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MARYLAND GAZETTE.

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Proceedings of Congreſs.

HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

WEDNESDAY, *June* 17.

MR. GERRY argued that by the operation of the clauſe there would be a claſhing of powers, and ſome which the ſenate were allowed to poſſeſs, would be rendered of no effect.—— Their power of appointment would be defeated in its object by the power in the preſident to remove; and the power of judging on impeachments, would be rendered vain by the power of diſmiſſing; for a power of judging implied a power of acquittal, which would, in its operation, be totally inſignificant, if the preſident could immediately diſplace an officer whom they had judged and declared innocent.

He inſiſted that as to the danger of abuſes, the remedy againſt them, which had been mentioned, that is, the power of impeaching the preſident if he diſmiſſed a good man, involved an abſurdity. How could the houſe impeach the preſident, when they had declared that he could lawfully do as he pleaſed? Would they impeach him for exerciſing a diſcretion which they had given him in the moſt unlimited manner?

If the legiſlature gave him an unlimited control over all officers, he would have, he ſaid, the abſolute control over the treaſury. We might as well give him the appropriation of monies; for it would be of little conſequence to make laws, when the preſident, by looking at an officer, could make it his intereſt to break that law. It muſt be expected that, from this general control, there would riſe up a government of revenue inſtead of a government of laws. It would be eaſy for the preſident to cover all his crimes by an application of the revenue to thoſe who were his judges, and ſuch an application would certainly be made, in caſe of a corrupt preſident; and corruption in him was what it was neceſſary to guard againſt.

Mr. Gerry, further obſerved, that giving the preſident the power to remove, would virtually give him a conſiderable power of appointment, independent of the ſenate; for if the ſenate ſhould reject his favourite, and agree to his nomination of one leſs agreeable to him, he might immediately remove the latter on the receſs of the ſenate, and introduce the favourite; for the conſtitution hath veſted him expreſsly with the power of appointing in the receſs of the ſenate.

It had been obſerved, he ſaid, that this was a caſe omitted, and that congreſs had a power of ſupplying the defect.--But they ought to conſider on what ground they ſtood. An attempt to ſupply ſuch a caſe might appear an attempt at an amendment to the conſtitution. The ſyſtem had provided a mode of making amendments—The legiſlature could purſue that alone. Any attempt to obtain amendments in another form would be a high crime and miſdemeanor; perhaps ſomething worſe. Gentlemen, he ſaid, appeared to be leading them on to what might be deemed treaſon againſt the conſtitution. The ſyſtem, it could not be denied, was in many parts obſcure and unintelligible. If it was once determined that congreſs might explain and declare what the conſtitution was, it could not be denied that they could change it at pleaſure. This obſcurity had been one of the great arguments againſt accepting it. It had been urged, that it was remarkably obſcure—It was indeed, he ſaid, moſt ſtudiedly obſcure. By this very act, the houſe were, he aſſerted, aſſuming a power to form a conſtitution.—If the people of the United States ſuppoſed that it is in the power of the legiſlative to give conſtructions to the conſtitution, they would revolt from it. The idea of the legiſlature having a right to make any alterations in the conſtitution was repugnant to the feelings of every freeman, and to the principles of the revolution.

He then took notice of the argument that the legiſlative and executive ought to be kept diſtinct; and aſked what department the ſenate was, when acting with the preſident? clearly an executive one. If ſo, the argument fell to the ground.—If they acted as legiſlative, it would be abſurd.—They were a conſtitutional council to the preſident, and were completely executive.

If the power was veſted in the ſenate, it had been ſaid the executive would be a two headed monſter; but it was already a two headed monſter, and if it was the deſire of gentlemen to make it leſs monſtrous, it ought to be made a conſiſtent monſter. He thought it would be monſtrous indeed to give the ſenate the power of appointing, and deprive them of that power of diſmiſſing officers.

He concluded with aſſerting, that the clauſe in debate was uſeleſs and unneceſſary, and inconſiſtent with the conſtitution. It was an officious interpoſition of the houſe in a buſineſs which did not properly come before it.

Mr. Benſon ſuppoſed there was a power in the legiſlature of ſupplying the omiſſion in the conſtitution, and determining by what power officers ſhould be removed. --The conſtitution had given the power to the government generally to remove at pleaſure; for it could not be rationally contended, that all offices ſhould be held during good behaviour.

