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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.

Mr. Dana. Mr. Chairman, I was diſpoſed to do juſtice to certain members of the houſe between whom and myſelf there might be ſuppoſed to exiſt ſome of theſe differences of opinion which have been ſtyled unessential. It was my intention to vindicate them from the imputation of being under the influence of the gentleman from Virginia. This was very different from what he probably imagined at the time of calling me to order. But it ſhall now be waved. The recommendation from the chair is entitled to reſpectful attention.

It is with deep regret, ſir, that I have ſeen the preſent meaſure puſhed forward upon the houſe. Yet I will acknowledge, ſince the commencement of the main debate, I have experienced a peculiar ſatisfaction in witneſſing the diſpoſition to allow ſo fair an opportunity for diſcuſſion. 'Tis like the ſenſation which accompanies the return of health, after having ſuffered ſeverely from the violence of diſeaſe.

Whatever difference of political ſentiment may exiſt among us, all will agree I think, in its being to the common reputation of gentlemen, that in the preſent inſtance the deliberations have been conducted with ſuch impreſſive order.—It may be further remarked as a ſource of grateful reflection, that on this momentous ſubject, we have not been addreſſed as if the eloquence of avarice, was the only eloquence becoming the American Congreſs. In the courſe of debate indeed, there has been ſome notice of the expence of the judicial eſtabliſhment, as organized by one of the acts paſſed at the laſt ſeſſion; but this has not, to my recollection, been inſiſted on, in this houſe, as the principal motive for adopting the bill on your table. On the contrary, one of the zealous advocates of the bill (Mr. Randolph) has ſpoken of the expence as being a paltry ſum, and diſclaimed the being actuated by this conſideration.

Such a frank declaration on his part was alike honorable and proper. For, what is the additional expence that muſt ultimately be incurred, for the ſupport of the judicial eſtabliſhment, according to the principles of the act now propoſed to be repealed? Permit me, ſir, to ſtate it diſtinctly.

The act in queſtion is "An act to provide for the more convenient organization of the courts of the United States," which was approved on the 13th of February 1801. By that act, ſix circuits were eſtabliſhed; five for the Atlantic ſtates, and a ſixth for Kentucky, Tenneſſee and the diſtrict of Ohio.

To each of the five firſt circuits, three circuit judges were aſſigned, and an annual ſalary of two thouſand dollars was allowed to each judge.

In the ſixth circuit, the judicial duties were to be performed by a circuit judge, with the aſſiſtance of the diſtrict judges of Kentucky and Tenneſſee. An annual ſalary of fifteen hundred dollars was allowed to the circuit judge; and the two diſtrict judges were each to receive the ſame ſum. By this eſtabliſhment, the diſtrict judge of Kentucky became intitled to five hundred dollars annually, in addition to his former ſalary: and the diſtrict judge of Tenneſſee, to ſeven hundred dollars.

	Dollars.
According to this ſtatement, there are for five circuits, the ſalaries for fifteen judges at 2,000 dollars	30,000
For the ſixth circuit, the ſalary of one circuit judge	1,500
The additional ſums, allowed to the two diſtrict judges	1,200
The amount of the whole for a year is,	32,700

It is to be remembered however, that after the office of one of the aſſociate juſtices of the ſupreme court ſhall become vacant, by reſignation, death, or conſtitutional removal, the vacancy is not to be ſupplied by a new appointment; but the court is thereafter to conſiſt of no more than five juſtices, that is, of one chief juſtice and four aſſociate juſtices. This is the purport of the third ſection of the act. All the juſtices, having been duly appointed, and having accepted their commiſſions, were entitled to their offices, ſo long as they ſhould behave well. As none of them could conſtitutionally be diveſted of office by an act of congreſs, the court muſt continue to conſiſt of ſix juſtices, until one of them ceaſes to hold his office; in which event, the office, and with it the ſalary, can rightfully be diſcontinued. After a conſtitutional vacancy ſhall exiſt, this part of the act may have effect; and there will then be a reduction of three thouſand five hundred dollars, for the ſalary of one aſſociate juſtice.

	Dollars.
The amount of the judges in the reſpective circuits, being, therefore, ſtated at	32,700
Deduct the allowance for one aſſociate juſtice of the ſupreme court	3,500
And the difference, being	29,000

is the additional expence to be ultimately incurred, for the ſupport of the judicial eſtabliſhment. This is the clear reſult of the whole. It has now been ſtated particularly, that the truth might be preciſely aſcertained on this point.

An expence of twenty nine thouſand two hundred dollars annually, it will be readily acknowledged, might be conſidered as a large ſum, if it were to be paid by an individual in this country. But it ſhould be kept in mind that this expence is for a public eſtabliſhment, intereſting to the whole people of the United States. It is to be paid by a nation—"a riſing nation, ſpread over a wide and fruitful land, traverſing all the ſeas with the richeſt productions of their induſtry, advancing rapidly to deſtinies beyond the reach of mortal eye."

