

lawful business, could not at the said session offer his answer, and the said Thomas Stone being disabled by sickness from attending the last session; Therefore, RESOLVED, That the following be now received, and entered among the proceedings of this session of the senate.

An ANSWER to the PROTEST of the honourable Charles Carroll of Carrollton, upon the assent of the senate being given to the bill concerning the admission and qualification of attorneys and solicitors.

THE propriety of an act to ascertain the qualifications of practitioners of the law, and regulate their admission to and continuance in practice, is not denied by the protester; but he objects, that the bill in question is a violation of the public faith, and the compact between the government and its citizens, by depriving, *for one and the same offence*, some individuals, of those rights and privileges which they had forfeited by disobedience to one act or assembly, and had purchased by complying with another. This objection is grounded on a consideration of the act for the better security of the government, passed in the year 1777, and an act for procuring an extra supply of provisions of the bread kind, also waggons and horses, for the use of the continental army, and the supplement thereto, passed at June session 1780. To determine whether this objection is just or not, it will be necessary to examine what was the public faith pledged by the acts of 1780—the nature of the compact between the state and those who had disobeyed the act of 1777, and complied with the act of 1780—and also whether the bill in question *for one and the same offence* deprives any individuals of rights regained by complying with last act, which they had forfeited by disobedience to the first.

By the act of 1777, all male persons above the age of eighteen years were enjoined to take and subscribe the oaths of fidelity and support to this state by a particular day, and on disobedience were subject to a treble tax, and among other disabilities were rendered incapable of practising the law *for life*. By the acts of 1780, the treble tax was taken off, and all disabilities incurred by omitting to comply with the act of 1777, except holding offices and voting at elections, were removed, on the persons who were subject to them supplying the public with certain waggons or horses. The question then arises, What was the compact between the state and nonjurors relating from the act of 1780? I apprehend nothing more, than that the nonjurors should be relieved from the penalties and disabilities inflicted by the first act, if they complied with this law, and that no future law should burthen them with the treble tax, or again incapacitate them *on account of their having neglected to comply with the act of 1777 only*. Further, I am satisfied the engagement of the state cannot be carried by a true construction of their acts. There is no stipulation that persons *disaffected* to our government, shall be admitted to or continue in the practice of the law. There is no engagement, that persons who had not taken the oath under the act of 1777, should *always* have a right to practise the law upon their taking the oath; nor is there any thing which looks like an engagement or promise of the assembly, that no other evidence of attachment except taking the oath of fidelity should be required from practising lawyers; or that no other examination of political principles should be adopted, but an appeal to the party's conscience. Had it been the intention of the legislature to have made such engagements, the language used would have corresponded with such intention, and I infer that the intention was not so, because the language of the law by no means conveys such meaning. It is said by the protester, that the nonjurors were left at liberty, by the act of 1780, to take the oath at any time, and even without taking it, were restored to all the privileges of citizens but such as were expressly excepted by that act. It is true that certain *disabilities* were removed by the act of 1780, and it is also true that nothing is said respecting the oath being taken at any time, nor was any oath of fidelity, or evidence of attachment to government, required to entitle to the exercise of any privilege of which nonjurors had been deprived, except the practice of the law. By precedent subsisting law, no person could practise the law without taking the oath of fidelity, which at the time the law requiring it passed, was thought a proper and sufficient test of attachment to our government; but men in general discovered, by experience, what was known before to those who were conversant with the history of mankind, that professions and oaths are not conclusive proof of political principles, and therefore the legislature, very wisely, did not, by the act of 1780, promise or engage that those who complied with that act should have a right to claim the privilege of practising the law by *taking the oath of fidelity*; nor did they make any engagement which can be construed to restrict future legislatures from making any regulations upon the subject which might be thought proper, except such as would render those who complied with this act *incapable* of practising the law, from the *circumstance* of their not having taken the oath agreeably to the act of 1777 only. Suppose a clause had been proposed in the act of 1780, that such nonjurors as found waggons or horses should *always* have a right unalterable by the legislature to practise the law upon taking the oath of fidelity, notwithstanding they were known to be disaffected, and determined to be so by the judges of the courts where they were to practise; would not such a clause have been rejected with indignation? And yet if the protester's reasoning is just, the effect of such a clause is implied by the act so strongly, as to amount to a rational compact. If this be the construction of the act of 1780, it remains to be considered, whether the bill referred to violates the public faith and national compact with the nonjurors. There is no clause in the bill which renders those who did not take the oath under the act of 1777 *incapable* of being admitted, or of continuing in the practice of the law. There is no clause which directs the judges to refuse admission to or empowers them to disqualify any attorney upon the *circumstance* of his not having taken the oath under the act of 1777, or even upon his having

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