Could the gentleman be ſerious, he aſked, when he ſuggeſted that this was a caſe to be propoſed to a convention of the people for an amendment to the conſtitution? Did the gentleman ſuppoſe that whenever a doubt aroſe reſpecting any part of the conſtitution, it ſhould be referred to a convention, and that the different doubts of different individuals ſhould all be ſettled in this way? Did he ſuppoſe that no part of the conſtitution was to be taken by conſtruction? It was unqueſtionable, he ſaid, that no conſtitution or law could poſſibly be formed which would not involve the neceſſity of conſtruction.

Mr. Benſon proceeded to prove the impropriety of veſting the power in the ſenate, by ſhewing the difficulties and embarraſſments which would reſult. He would put the caſe of the officer to which the bill related. To him were to be committed the negotiations with foreign miniſters; a very delicate truſt. The ſupreme executive, in controling this department, would frequently be obliged to act on ſuſpicion, and that of the moſt delicate kind, and the circumſtances on which it was founded, not proper to be explained. He would be in a ſituation which would render it improper to make uſe of the evidences of his ſuſpicion—Was it to be ſuppoſed then that the ſenate would implicitly ſubmit to his will and his propoſal? They would not; they would certainly require the reaſons. Suppoſe he ſhould tell them that he ſuſpected the man's fidelity, they muſt then proceed farther, and inſiſt on a full communication. Was it not to be ſuppoſed that this officer would have at leaſt one friend in the ſenate, who would contend for a hearing, and a fair trial? The preſident was then to be the complainant, and a ſubordinate officer the defendant; and the ſenate would ſit in judgment between the chief magiſtrate of the United States, and one of his officers. He begged gentlemen to tell him if this abſurd ſcene looked like good government. In every inſtance of a propoſition for removal, on account of incapacity, or any other cauſe, an inquiry would take place; for a man would always have ſome friend to demand this in his favour. All theſe inconveniencies would be done away by giving the preſident the power to remove the officer.

One argument, ſtrongly urged, he ſaid, was, that the ſame power which appoints ſhould have the right to remove. But a diſtinction properly took place here.—If the preſident and ſenate were to be conſidered as one body deliberating together in the buſineſs of appointments, and if the appointment itſelf was their joint act, and each individual had a right to make propoſitions, the reaſoning might hold good. But on the contrary, they acted as diſtinct bodies; the ſenate had only a ſimple negative or affirmative, and no member had a power to offer an original propoſition—The moment this ſimple principle was deviated from, the power in the ſenate, which was only intended as a check, would become an original authority, and the executive department would be ſplit, divided and diſtracted.

But it had been propoſed, that the preſident ſhould have the power of ſuſpending. What would be the conſequence of this? If the ſenate ſhould, on their convening, reſtore the officer, the preſident would have a man forced on him whom he conſidered as unfaithful, and who was diſagreeable to him, a man who was properly his mere inſtrument. How would buſineſs be conducted? What communication, what confidence could exiſt between the preſident and the reinſtated officer? The executive adminiſtration would become impracticable; it would be made up of diſcordant materials, and its operations would be ſubject to perpetual diviſions and jarring—In ſhort, it appeared to him indiſpenſable to the exerciſe of the authority which the conſtitution had veſted in the preſident that he ſhould have the power of removal; and he was convinced that the liberties of the people would not derive a particle of additional ſecurity from reſtraining or with-holding any part of this power.

Mr. Smith (S. C.) entered into a general reply to the arguments in favour of the clauſe, and was anſwered by Mr. Vining. This concluded the buſineſs of Wedneſday.

THURSDAY, *June* 18.

Mr. White.—This queſtion has occaſioned a ſolemn debate, though ſome gentlemen have conſidered it ſo clear or ſo trivial as to excite their ſurpriſe, that it has again been brought before the houſe. I conſider it as the moſt important queſtion that has been yet conſidered; the moſt important that I ever had a voice in diſcuſſing or a vote in determining, except that of adopting the conſtitution itſelf in the convention of Virginia. I conſider the day on which the ſenſe of the houſe is to be taken on this ſubject as a memorable day in the annals of America. Sir, I do not conſider it is ſimply whether the power ſhall be veſted in the preſident, or in the preſident and ſenate. The conſtitution has determined that point. Nor do I conſider the queſtion to be whether offices are to be held during good behaviour, or at the pleaſure of thoſe who appoint them: I ſuppoſe on a fair and neceſſary conſtruction of the conſtitution, that matter is ſettled. All arguments tending to ſhew that one or the other mode of appointment or removal, is proper or improper, or that they ought to be diſplaced by impeachment, are inapplicable to the preſent caſe. But the reſpectability of the characters who ſupport theſe arguments, entitle them to notice.