If you compare this with your permanent expenditures as eſtimated by the preſent ſecretary of the treaſury, you will find it is not the one hundredth part of the amount to be paid for the current ſervice of the year, even if you exclude all the payments on account of the public debt. It is not the third part of what is eſtimated as neceſſary for maintaining one of your frigates.

If you compare the expence with the means of paying it, you will find, the whole ſum for the circuit judges of the fourth circuit; does not amount to the duties payable on ſeven hundred coaches, chariots, poſt chariots, poſt chaiſes, phætons, and coaches owned in Virginia. That ſtate, it is to be remembered, forms a part of the fourth circuit; and on examining the treaſury documents laid before congreſs, you will find, that during the year 1800, there were in Virginia 709 pleaſurable carriages, ſuch as I have juſt mentioned; beſides upwards of three hundred other four wheel carriages paying inferior rates of duty.

If you compare the additional expence, which has been ſtated, with the population of the United States, and apportion it accordingly, you will find it to be but very little more than half a cent for each perſon.

It would be a national reproach, it would be an infamy to the American name, if the conſideration of ſuch an expenſe, could excite the ſolicitude which has been manifeſted reſpecting the queſtion now in debate. The expence is not, cannot be, the true cauſe of what has been witneſſed on this ſubject.

Conſiderations of a different nature, ſuch as appeal more eloquently to the paſſions, muſt have operated to produce the effect. You may form ſome judgment of them, from what was ſaid by a gentleman from Virginia (Mr. Giles) when he referred to the journals of the laſt ſeſſion, and ſpoke about oppoſing the public will.

But, before replying to that part of his obſervations, I beg liberty to advert to what has been ſaid reſpecting the character of officers who have been diſmiſſed ſince the 4th of March. It might have been hoped, that it would be ſufficient for gentlemen to be in poſſeſſion of power, without attempting to deprive thoſe whom they have driven from office of their well earned reputation.—Are the perſons now in power ſenſible of a deficiency of their own ſtock, and do they expect to ſupply it by this ſpecies of plunder?

A gentleman from Maryland (Gen. S. Smith) has made ſome obſervations conveying a general alluſion to negligencies and delinquencies in office: But he did not profeſs to apply the alluſion to all the gentlemen who have been diſmiſſed. If I did not miſunderſtand him, he would admit, that there were ſome worthy men among them. I regret that the gentleman from Maryland is not now in his place. If he were preſent, I am perſuaded he would not wiſh that his obſervations ſhould be left ſo as to be conſtrued to the injury of meritorious officers. Leſt they ſhould be thus miſconſtrued with reference to the ſtate from which I am a repreſentative, I could have wiſhed to enquire whether he would be underſtood as imputing any miſconduct to the gentlemen who have been diſmiſſed in Connecticut.

It is well known that it has been the executive pleaſure to diſmiſs a ſupervisor of the revenue for Connecticut, and two collectors of the cuſtoms—The gentleman from Maryland, I firmly perſuade myſelf, could not intend to accuſe them. I know them perſonally. They are men of worth. I am confident, no gentleman who knows the truth and reſpects it will affirm, that either of thoſe officers was incompetent to his office, or inattentive to his duty or unfaithful to the conſtitution. Nor can it with a colour of juſtice, be pretended that they were hoſtile to our revolution. They all have deciſive proofs of their attachment to it. No anti-revolutionary adherence to our enemies can with truth, be charged againſt them; and their official integrity is irreproachable. If criminality is to be imputed to them it muſt be for a new ſpecies of crime—they have been guilty of obeying the laws of their country.

Was it a reaſon for their diſmiſſion, that ſome of the perſons high in office did not expect them to be ſo devoted to particular views as was wiſhed. Whatever it may have been, I will not in this place, imitate gentlemen on the other ſide who have ſo freely called in queſtion the characters of perſons differing from themſelves in political opinions. Nor will I here undertake to draw a compariſon between the officers who have been diſmiſſed and thoſe who have been appointed to their places. I wave any general inveſtigation of the characters of men recently placed in office.—It might occupy too much time, eſpecially at this late hour. I quit the topic, with a general remark—Gentlemen ſhould remember, their glaſs-houſe is not a fortreſs.

After this vindication of meritorious men who have been removed from office I will now attend more particularly to ſome obſervations of the gentleman from Virginia. He has ſpoken of the judicial act of the 13th of February 1801, as if the paſſage of it had been attended with improper circumſtances, and thence has attempted to deduce the inference that it ought to be repealed. He read part of the journal of the laſt ſeſſion, and charged certain members of the houſe with having been engaged in oppoſing the public will at the time when the act was approved. The journal ſhews, that on the 13th of February, eighteen hundred and one, the repreſentatives, voting by ſtates, proceeded to the twenty ninth ballot for preſident, and the reſult was the ſame as had taken place before—the votes of eight ſtates given for Thomas Jefferſon; the votes of ſix States for Aaron Burr; and the votes of two States divided.

