

What is the legal construction of the act for the better security of the government, we do not think within our province to determine, it being a question that, we apprehend, falls more properly under the cognizance of the judicial powers of this state, which, by our constitution, ought to be carefully separated from those of the legislature. Under this idea, we think it improper, that the latter should interfere in a matter arising from pre-existing circumstances, that may probably become the subject of a judicial contest. When a law is held forth to the people, it prescribes a rule of conduct, and that conduct must necessarily be regulated by the ideas of those, who are to conform to and expound it. We conceive therefore, that it would be unjust to declare particular regulations under one act, and to construe actions consequent thereon by subsequent explanatory declarations. If the proposed declaratory bill says no more than the act it is intended to explain, it is unnecessary. If it does, it must be evident, that those, who were the objects of the latter, had not the same information, as those would have, who were appointed to expound the former. This we apprehend to be impolitic and unjust, and repugnant to the principle suggested, that the conduct of individuals should be determined by those rules, which existed at the time of such conduct, and which rules only can be supposed to have been in their contemplation.

Our constitution reprobates all *ex post facto* laws, and we conceive the bill proposed within the spirit and meaning of the prohibition. It is immaterial whether an act is in express terms declared to have a retrospective efficacy, or so framed, as unavoidably to be productive of such effect. If a law is promulgated for entitling the improver of land to certain immunities, and a person should reclaim ground from the sea, and erect buildings thereon, under an idea that he was entitled to the privileges intended to be conferred, the judges certainly ought to determine his right on a construction of that act which influenced his conduct. Should a subsequent statute be framed, under the pretext of explanation, declaring the invalidity of his title under the former law, it must influence a determination of the question, arising under the precedent act of the legislature. All laws are to be expounded; as having some effect; if therefore such subsequent explanatory statute has any effect, it must be to influence a construction different from what it is supposed the former law would have received without it. If this effect is denied, the explanation is nugatory. The act of the magistrates was either right or wrong; if right, it would be unjust at this time to declare it otherwise; if wrong, the ordinary powers of judicature are competent to a discussion of the question.

We do not recollect any instance of a declaratory statute, *pendente lite*, or that affects penal matters, which had received no final determination. An improper adjudication has sometimes induced a legislative interposition, but the rule is always grounded on monition, and accommodated to future events.

We hold it indispensably necessary to check every attempt to blend the legislative and judicial authorities: they are directed by our form of government to be always distinct and separate. The caution was dictated with wisdom, and we think it more eligible to give a liberal than a confined construction to the mandate. It is the business of the legislature to make, and of the judges to expound, the laws. The bill, we think, had a tendency to introduce an infraction of this rule, for the opinion of the legislature must (as was intended) have great weight with those, who are to construe and explain their language.

As we shall always exercise the power of approving or rejecting such bills as may be the subject of our deliberation, it will also be our desire to have your approbation of our measures. We must however claim the right of determining on such deliberative points as come before us, from those reasons that leave the most forcible impressions on our minds, and such as we apprehend to be most consonant to general principles, and the spirit and meaning of our constitution; which we do not, from any inconveniences that we have experienced, wish to receive an alteration.

By order,

R. RIDGELY, cl. sen.

The senate adjourns till 3 o'clock.

P O S T M E R I D I E M.

The senate met.

The bill, entitled, An act for the relief of certain nonjurors, was read a second time, by especial order, and the question being put, That the following words, from the word, "government," in the 14th line of the 4th page, to the end of the clause, be struck out? "whereby the said Nathaniel, in his life-time, and the estate of the said Nathaniel, after his death, became chargeable with and liable to pay the treble tax, for his, the said Nathaniel, not having taken the oath aforesaid." Resolved in the affirmative.

A F F I R M A T I V E.

The honourable Daniel of St. Thomas Jenifer, president, Matthew Tilghman, Charles Carroll, barrister, Charles Grahame, William Hindman, and Thomas Jenings, Esqrs.

N E G A T I V E.

Brice T. B. Worthington, and Thomas Contee, Esqrs.

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