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For the National Intelligencer.

THOMAS PAINE,

To the Citizens of the United States.

Letter the Fifth.

IT is always the interest of a far greater part of the nation to have a thing right than to have it wrong; and, therefore, in a country whose government is founded on the system of election and representation, the fate of every party is decided by its principles.

As this system is the only form and principle of government by which liberty can be preserved, and the only one that can embrace all the varieties of a great extent of country, it necessarily follows, that to have the representation real, the election must be real: and that where the election is a fiction, the representation is a fiction also. *Like will always produce its like.*

A great deal has been said and written concerning the conduct of Mr. Burr during the late contest in the federal legislature, whether Mr. Jefferson or Mr. Burr should be declared President of the United States. Mr. Burr has been accused of intriguing to obtain the Presidency. Whether this charge be substantiated or not makes little or no part of the purport of this letter. There is a point of much higher importance to attend to than any thing that relates to the individual Mr. Burr; for the great point is *not* whether Mr. Burr has intrigued, but whether the legislature has intrigued with *him?*

Mr. Ogden, a relation of one of the senators of New-Jersey of the same name, and of the party assuming the stile of Federalists, has written a letter published in the New York papers, signed with his name, the purport of which is to exculpate Mr. Burr from the charges brought against him. In this letter he says,

"When about to return from Washington, two or three *members of Congress* of the federal party spoke to me "of *their views* as to the election of a "President, desiring me to converse with "Col. Burr on the subject, and to ascertain *whether he would enter into terms.* "On my return to New York. I called "on Col. Burr, and communicated the "above to him. He explicitly declined "the explanation, and did neither pro- "pose nor agree to any terms."

How nearly is human cunning allied to folly! The animals to whom nature has given the faculty we call *cunning*, know always when to use it, and use it wisely; but when man descends to cunning he blunders and betrays.

Mr. Ogden's letter is intended to exculpate Mr. Burr from the charge of intriguing to obtain the Presidency; and the letter that he (Ogden) writes for this purpose is direct evidence against his party in Congress, that they intrigued with Burr to obtain him for President, and employed him (Ogden) for the purpose. To save *Aaron*, he betrays *Moses*, and turns informer against the *golden calf.*

It is but of little importance to the world to know if Mr. Burr *listened* to an intriguing proposal, but it is of great importance to the constituents to know if their representatives in Congress made one. The ear can commit no crime, but the tongue may; and therefore, the right policy is to drop Mr. Burr as being only the hearer, and direct the whole charge against the federal faction in Congress as the active original culprit, or, if the priests will have scripture for it, as the serpent that beguiled Eve.

The plot of the intrigue was to make Mr. Burr President on the private condition of his agreeing to, and entering into, terms with them, that is, with the proposers. Had then this election been made, the country, knowing nothing of this private and illegal transaction, would have supposed, for who could have supposed otherwise, that it had a president according to the terms, principles, and intention of the constitution. No such thing. Every form, principle, and intention of the constitution would have been violated; and instead of a President, it would have had a mute, a sort of image hand-bound and tongue-tied, the dupe and slave of a party, placed on the theatre of the United States and acting the farce of President.

It is of little importance, in a constitutional sense, to know what the terms to be proposed might be, because any terms other than those which the constitution prescribes to a President is criminal. Neither do I see how Mr. Burr, or any person, put in the same condition, could have taken the oath prescribed by the constitution to a President, which is, "*I do solemnly swear, (or affirm) that I* "*will faithfully execute the office of pre-* "*sident of the United States, and will* "*to the best of my ability preserve, pro-* "*tect and defend the constitution of the* "*United States.*"

How, I ask, could such a person have taken such an oath, knowing at the same time that he had entered into the presidency on terms unknown in the constitution and private, and which would deprive him of the freedom and power of acting as President of the United States, agreeably to his constitutional oath?

Mr. Burr, by not agreeing to terms, has escaped the danger to which they exposed him, and the perjury that would have followed, and also the punishment annexed thereto. Had he accepted the presidency on terms unknown in the constitution and private, and had the transaction afterwards transpired (which it most probably would, for roguery is a thing difficult to conceal) it would have produced a sensation in the country too violent to be quieted and too just to be resisted; and in any case the election must have been void.

