

the understanding and belief of either branch of the Assembly, that the Act of 1792 was a permanent Act, one which could not be constitutionally repealed, during the continuance of the Chancellor's commission; and, that the Act of 1798 was altogether temporary in its character, and might therefore be suffered to expire. But, let it be conceded, that such was the understanding of the delegates. If this position is correctly understood, it amounts to no more than this: Where a salary is given to the Chancellor by a law, which is not limited in duration, it cannot be constitutionally repealed for the purpose of diminishing that salary. If this be the position claimed by the delegates, every

671 * thing for which the Chancellor and Senate contend, is admitted. But it seems, there is a nice distinction between the repealing of a law, and the suffering of a law to expire. What is it? Does it amount to anything more than a distinction between an act of commission, and an act of omission? The law, having declared the amount of the Chancellor's salary, the Legislature cannot constitutionally diminish it by repealing that law; but they may do so by suffering it to expire:—that is, the Legislature commit a violation of the Constitution, if they do pass an Act to diminish the salary; but if they diminish it by omitting to pass an Act, they do not violate the Constitution. This opinion, then, can have no other foundation, than the distinction between an act of commission and omission. Let us examine it.

The great object of the Constitution is judicial independency; and, therefore, it is commanded by the Declaration of Rights, that the Chancellor's salary shall be secured to him during the continuance of his commission. The mode of obeying this command is a matter of no importance; and therefore, the mode is submitted entirely to the discretion of the Legislature. But any act, either of commission or of omission, which disobeys this command, and which prevents the attainment of the object contemplated, is alike a violation of the Constitution. Suppose the Legislature should, by an Act, without making any provision whatever for payment, fix the amount of the salary of the Chancellor; and then, by another Act, provide a fund for its payment; and, afterwards, were to repeal the latter Act, without making any other provision for payment. It is presumed, that no one could hesitate in pronouncing such conduct a gross violation of the Constitution. Then suppose, the Act, making provision for payment, were limited to two years; and the Assembly were to neglect to continue it, or to make any other provision for payment; such legislative omission, would have precisely the same effect as the act of commission; and, therefore, the violation of the Constitution would be no less palpable. The salary of the Chancellor is to be secured to him; that is, it shall not, at any time, on purpose, or by neglect, be withheld or diminished, during the continuance of his commis-