Much has been ſaid on this topic, which has at length been brought forward as a public charge, by the gentleman from Virginia. It is now time that it ſhould be examined.

According to the principles of our government, the public will, when explicitly aſcertained by an authentic act, is the law of the land, and muſt be obeyed. Of this there can be no doubt; it is beyond all queſtion. But this public will is not merely the will of part of the community, a ſection of the people; it is the will of the great body of American citizens. The higheſt and moſt ſolemn expreſſion of the public will in this country is the conſtitution of the United States. This was agreed to by the general convention—was tranſmitted to the legiſlatures of the ſeveral ſtates by the unanimous reſolution of congreſs under the confederation—was recommended by all thoſe legiſlatures, when they paſſed laws for ſubmitting it to conventions for their ratification—and was finally ratified by the conventions of all the ſtates in the union. It was thus eſtabliſhed by the general conſent. In this, we ſhould acknowledge the high authority of the public will.

There is however a misfortune which attends the argumentation of ſome gentlemen. They ſubſtitute a part for the whole; and would confound the will of a certain portion of the people, however vaguely expreſſed, with the will of the whole public body as explicitly manifeſted by an authentic act.

What manifeſtation was there of the public will relative to the late election of a Preſident of the United States? The only authentic evidence of the public will on this ſubject proved, that Thomas Jefferſon of Virginia, and Aaron Burr of New-York, were equally the objects of approbation. The majority of the electors had given them an equal number of votes. What then was the difference of right between them? Was it, that one of the candidates was a Virginian? Was it that the members of congreſs were aſſembled on the banks of the Potomac, with Virginia in view on the other ſide? Muſt it be acknowledged as the prerogative of that ſtate to impoſe a chief magiſtrate on the Union?

Or was there a difference of right, becauſe Virginia, with its extent and population, could make more clamour than any other ſtate? The noiſe of ſo great a ſtate may ſometimes ſeem loud enough for the voice of the people of the United States. And are they, therefore, in this houſe to be confounded with each other? If ſo, the obſervations about the public will, of which we have lately heard ſo much from a certain quarter, muſt be underſtood to mean the will of Virginia: and we may thus judge of the argumentation when gentlemen from that ſtate are ſpeaking of the reſpect due to the public will.

Two perſons were preſented, in conſtitutional form, to the Houſe of repreſentatives, as being equally candidates for the office of Preſident—One from Virginia, and the other from New-York. When they were ſo preſented, the choice between the two candidates was devolved on the repreſentatives by the conſtitution of the United States. After maturely conſidering the queſtion, it was for them as ultimate electors to vote as they judged to be moſt for the public welfare. They voted by ſtates as required by the conſtitution. And are gentlemen to be here accuſed for exerciſing the conſtitutional right of election according to the conviction of their own judgment? When called upon, under the conſtitution, to elect one of the two candidates, were they not bound, by the nature of their duty, to give their votes according as the one or the other was by them judged to be more or leſs preferable? Upon what principle can gentlemen be accuſed of hoſtilities to the intereſt of the people, becauſe they did not think proper to elect the candidate from Virginia? Are our affairs already reduced to ſuch a ſituation that it is to be charged as a public offence, if any member of this houſe has failed to vote for a Virginian to be the Preſident of the United States?

It was the conſtitutional right of members of this Houſe, in deciding between the two candidates, to give their ballots for the one whom they believed to be ſuperior in practical capacity for adminiſtering the government; one whom they believed to be not hoſtile to the commercial intereſts of the country, and not diſpoſed to ſubject the Union to the domination of a particular ſtate, whatever might be its lordly pretenſions in conſequence of extent of territory or antiquity of dominion.

As the gentleman from Virginia has thought proper to ſpeak of events which took place about the time of paſſing the act in queſtion, allow me, ſir, to mention one circumſtance of which he has ſaid nothing. The act, as finally enrolled, was ſigned by the ſpeaker of the Houſe of Repreſentatives, after the balloting for a Preſident had commenced; and the clerk carried it to the other houſe for the ſignature of their preſident. The candidate from Virginia was then in the chair of the Senate. The clerk of this houſe, on firſt preſenting himſelf as was cuſtomary at the door of the ſenate chamber, was not admitted. The ſituation came to the knowledge of a Senator, and was communicated to the Senate. After the ſenſe of that body was found to be for his admiſſion, the door was opened, and the clerk was admitted to deliver his meſſage, and preſent the enrolled bill for ſignature. It was then ſigned by the Preſident of the Senate.

