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CONGRESS.

HOUSE OF REPRESENTATIVES.

APRIL 10.

DEBATE

On the bill to prohibit officers of the Army and Navy from holding or exercising any civil office.

The House resolved itself into a committee of the whole—MR. GREGG in the chair—

The bill, having been read, was reported to the House without amendment.

MR. N. WILLIAMS observed that when this bill was first read he had remarked that he thought it contained a principle not to be found in the resolution on which it was predicated—a principle, which appeared to him to be new, which would, if adopted, prove extremely pernicious, and which went to the removal of an officer in the enjoyment of an office constitutionally holden by him. It did not belong to the legislature to give to any law a retrospective operation, or that would affect officers in the enjoyment of their constitutional privileges. If they did so they would assume the right of removing an officer from his office. The bill, therefore, as it stood, struck him as altogether unconstitutional—The legislature was not the proper department for the exercise of this power. The constitution had provided a particular mode in which officers could be removed from office; and the legislature had no power to over-rule this provision. It may be said that we are only making a regulation that officers of a certain description shall not hold another office. Mr. Williams said, he agreed to the correctness of this principle; but in the present instance, they were assuming a power which the constitution did not give. He, therefore, hoped that gentlemen favorable to this principle would so amend the bill as to remove the objection he had stated. If it should be so amended as to confine its operation to all future appointments, he should have no objection to it. But if it were to affect existing officers constitutionally enjoying their offices, he considered it dangerous and should vote against it. Not having the bill before him, he could not state what amendment would be satisfactory to him. He, therefore, moved that the bill should be printed.

MR. J. CLAY said the bill was very short, and contained no new principle whatever. This was an age of discoveries, and the gentleman from New-York has discovered that the bill to "prohibit officers of the army and navy from holding or exercising any civil office," is at war with the resolution which declares "that provision ought to be made, by law, to render any officer in the army or navy of the U. S. incapable of holding any civil office under the U. S."

This is really a discovery, said Mr. C. and how the gentleman can vote for the one and not for the other, is a most extraordinary thing. But the gentleman has made a constitutional discovery—that when a man holds an office the officer cannot be destroyed. But had not officers under the excise law been destroyed, and have they not been removed by the abolition of their offices—And have not the commissions of the judges been revoked? And I see nothing which shall prevent us from saying the governor of the Louisiana or Indiana territory shall not be a military officer. As to printing the bill, as it consists of but three or four lines, I can see no occasion for it whatever.

MR. J. RANDOLPH said the gentleman from New-York, notwithstanding his extraordinary modesty, certainly had made a great discovery, viz.—that, passing a general law, which is a general rule, is similar to legislating on a particular case—that a law declaring that certain officers shall be appointed for four years, is equivalent to A, B, and C being turned out at the end of four years. The bill, Mr. R. said, was strictly conformable to the resolution—there was no difference between them, however the gentleman might be for throwing an anchor to windward to claw off a lea shore. Are we about to say that A, or B, holding a military office shall be removed from the civil offices they now hold? No—We are merely saying they shall not be both held by the same person, which is surely a legislative act. If we violate the constitution and trench on the prerogatives of the Executive, has not the constitution armed the Executive with a power to defend itself? If we pass such a bill, will not the Executive return it to us, if it be not previously arrested in the other House?——Are we a legislative body with the power of binding by our acts the whole government, or a mere chamber to register edicts and pass supplies? I had always supposed that we were a legislative body, and I had hoped an independent legislature. If we are, we have a right to prescribe rules for the government both of the Executive and the judiciary—for be it remembered that before a bill becomes obligatory, it is necessary to have the assent of the other branches. But on the construction we have heard, I ask the gentleman why we have not the same right to declare a man after a certain day shall not exercise both a civil and military office, as to say that no military officer shall hereafter be appointed to a civil office? The gentleman's ideas will apply to one case as well as the other. If, however, gentlemen choose to vote out the bill, they will do as they please—It will be extremely easy for them to find a pretext; but they will not be able to assign reasons to influence the vote of any man possessed of a clear head and a sound conscience.

