intelligent to be practised upon in this way. Duane [19] said the doctor was mistaken, and appealed to governor M'Kean, who was [20] sorry to hear from Dr. Eustis, that nothing could be got in Massachusetts, by this measure, he would answer for its being highly useful in Pennsylvania, and particularly among the Germans—Duane said it would also be quite as useful among the Irish [21]—Governor M'Kean said [22] if the committee would but make such a report, Duane and Mr. Gallatin had advised, that he would get it translated into the German language, and have thousands of copies diffused gratis throughout the German settlements—Mr. Ned. Livingston declared as much effect might be produced by it among the Irish in the city of New-York, [23] as the Germans in Pennsylvania, and said something was wanted there to draw off the public mind from further contemplation of the repeal of the judiciary, and the late augmentation of salaries. For all this history of the caucus proceedings, we are indebted to Mr. Claiborne of Virginia, [24] who, when Messrs. M'Kean, Gallatin, Livingston, and Duane were spouting, was drinking deeply of whiskey & on his way home met Mr. Davis, who had not been invited to the caucus, and communicated to him what had passed there.

"Without deigning to give any information to the constitutionalists, or answering their inquiries, the ministerialists [25] have passed all the accounts of Duane, which amount to a monstrous sum. The contingent expences of the House of Representatives, alone (and most of the items are for printing and stationary from Duane's shop) amount to twice [26] as much as they did at any preceding session—to the sum of 17,000 dollars. Mr. Gallatin has sent to us, through the committee of ways and means, a bill purporting to be for the final discharge of the public debt; but the real object is to guard against and remedy the inconveniences which will result from the [27] repeal of all internal taxes; and this is done by a clause which authorises the President [28] to re-borrow the whole amount of the Dutch debt. An agent is also [29] provided for, who, with a salary 9,000 dollars, per ann. is to reside in Holland for the purpose of negociating loans, and paying off for the interest of our debt.—All this kind of business was heretofore done by our minister, Mr. Murray—but Mr. Jefferson will not have a minister; but, as we have negotiations to make, he has asked for an agent, and he is to have a minister's salary. What a miserable opinion, of the minds of the people of this country, must our philosopher have, to think they can be deceived by such paltry artifices!"

CONGRESS.

HOUSE OF REPRESENTATIVES

Monday March 1, 1802.

DEBATE

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

DR. CUTLER.—Mr. Chairman—It is with great reluctance that I rise on this question, especially at this late period of the discussion. Unaccustomed to legislative debates, and conscious to myself, that on a subject which has already had so able and copious a discussion, it is not possible for me to say any thing which is not familiar to every gentleman in this house, I should have much preferred giving my silent vote.

But, Sir, viewing as I do, the magnitude of this question, I feel it a duty which I owe to my constituents—a duty, sir, which I owe to myself, to state some of the reasons which have directed my judgment, and on which I have founded my opinion, in deciding on the bill before you. At the same time, I feel it to be very unpleasant to solicit the attention of the committee when I see the patience of gentlemen so much exhausted. I will detain them but a very short time.

In the pursuits of my life, sir, I have not been led to turn my attention very much to systems of jurisprudence, nor have I been conversant in courts of judicature;—but on a subject as momentous as this which now occupies the attention, not only of this committee, but the nation at large, I believe it not necessary to be an adept in political science, in order to form a correct opinion.

Sir, I well recollect the time when the constitution, which authorises us to sit here, was under consideration in the state from which I came; and I am certain if the important feature of an *independent* judiciary had not been clearly discovered in it, the adoption of it would not have been effected. *Independent* of what, sir? Of the overbearing power of the executive and legislative branches of the government on the one hand, & of popular whim and caprice on the other. The people, generally, so far as my information extends, and myself among the rest, believed, that our safety in life, property, liberty, and reputation, was secured by this all important feature, in a government emphatically introduced "*to establish justice, to insure domestic tranquility, and to secure the blessings of liberty.*" And I feel myself utterly incapable of comprehending what gentlemen mean, when they suppose we are safe, under the administration of a judiciary, liable to be removed by the legislative body, any more than if they are liable to be removed by the executive. If passions, or any improper motives, may induce the executive to abuse such a power, may not passions or improper motives operate upon a legislative body? And if I understand the import of *responsibility*, as attached to a man, or men in public office, and producing the salutary effects of checking any of the imperfections incident to man; this same *responsibility* operates stronger upon an individual than upon a numerous body of men; and I must believe, because such is the irresistible conviction of my mind, that it would be safer to trust our judiciary to be removed at the will of the executive, chosen, as he is, once in four years, and solely responsible, than to the legislative body, who, by dividing the blame, if any be imputable, will unavoidably reduce it to nothing.

Mr. Chairman, with these impressions upon my mind, and understanding as I do, the words of the constitution, I have not a doubt, that the independency of the judiciary was intended to be secured, as much against the power of the legislature as the executive. If words are to convey ideas to plain men, not used to the subtilties of legal proceedings, which I must believe was the intention when this constitution was composed, they can, in this case, convey but one idea.—When plain men of common sense read this part of the first section of the 2d article, "*the judges of both the supreme and inferior courts shall hold their offices during good behaviour,*" will not the irresistible impression be, that these words were intended to give entire security to the judges so long as they *behave well?* That *good behaviour* should be their security against the encroachments of any power created by this instrument? And will not the impression be precisely the same when it is read by men of the strictest logical and grammatical correctness? If no crafty imposition upon the public mind was intended—if the true construction of an instrument, involving their dearest rights, was not concealed under implications and far-fetched deductions—if there was not an intention to deceive, can this plain sense of it be rejected?