But what are we to think of those members of congress, who, having taken an oath of the same constitutional import as the oath of the president, violate that oath by tampering to obtain a president on private conditions. If this is not sedition against the constitution and the country, it is difficult to define what sedition in a representative can be.

Say not that this statement of the case is the effect of personal or party resentment. No. It is the effect of *sincere concern* that such corruption, of which this is but a sample, should, in the short space of a few years, have crept into a country that had the fairest opportunity, that providence ever gave within the knowledge of history, of making itself an illustrious example to the world.

What the terms were, or were to be, it is probable we shall never know; or what is more probable, that feigned ones, if any, will be given. But from the conduct of the party since that time, we may conclude, that no taxes would have been taken off, that the clamour for war would have been kept up, new expences incurred, and taxes and offices increased in consequence; and among the articles of a private nature that the leaders in this seditious trafic were to stipulate with the mock President for lucrative appointments for themselves.

But if those plotters against the constitution understood their business, and they had been plotting long enough to be master of it, a single article would have comprehended every thing, which is,

That the President (thus made) should be governed in all cases whatsoever by a private junto appointed by themselves.

They could then through the medium of a mock-president have negatived all bills which the party in congress could not have opposed with success, and reduced representation to a nullity.

The country has been imposed upon, and the real culprits are but few; and as it is necessary for the peace, harmony, and honour, of the union, to separate the deceiver from the deceived, the betrayer from the betrayed, that men who once were friends, and that in the worst of times, should be friends again, it is necessary, as a beginning, that this dark business be brought to a full investigation. Ogden's letter is direct evidence of the fact of tampering to obtain a conditional President. He knows the two or three members of congress that commissioned him, and they know who commissioned them.

THOMAS PAINE.

Federal City, Lovel's Hotel, Jan. 29, 1803.

FOR SALE.

BETWEEN two and three thousand ACRES OF LAND in the county of Loudoun, being part of the Goose creek tract of land, purchased of the late Col. CHARLES CARTER. On Little River, which runs nearly thro' the middle of the tract there is between two and three hundred acres of rich low ground. The high land excellent for small grain, and the production of grass; particularly timothy. About one half the land is in the occupation of tenants, and on that part untenanted, one hundred and seventy six bushels of wheat are sown. All the tenants are well watered, have good springs, and a sufficiency of woodland and timber for their support. In a pleasant situation on that part not occupied by the tenants, there are necessary improvements for the accommodation of a small family, all built within a few years past. I will treat for the whole, or (if preferred by a purchaser) that part which is not in the possession of tenants. Stock of the bank of Alexandria will be received in payment. For terms apply to

JOS. JONES.

Loudoun, Dec. 20. Jan. 5 2aw3w

National Intelligencer.

Congress of the United States.

House of Representatives.

Thursday, January 27.

(Debate Continued.)

The Chairman then read the second resolution, as follows:

Resolved, That provision ought to be made by law, for submitting to judicial decision, the right of the judges of the Circuit Court, to their compensations.

Mr. Randolph said he was not ready for the question. He had one or two remarks to offer, which had suggested themselves during the reading of the resolution. It had been repeatedly decided that the United States would not permit themselves to be brought into their own courts. Wherefore grant to a particular class of persons, in a single case, that which has ever been refused to the war-worn soldier of the revolution. Especially when it should be recollected, that this case, involving the interest of judges, as a *class*, could not be decided by any judicial tribunal, free from bias.

A doctrine is advanced new to this House, which I have been told originated with an eminent character on the bench of the United States. I did not hear the gentleman from Connecticut distinctly, but I understand him as subscribing to it. That Congress may, constitutionally, deprive a judge of all authority and transfer to another his powers and duties, but that the *office* nevertheless remains, and the judge, of course, entitled to his compensation. The constitution says that "the judges shall hold their *offices* during good behaviour and shall, for their services, receive a *compensation.*" Without entering into a question which has already been so fully discussed, he would barely remark that, if the position just advanced be true, the words *compensation* and *office*, which the constitution supposes, and every one believes, to have distinct and different meanings, must be convertible terms. For when the powers and duties are taken away, what let me ask, is left but the *salary?* The word office must then be rendered by the word *salary.*