MR. R. NELSON said he had voted against the resolution on which this bill was bottomed, because he thought it had a squinting at a particular case, and because he thought they had no right to pass such a law. It was a sound doctrine that the laws of the land ought to be general, and that they ought not under the cover of a general law, to provide for a particular case, Mr. N. said he should not have supposed that this was the case in this instance, had not some of the advocates of the bill mentioned the man against whom it was intended to operate. He had another reason against the measure. He thought they had no constitutional right to pass such a law. As the case of the governor of Louisiana had been mentioned, he would likewise notice it. He would ask whether the governor of Louisiana held his office of governor under a law of the U. S. or under the constitution. If he held it under a law, he wished gentlemen to point it out. He believed, however, there was no such law; but that he held his office under the general provisions of the constitution. If he were correct in this opinion, he would ask whether it was competent to Congress to alter the tenure by which the office was held without first altering the constitution. If under the constitution the President had a right to appoint a military officer governor of Louisiana, he would ask whether they had the power by law of abridging this right. He apprehended not, as it required as great a power to undo as to create a constitutional provision. The case had been likened to the case of an excise officer. But the excise offices were held under a law, and it was only necessary to repeal the law to abolish the office. So with regard to the judges. When the law establishing them was repealed they fell with it. But is this a similar case? Are we about to repeal a law? No. We are about making a law the effect of which is to drive a man from an office which he now holds under the constitution. Mr. N. said these where the principal reasons which induced him to vote against the bill as well as the resolution.

MR. SMILIE hoped the bill would be printed. It certainly contained a principle, which it was their duty carefully to examine before they adopted it. He would confine his remarks to one point—the constitutional principle implicated in the bill. If it provided that after a certain day no appointment should be made of a military man to a civil office, the case would be different. But it declares that after a certain day no man shall hold both a civil and military office. The cases which had been mentioned were not analogous. The removal of officers by disbanding the army and that of the judges had been mentioned. What were those cases? In both instances a law had been passed abolishing the establishment of which they formed a part. Was that the case here? No—On the contrary they were about to pass a law removing a man from office, without abolishing the office. Could any gentleman shew any power possessed by Congress of removing a man from office without abolishing it. Mr. S. said he should adhere to the constitution in good as well as bad times, and deeming this measure a direct violation of it he should vote against it.

MR. CLARK said the gentleman from Maryland had declared the officer alluded to a constitutional officer, created by the constitution, and not by law. He wished the territorial law might be read.

MR. R. NELSON replied that he had said no such thing. He knew full well that there was a law for the appointment of a governor of Louisiana. If they wished to get rid of the man, they should repeal that law. He had said that the appointment was under the constitution, which being constitutionally made, there was no power in the legislature to remove him.

MR. J. CLAY said the objections raised by gentlemen to this bill appeared to him very strange. Several acts had been passed by the legislature establishing various offices. Gentlemen all acknowledge that it is in the power of Congress to destroy these offices by repealing the laws that create them, and yet they deny that it is in their power to modify them. It is within the power of the legislature to say that a man, though appointed for three years, shall vacate his office at the expiration of one year. So it is in their power to say no military officer shall be appointed governor of a territory. If they have power to repeal a law and destroy the office created by it, there can be no question of their having the power of modifying the office. Your law, said Mr. C. constitutes the governors of the territories commandants of the militia. Surely then it is in the power of the law to say they shall no longer be commandants of the militia. So with the officers of the army, you have a right to destroy the office of brigadier general, or to say it shall not be held by a governor of a territory.

MR. C. said he had no enmity to the person alluded to. He had no personal knowledge of him. But he was of opinion that a man appointed to a civil office which was from its nature local, ought not to hold a military office which might carry him from the place where the first was exercised. It had been remarked by the gentlemen from Maryland, that this officer had been appointed under the constitution by the President and Senate, and that it would require as great a power to repeal as to make this provision. He agreed to the accuracy of this remark; but would answer it by stating that the proposed law before it became binding, would require the concurrence of the President, the Senate and that House.

The House divided on the motion to print the bill—Ayes 46—Noes 52.

When the bill was ordered to be engrossed for a third reading.

APRIL 11, 1806.

MR. GREGG said he never found himself involved in greater difficulty. He was in favor of the principle involved in the bill, and yet he could not vote for its passage. He believed it was a correct principle that civil and military offices should be kept distinct, and he wished the constitution had prohibited the union. In relation to the individual on whom it was mentioned yesterday this law was to operate, he was satisfied it would be best if he could be removed from one of the offices he held, and if such a course had been pursued, he should have been in favor of destroying the office of brigadier general, to get rid of the officer. The effect of this resolution would be to take from a man an office which he held under the constitution. This power they did not possess. The only constitutional way to effect the object was to destroy the office. He would agree likewise to amend the constitution, so as to declare the union of civil and military office incompatible, or to a law providing that after a certain time no person should hold two such offices; and he should, if practicable, be for doing away the office of governor of Louisiana; because he believed the person holding that office was, by his course of proceedings, producing a disturbance in the territory. But although he entertained a favorable opinion of the principle of the bill, and would wish to remove that gentleman from one of the offices he held, yet he must vote against the bill, as it went to the unconstitutional removal of an officer.