I ſhall proceed, Sir, to inquire, whether we are bound by the conſtitution, or whether we may grant to others, or aſſume to ourſelves, powers which the conſtitution has not given in expreſs terms, or by neceſſary implication. This I conceive to be the queſtion.

It is not contended, that the power propoſed to be veſted in the preſident is given him in expreſs terms, or that it can be inferred from any particular clauſe of the conſtitution. It is ſought for from another ſource, the general nature of executive power; it is on this principle the clauſe is advocated, or I miſtake the gentlemen's argument. It was ſaid by the gentleman, who opened the debate in oppoſition to this amendment, that the conſtitution having veſted the preſident with a general executive power, thereby all thoſe powers were veſted which were not expreſsly excepted, and therefore he poſſeſſed the power of removal. Sir, this is not to be learned in the American governments, each ſtate has an executive magiſtrate; but look at his powers, and I believe it will not be found that he has, in any one, the right of appointing or removing officers.—— In Virginia I know that all the great officers are appointed by the general aſſembly. This is generally the fact in other ſtates. If then the doctrine of the gentleman is to be ſupported by examples, it muſt be by thoſe brought from beyond the Atlantic--We muſt alſo there look for rules, by which the executive power, in the latitude of this principle, may be circumſcribed, if indeed it can be limited. Upon this principle, Sir, the ſame power is given to the legiſlature—they will poſſeſs all powers not expreſsly excepted. If the preſident has all executive powers which are not expreſsly excepted, I do not know that there can be a more arbitrary government. The preſident, I conceive, will have all the power of a monarch, and the legiſlature all the powers of ſovereign legiſlation. This I take to be a clear and neceſſary deduction from the principle on which the clauſe in the bill is founded. The preſident is limited in the appointment of ambaſſadors, conſuls, judges, and all other officers, and in making treaties. In theſe he is expreſsly limited, and no further. Take from him theſe, and give him all other executive powers, as exerciſed in a monarchy, and ſee what they will be. There are alſo exceptions to the legiſlative power; ſuch as that they ſhall not for a time prohibit the importation of ſlaves; that direct taxes ſhall not be laid, but in a certain mode; that taxes ſhall be uniform; that they ſhall grant no titles of nobility, &c. Theſe are the exceptions to the legiſlative: now give them all the powers of the parliament of Great-Britain, and what kind of government will you have? I cannot deſcribe it. It appears to me abſolute, and as extenſive as any deſpotiſm.

If you go once beyond the boundaries of the conſtitution, where can you draw a line with any preciſion? and with what ſafety to liberty can the doctrine of this clauſe be ſupported? I underſtand our ſyſtem different in its form and ſpirit from all other governments in the world. It is in part national and partly federal; and though it is more extenſive in its powers than moſt other confederated governments, yet the congreſs is not to be compared to national legiſlatures.—To theſe general powers are granted, ſome with and ſome without any particular reſervations in favour of the body of the people; and to theſe only will the gentlemen's reaſoning apply.—Here is, Sir, no analogy.—This is a government conſtituted for particular purpoſes only; and the powers which the people have thought proper to grant are ſpecifically enumerated, and diſpoſed of among the various branches. If theſe powers are inſufficient, or if they are improperly diſtributed, it is not our fault, nor within our power to remedy.—The people muſt grant further powers--organize thoſe already granted in a more perfect manner, or ſuffer from the defect. We can neither enlarge nor modify them.

Sir, this was the ground on which the friends of the government have ſupported it; it was a ſafe ground, and I venture to ſay that it would not have been ſupported on any other. In the ſtate from which I came, if its advocates had not maintained this principle, it would never have been ratified.

Mr. White then read a part of the ratification by Virginia, in ſupport of this aſſertion.

Sir, ſaid he, how far the eſtabliſhment of the principle contended for may affect the completion of our union, I will not undertake to ſay: I will only remark, that the ſtate of North-Carolina has expreſſed nearly the ſame ſentiments as Virginia, with this difference, that Carolina would not adopt the conſtitu-