The petitioners state that they are not actuated by a sense of their own interest, but that the public good is their sole object. I mean not to doubt their sincerity, but it is plain they are mistaken. This business involves only personal considerations—it has not a shadow of connection with the public welfare. The constitution renders the judges independent in a pecuniary point of view, in order that they may give independent judgments. In conceding that they may be constitutionally deprived of the power of acting as judges, every thing connected with the public weal is given up. If Congress can transfer their authority to other courts, it is a matter of private concern whether they continue to receive their salary. The public is no further interested than as to the amount which they are to pay. How strange then is it to hear men of the first standing on the bench say, and to hear it repeated here; as to the *conduct* of the judge in which alone the public are interested, Congress may take it away, may transfer it to whom they please; but as to the salary, in which the public cease to have an interest so soon as the judge is divested of judicial power; as to the salary, in which the *man alone* is interested, it is sacred, it cannot be touched. That is, on every political revolution the existing courts may be to all intents and purposes annihilated, and their authority transferred to others, provided you pension the judges. When they cease to be *judges*, to have the power of deciding on our property, reputation and lives, what, in the name of Heaven, is their salary, or their office, if you will have it so, to us? What concern have we in their pecuniary independence when they no longer possess judicial authority?

Mr. R. said he was every way indisposed to enter upon a long discussion of this question. That he had barely made a few observations on an opinion the most incomprehensible which he had ever heard. That his own mind had long been made up on this subject, and he supposed other gentlemen to be equally decided.

Mr. Dana was of opinion that every subject should be brought fairly and directly to a decision. And after it had been fully discussed and fairly decided, it ought to be considered as settled. So far as this subject had been completely decided, he had no disposition now to enter into the discussion. He fully agreed too with the gentleman from Virginia that to admit that Congress had the constitutional right to take away the powers of the judges was virtually to give up their claim for compensation, which only resulted from their right to office. Other gentlemen, however, were of a different opinion; and such an opinion may have been, and, he believed, was taken by some of the gentlemen who passed the repealing law. Such opinions, he knew, had been expressed by some gentlemen in public and in private.

The question of compensation to the Judges involved considerations very distinct for those ordinarily decided upon in that House. Most of the individual cases brought here were made in persuance of some particular law, and did not call in question the authority of Congress. If the case of the Judges were to be referred to any tribunal, the right to refer was founded on the principle of controlling the decisions of the legislature in case those decisions should appear to the tribunal to be unconstitutional. It was, therefore, in this view not proper to refer the question to a tribunal dependant on the body to be controlled. This was the only course that would probably be deemed impartial by all the parties concerned.

Mr. Bacon said the true question was on the constitutionality of the repealing law. One Congress had passed a law constituting certain courts, which at the last session had been repealed. Now of what do courts consist? Of Judges who are officers of the court. The question is whether by abolishing the courts, these offices are abolished. He supposed they were. He considered the terms as synonimous. Now the question is whether if the offices are abolished, those who filled them before they were abolished, are entitled to salaries? That is the only question that remains undetermined. What does the Constitution say? Admitting the offices abolished—it says, "The Judges, both of the Supreme and Inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their *continuance in office.*"

Does it not follow, that if they do continue in office, they are entitled to a salary for the services they perform. If they do not continue in office they are entitled to nothing, and the Constitution has no reference to them.—This is the true question.

Mr. Bacon said he had been reminded of some observations made by him the last winter. But he supposed that having determined the question that the offices were abolished, the other question of compensation was determined of course.