MR SMILIE thought the passage of this bill involved a principle of a very serious nature. As to the abstract principle involved in the bill he did not dispute its correctness, or that it ought to have been a part of the constitution. But the question was, whether they had a right by a legislative act, to prejudice any other branch of the government. They were not in his opinion warranted in travelling out of their own sphere, to remove existing evils. There was but one way in which the constitution provided for the removal of a public officer. It says "the President, Vice-President and all civil officers of the U. S. shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Here was the true and only sphere in which the House could move. If the constitution did not give the right of removal in any other way, it did not exist; and if they undertook by a legislative act, to remove a man constitutionally appointed, who would pretend to say what mischief might not result from it. For these reasons he should vote against the bill.

MR. QUINCY said it appeared to him that one of the arguments urged by gentlemen against this bill was fallacious—that which considered it an invasion of the rights of the executive. This argument went on the assumption that the President would necessarily sign the bill sent to him, which might or might not be the fact. If he accedes to it, the argument of gentlemen falls to the ground; and if it shall be returned, it will be then time enough to discuss the constitutional principle. With regard to the general expediency of passing such a bill, the strongest arguments would be found in favor of it on the page of history. If history proved any thing, it was that the condition of those was most degraded who lived under the colonial governments of republics. This was amply proved by the annals of the Carthagenian and Roman republics—the territory under contemplation was a kind of colonial government, and might in the course of time be a powerful engine in the hands of the executive. He wished therefore for a separation of the civil and military powers, which might arise under it.

MR. SMILIE said if the question was what was most convenient or best, he should have no difficulty in agreeing with the gentleman from Massachusetts. But it rested on higher ground—on what was constitutional. If he had a right to make the constitution, he would have no hesitation in separating the civil and military powers. But he could not forget the occurrences which had taken place in the state he had the honor to represent in part. In that state there had been but a single branch of the legislature, without any executive veto on the passage of the laws. He had seen that government destroyed by sweeping away the executive power before the irresistible authority of the legislature, and he had seen the people obliged, from this circumstance, to give up that constitution and frame a new one. The measure under consideration was of the same kind. The constitutional powers of the executive ought not to be encroached upon, unless the object was to produce confusion. He had seen the effects of such measures and deprecated them. You may, said Mr. Smilie, abolish the office, and the officer falls with it, but in no other way while the office continues, can you remove the officer except by impeachment. Shall we then in order to get rid of a man who may not have done right (and as for myself I am ready to answer I have no affection for the man) go into a new scene, the length of which we cannot foresee. This principle once established may lead to any thing—it may lead to a destruction of the powers of the executive altogether. I am as tenacious of the powers of the legislature as any man—but I believe the powers of the executive to be equally necessary. Indeed I think there is more danger to be apprehended from the overwhelming power of the legislature than from the powers of the executive. For the legislature are so powerful that there can be little danger of the executive encroaching upon it.

MR. EPPES. If I took the same view of the operation of this law with the gentleman from Pennsylvania, I should certainly give it my negative. As however I voted for the resolution on which it is founded and consider the law in conformity with the resolution, I will assign in a few words the reasons which will govern my vote.

We have been told that all the departments of the government are independent of each other—No man denies the correctness of this principle. Let us not interfere with the constitutional rights of the other departments, nor abandon our own. The Executive has by the constitution the right of nominating for office any citizen of the U. S. whether an officer of the army or navy, or not. This being a constitutional right, he certainly cannot be deprived of it by law—the right remains and may be exercised if the law passes—the law merely severs the civil and military offices, and leaves the military officer to decide whether he will vacate his military command by holding or accepting a civil office—the Executive will have the same right to appoint; the individual will have the same right to accept the civil office as heretofore, but the acceptance vacates his command in the army or navy. If then the Executive right to appoint, and the right of the officer to accept remains after the passage of this law, how can gentlemen contend that the constitutional right of appointment is narrowed; all the difficulty on the present occasion arises from the law being made to bear on the constitutional right of appointment—It is intended to operate only on offices in the army or navy which are created by law, to the tenure of which we may annex such conditions as the public good may require. Under the constitution we have a right to prescribe rules for the government of the army or navy—In passing this law we add a new clause to the articles of war, viz. That an officer of the army or navy shall not hold or accept a civil office. Do gentlemen really suppose we have no right to make this rule. If we can say that an officer shall not get drunk, that he shall have short hair, a coat of a certain form, that he shall not absent himself from his duty, or if we can in fact annex any other condition calculated to insure to the public his services, why may we not declare by law that he shall not hold or accept a civil office, he shall forfeit his military command. The public welfare is the basis of the rules for the government of the army and navy—we have a right to prescribe such rules as the public good requires, and it is our duty to establish such as will insure to us the services of our military officers in that station to which they are appointed.