But, sir, if the construction of the constitution gentlemen contend for be correct, this article gives not the least security. If the legislature can remove the office when they please, and of course the judges, can gentlemen shew what security is given by this article? If it was intended to guard only against the power of the executive, why was it not so expressed? The security is no more, nor better, than it would have been, if the article had expressly said—"*The judges of both the supreme and inferior courts shall hold their offices during the pleasure of the legislature.*" If we depart from the plain letter, to make out a meaning by hard *construction*, we may give any sense to the constitution we please. Here an insuperable objection arises in my mind to the constitutionality of this bill. Much ingenuity has been displayed in the course of this discussion, by gentlemen who advocate the bill, but the point on which the question of constitutionality principally bears, has been slightly passed over, or the plainest and most forcible arguments left unconfuted. The unsophisticated common sense of honest men who have only common understanding, will compel them to believe, the legislature is not vested with power to remove judges at pleasure. If the constitution does not place the judiciary out of the reach of removal, as well by the repeal of the law establishing the courts, by which they act as judges, as in any other way, they hold their offices not during good behaviour, but during the pleasure of the legislature.

If the judges misbehave the constitution has wisely authorised an impeachment, and a conviction involves in it removal from office. In a very few words the wisdom and design of the constitution is developed. We are not to suffer under the administrations of bad men, because if their conduct is bad, they can be removed. Neither are we to suffer from a fear which the judges may feel of being crushed by the weight of executive or legislative power, nor from the sovereignty of the people operating in elections. "*The fear of man bringeth a snare,*" and in no case, can this fear do so much injury, as in the character and person of a judge.—But I will not, Mr. Chairman, take up the time of the committee, in reiterating arguments which have been so clearly and forcibly impressed, at least upon my mind, by the honourable gentleman who have opposed this bill.

Sir, this government has been emphatically stiled a government of checks and balances; it has been so understood by the people; & in this, more than in any thing else, have they seen their own safety in the delegation of power. I believe, it was the intention of the wise framers of the constitution, that the judiciary should form, not a 'subordinate, but co-ordinate branch of the government." By making the judiciary, equally with the other branches, a component part, a check was formed, not less necessary to the security and freedom of the people, than any other contained in the constitution. This check erects a barrier between the government and the people, and becomes the bulwark of equal justice and equal liberty. It is the only effectual security against the encroachments of the legislature upon the constitutional rights of the people. And in forming a wise and free government, it will for ever be a *desideratum* to establish, immoveably, an impartial, inflexible and sacred administration of justice.—I was happy to hear the other day, an opinion which was in perfect union with my own, so decidedly advanced by my honourable colleague, on the opposite side of the house (Mr. Bacon). He declared it was an opinion he had weighed in his own mind, and whatever conclusion might result, he should still adhere to it, that the judicial officers of every grade, from the judge of the supreme court of the United States down to the common justices of the peace, not only have a right, but are bound by their oath of office, to judge of the constitutionality of the acts of Congress. And I should be still more happy to find the opinion of that gentleman according with my own, in opposing an act, which is hostile to the very principle he so confidently advanced.

It has been, Mr. Chairman, repeatedly said, that this independence of the judiciary would involve in it a destruction of the legislature; that the independence contended for, would, in its consequence, erect the judiciary into a despotism. But it has as often been answered, that the judiciary commands no money—raises no armies—makes no laws—and this completely removes from my mind every apprehension of danger. Any power the judiciary can assume over the legislature is merely negative—it is of the preventive kind—it is only calculated to prevent injury—and not to inflict it. The moment they attempt to inflict punishments, not authorised by law, an impeachment is an effectual remedy.

Sir, if the bill on your table passes into a law, I can see no obstacle to the passing another, similar to the act repealed or varying from it, establishing the same or a greater number of judges. The next congress may go on to do the same; and a perpetual fluctuation of your judges must be the inevitable consequence. If the constitution has not meant among other things, to guard against an abuse of power, I cannot see for what purpose these words were introduced shewing the tenure of office in your judges to be solely that of *good behaviour*. If the words in the constitution have not done it, I cannot discover the use of words, nor the benefit of intellect in giving them an explanation. I must subscribe to the opinion of the President of the United States, expressed on a late occasion, which I believe to be perfectly correct, that the true construction of the constitution, is the '*safe and honest meaning, contemplated by the plain understanding of the people at the time of its adoption.*'

Mr. Chairman, before I sit down, I will just make one or two remarks, on an observation I do not recollect to have been noticed, which fell from an honorable gentleman from North Carolina, whose political knowledge and talents I respect, and with whose candour I was much pleased. This gentleman (the hon. Speaker of the House) has said, and seems to rely much upon it, that all the evils which can possibly be apprehended