Mr. Griswold. Last winter the gentleman from Massachusetts informed us that the right of the Judges to salaries was not involved in a decision on their powers. Now, he says by a decision of that question the present question was decided of course. I conceive that this question never has been settled by the legislature. Opinions entertained by different gentlemen have varied. It is the opinion of some very respectable legal characters, that though Congress may deprive the Judges of all their powers, yet they cannot deprive them of their offices, and their characters of Judges, and that they are still entitled to their salaries. Such an opinion is entertained by high and respectable law characters. I am not of this opinion, as hinted by the gentleman from Virginia. I thought that when we passed a law essentially impairing the power of a Judge, we essentially impaired his office, and when we deprived him of all his powers, we also deprived him entirely of his office. But gentlemen of a very high and respectable character were of a different opinion. They may, perhaps, be correct. And so long as such opinions are entertained an impartial tribunal ought to be established to decide the question. I cannot see any objection to such a tribunal. I have never felt an objection to transfer to courts of law, the decision of claims resting upon legal grounds. I always thought such a mode of decision proper; as I thought that whatever an individual conceived himself as having a right to by law should be settled in a court of law. I have no objection to the reference of this question to the supreme court. I have, therefore, moved the resolution, and I hope it will prevail. As to the opinion of the gentleman from Virginia (Mr. Randolph) that this claim exclusively relates to the personal interest of the judges, I conceive that is not correct. The judges consider the repealing law as unconstitutional. They, therefore, consider themselves as still judges of the United States. It is a principle guaranteed by the constitution that they shall not be removed but for misbehaviour. They believe it to be their duty to pursue every legal means in their power to vindicate that principle, as violated in the repealing act. Believing that principle to be just, believing it to be sacred in the opinion of the people of the United States, how could they relinquish their claim to compensations, a necessary consequence of it, without relinquishing the principle itself? They could not do it. I do not, however, wish to go into an extensive discussion of the question, which I consider unnecessary, believing, as I said before, that by the course taken by the House it is settled that the resolution shall be rejected.

Mr. T. Morris said if he understood the gentleman from Massachusetts (Mr. Bacon) right, who had spoken on this subject during the last winter, he had said that not only every judge, but every justice of the peace had a right to decide on the constitutionality of a law. If that opinion was correct, and he still entertained the same opinion, he knew no reason why he should now object to the institution of an impartial tribunal. The judges thought one way, and congress the other. The repealing law may be constitutional or not. Why then refuse to refer the decision to an impartial tribunal. Believing this the most correct mode he thought the application proper. But the gentleman from Virginia says if you allow a tribunal to the judges, why not also allow one to settle the claims of our revolutionary soldiers. To this Mr. M. said he had no objection; though he did not think that in those cases they were so fully called upon as in this case. The former were principally appeals to the liberality of the House. Whereas this involved a great constitutional question. He understood, indeed that such a provision existed in the state which that gentleman (Mr. Randolph) represented, by which any individual, considering himself aggrieved, could apply to a court of justice, in consequence of the decision of which money could be drawn from the treasury.

Mr. John C. Smith said he did not propose to discuss, much less decide the question whether the petitioners were entitled to their salaries, because he perceived a strong disposition in the House not to consider the petition on its merits, and because this was a question which the judges themselves did not desire should be settled by Congress; but referred to the determination of a disinterested and impartial tribunal. The honorable gentleman from Virginia (Mr. Randolph) had observed that this course would be unexampled, and that the government might with equal propriety erect a forum to decide the numerous applications to this House for invalid pensions. Mr. S. said the very allusion made by the hon. gentleman had brought to his recollection a precedent which he thought not inapplicable to the present case.

He said, it would be remembered that, at a certain period, the Judges of the Supreme Court were directed by an act of Congress to receive on their circuits the evidence of *claims to invalid pensions*, and report their evidence to the Secretary of war for his ultimate determination—Some one or more of the Judges considered the act unconstitutional, as requiring them to perform a service not within the sphere of their official duties, and refused to execute it—the others discharged the duty enjoined, but under the stile of *commissioners*—A question arose whether the proceedings of these commissioners were valid so as to entitle the claimants to the provision contemplated by the act—How was this question disposed of? Instead of putting an end at once to all doubts on the subject by a legislative decision, Congress directed *the Secretary at war, in conjunction with the Attorney general to take such measures as might be necessary to obtain an adjudication of the supreme court of the United States on the validity of any such rights as were claimed under that act*—Here, said Mr. S. is a precedent for the measure now proposed, produced by an occasion of infinitely less importance, in his opinion, than the present—He considered the judges as standing on at least as high ground as ordinary claimants—They had been elevated to office not by their own acts but by the government itself—their salaries had been secured to them not for their personal benefit—but for the public good.

Mr. S. said he had risen merely to make these remarks—but being up he must be permitted to say that during the time he had had the honor of a seat