But we are told we are about to remove from office a civil officer by law. The gentleman from Pennsylvania has read the clause of the constitution which provides for the removal of civil officers by impeachment. This law is not to operate on civil but on military officers—civil officers it is true are removed by impeachment—military officers by such forms as we think proper to prescribe by law—the operation of this law will be precisely the same with any other new rule prescribed for the government of the army or navy. Suppose we were to pass a law that any officer found drunk after the 1st of July next shall forfeit his office—his having been drunk before would not subject him to the penalty of the law—but his being drunk after the 1st of July next would deprive him of his office. Apply this to the case of a civil office. An officer of the army or navy having accepted a civil office or holding a civil office does not at present vacate his military office; the reason is obvious, there is no law against it; if, however, after the 1st of July next he accepts or continues to hold a civil office he forfeits his military command under the new article of war which this law establishes. The law severs the two offices, declares them incompatible with each other and leaves the individual free to make his election. As to the general principle that the civil and military ought to be separate and distinct I have no doubt, if the principle is correct, the law ought to extend to all cases, not only such as may hereafter arise, but to those which at present exist.

The question was then taken by Yeas and Nays on the passage of the bill—Yeas 61—Nays 31.

Speech of Mr. LYON on the proposition to build two seventy-fours

MR. LYON. Ignorant as I may be supposed with respect to nautical affairs, it will no doubt be thought presumptious for me to join in this debate, or to offer my crude opinions to the committee. I can assure you, sir, that so fully am I persuaded of this, and so little hope have I, that any thing I can say on this subject will alter the opinion of one gentleman on this floor, that I would have given a silent vote on this extremely important question, did I not know that this is a question of the first magnitude, as it respects the interest of the western country, and did I not feel it my duty to attempt an explanation of that interest.

The question before us I view to be merely this, will the nation afford the reasonable encouragement and protection within her power to her own commerce, carried on in the vessels of her own citizens, built of her own materials and by her own artificers? Or in other words, will you afford a reasonable share of that revenue which you derive from commerce to its protection? While commerce is paying your national debt; while she supports your civil list, and your war department; while she pays immense sums under the heads of foreign intercourse, and Mediterranean and Indian tributes; while she is adding to your dominion the finest rivers on the globe, with numberless millions of the richest acres, and while she furnishes you with the products of every other country at a reasonable price, thereby greatly enhancing the value of the produce of your own; at the same time encreasing her own power of serving you in a compound ratio of about ten per cent. will you suffer her wings to be clipt, and her vitals to be struck at by every foreign robber who can set afloat a bark able to carry a gun? The documents laid before you from the treasury department, shew that I am within bounds, when I thus describe the powers and the utility of this, I had almost said omnipotent hand maid, commerce. While the petitions from the merchants all along the sea board with which your tables have been loaded, together with the newspapers you every day read, pourtray a share only of the injuries commerce sustains, and the dangers to which she is exposed, they justify me in asking the question. Will gentlemen, I say, sir, like the avaricious boy in the fable, kill the goose that lays the golden egg? Or shall the ox that treads the corn be muzzled and starved in the midst of surrounding plenty?

I know very well I am addressing two classes of gentlemen who are in the habit of viewing this subject in a light very different from myself. The first class the largest, and very respectable they are indeed, consists of back country gentlemen, who live inland, all along from N. Hampshire to Georgia, being but little interested in commerce themselves, many of them believe that by the destruction of foreign commerce, their constituents will be driven to provide their own necessaries by their own industry, and that it will be a blessing to them. I fear, sir, these gentlemen do not reflect with due consideration, if they did, they would see that by the destruction of foreign commerce, they will be obliged to recur to internal taxation, at a time when every source is dried up from which the people have been in the habit of receiving money to pay their taxes. I fear, sir, that those gentlemen have not sufficiently examined the truth of the position, that the necessity of satisfying the mere wants of nature seldom excites industry, and that industry is produced only by a desire to obtain those things which meet the artificial wants of man. I fear, sir, they disregard the well founded maxim, that in proportion as a nation neglects and despises commerce, she approaches to barbarism.

To this class of gentlemen permit me to say, that when by my situation, I was exposed to all the prejudices which back country people have imbibed on this