What ſhould be thought of this as taken in connection with the fate of the act and the pendency of the preſidential election? Was it a circumſtance which muſt ever be remembered with mortification, and which therefore will never be forgiven?

To give a further colour to the ſuggeſtion that the paſſage of the act was attended with improper circumſtances, the attempt has been made to impreſs an idea, that it was adopted without mature deliberation, & hurried through its different ſtages in a reprehenſible manner. If we are not willing to be miſled by pretexts, let us examine what was the fact.

A recurrence to the journals of the houſe will prove, that the ſubject of the judicial eſtabliſhment was recommended by the Preſident of the United States, to the attention of Congreſs, at two ſucceſſive ſeſſions. In his communication at the opening of the firſt ſeſſion of the ſixth congreſs, he recommended the ſubject in the following terms:—"To give due effect to the civil adminiſtration of government, and to enſure a juſt execution of the laws, a reviſion and amendment of the judiciary ſyſtem is indiſpenſably neceſſary. In this extenſive country it cannot but happen, that numerous queſtions, reſpecting the interpretation of the laws and the rights and duties of officers and citizens, muſt ariſe. On the one hand, the laws ſhould be executed; on the other, individuals ſhould be guarded from oppreſſion.—Neither of theſe objects is ſufficiently aſſured under the preſent organization of the judicial department. I therefore earneſtly recommend the ſubject to your ſerious conſideration." In the houſe of Repreſentatives, this part of the Preſident's ſpeech was referred to a ſelect committee. They reported a bill which contained a variety of proviſions for amending the ſyſtem. The bill was referred to a committee of the whole, in which it was diſcuſſed ſeveral days; and was afterwards recommitted to the ſame gentlemen who had reported it. As it was printed for the uſe of the members, and the ſubject was extenſively intereſting to the community, it was judged proper to defer a final deciſion until another ſeſſion, and, in the mean time, gentlemen might have an opportunity to acquire information that would aſſiſt them to form a more ſatisfactory judgment.

At the ſecond ſeſſion of the ſixth congreſs, the ſubject was again recommended by the Preſident. Theſe are his words: "It is in every point of view of ſuch primary importance to carry the laws into prompt and faithful execution, and to render that part of the adminiſtration of juſtice, which the conſtitution and laws devolve on the federal courts, as convenient to the people as may conſiſt with their preſent circumſtances, that I cannot omit, once more, to recommend to your ſerious conſideration the judiciary ſyſtem of the United States. No ſubject is more intereſting than this to the public happineſs; and to none can thoſe improvements which may have been ſuggeſted by experience be more beneficially applied." On this recommendation, a ſelect committee was appointed. That committee reported a bill to provide for the more convenient organization of the courts of the United States. The bill underwent a long diſcuſſion and a variety of amendments. It was finally paſſed in the houſe of repreſentatives, by a majority of 51 to 43; and, in the ſenate, by a majority of 16 to 11. After knowing theſe facts, will gentlemen have the hardihood to call this a haſty meaſure?

Compare the whole proceedings with what took place reſpecting a former act. Gentlemen have ſpoken of the general power of congreſs, to repeal acts paſſed by their predeceſſors. Are they prepared to repeal the act to which I now refer? It is the act relative to the temporary and permanent ſeat of government, paſſed in July 1790. That act was carried in the Senate, by a majority of 14 to 12. In the houſe of repreſentatives, a committee of the whole agreed to it, as it came from the ſenate. Twelve different amendments were propoſed in the houſe; the yeas and nays were taken on each of them, and every amendment was rejected—all in one day. A motion was then made for the third reading of the bill on the Monday following: The motion was negatived. It was moved that the third reading ſhould be on the next day: This was negatived. The yeas and nays had been taken twelve times during the ſitting; a motion was made to adjourn. This was negatived. The general rule of the houſe being againſt reading a bill twice on the ſame day without ſpecial order, a motion for then reading the bill the third time was made on the part of its advocates and carried. On taking the yeas and nays for the thirteenth time in one day, the bill was paſſed by a majority of 32 to 29. Mark the ſmallneſs of the majority in both houſes; the utter rejection of every amendment in the houſe of repreſentatives; the hurried manner in which it was forced on to the final queſtion; recollect other conſiderations relative to the paſſage of that act, and then judge whether it was not attended with circumſtances ſignally improper. If matters of this kind conſtitute a ſufficient cauſe for gentlemen to repeal any act paſſed by their predeceſſors, why ſhould we remain here in purſuance of that act? Will any gentleman ſay, it is for our perſonal convenience that the ſeat of government is now at this place? Is it at preſent for the public convenience? Is it leſs expenſive for individuals, or for the public than it would be in ſome of your commercial cities? Have you here the opportunities for valuable information which might be had elſe-