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CONGRESS.

HOUSE OF REPRESENTATIVES.

TUESDAY, December 11.

Debate on the bill for authorising the erection of a Dam or Causeway from Mason's Island to the Western shore of the Potomac.

(Concluded.)

Mr. G. W. Campbell considering an important principle involved, would offer a few remarks on the point in question, namely whether Virginia did really intend to cede to the United States any right of jurisdiction which she possessed over the Potomac, and if she did mean to cede, whether the law passed by her is couched in such terms as to convey that right?

The principal objection relied upon is that the right which Virginia had was nothing more than a use springing out of the real property without any territorial right: yet he understood that both the states of Maryland and Virginia could send their civil officers to execute process upon the Potomac. This being admitted the inevitable conclusion is that the river was within the jurisdiction of Virginia for such purpose. Now look into the law, and see whether the terms be not broad enough to cover the jurisdiction claimed by Congress: the words are, that she cedes a tract of country not exceeding ten miles square, &c. and that Congress may exercise exclusive jurisdiction over the soil and the persons residing thereon; from these words, it is clear that Virginia meant to convey every thing she possessed in relation to the soil. He believed that a person might use expressions in a deed that conveyed more than he possessed. Although the object did not pass, yet it was *pro tanto*, good for as much as he did possess, which was the case with Virginia. He concluded by observing that it was singular, so much danger should be apprehended, and yet no person came before them to complain; there were no petitions either from Alexandria or the Eastern branch, nor did he apprehend there would be any, as he believed that deepening the channel would be a general good, and not produce even a partial injury.

Mr. Macon (Speaker.) Although it may be a good rule, yet it is not a general one, that people are well satisfied when they do not complain; yet gentlemen when they are sent here to legislate must exercise their own judgment on the probable consequences. If all the people of the district were to say this was a proper measure, he should still exercise his own opinion. The gentleman from Virginia (Mr. Lewis) had narrated the history of this river, and informed us there was no impediment prior to 1784. He did not doubt the correctness of the statement; but he should have gone further, and informed us what was the population on the waters of the Potomac at that time, and what it is at present, and likely hereafter to be; because if such a mud bank was raised in the river when its banks had little or no cultivation, what was it likely to be when thickly settled, for every new farm, every additional cultivation loosened the earth, which was swept away by every fresh, and the mud bank at the head of tide water would proportionably increase in magnitude. Such had been the case with the Rappahanock, and if it should turn out that these two rivers are in a similar situation, their trouble would be thrown away.

Mr. Holland admitted that the quantity of mud would increase by cultivation; but if the channel is deepened by narrowing the river, the mud would descend lower, and deposit itself in that part of the bed of the river where the channel was deeper: he had no doubt of the right of Congress to the exclusive legislation over the river, as well as over every other part of the district; he should therefore vote for the bill, believing they had the right, and that the measure would be greatly beneficial to the commerce of the country.

On the question being about to be put, Mr. Eppes requested the clerk to read the 8th article of the compact between Maryland and Virginia, which being done,

The question on striking out the first section was put and lost, 40 members voting in the affirmative, and 72 against it.

Mr. Lyon proposed a new section incorporating a company to build a bridge over the Potomac; he thought the two objects ought to go together, and unless they were connected he should not vote for the bill.

The Chairman determined the motion not in order, the committee having had nothing relative to a bridge referred to them; the amendment however would be proper in the House.

The committee then rose and reported, and the House adjourned.

THURSDAY, December 13.

On the third reading of the bill for the erection of a dam or causeway from Mason's Island, to the Western shore of the Potomac.

The Yeas and Nays were called for by General Varnum.

Mr. Dawson. My absence from this House for some days past, occasioned by my bad health, has prevented my hearing the arguments which have been urged in favour of this bill, as well as those in opposition to it; presuming however, that they had much affinity to those which were urged on its introduction, which in my judgment were conclusive in opposition, and feeble in support, I must be permitted to express my astonishment, that it has progressed so far, and that this House must now decide on its passage or rejection.

In this stage of the business and under existing circumstances I should not intrude a single observation, especially as I learn that the subject has been fully discussed, and various votes taken—did I not feel impelled by one consideration superior to all others—but, sir, whenever a proposition is made which goes to affect the interest and wantonly violates the rights of a state, one of whose representatives I am, I hold it to be my bounden duty to rise in the opposition.—Such is the bill in your hand, and under such influence do I now act—in my judgment, that bill usurps a power, and attempts the exercise of a right which the states of Maryland and Virginia never have, and I trust never will relinquish to any government—a right essential to them as sovereign states; and the relinquishment of which will render them dependencies not only on the general government, but upon any corperation within the district of Columbia.

In the course of this discussion, reference, no doubt, has been had to the deeds of cession from those two states to the general government, I mean not again to bring them to their view, and mention them only for one purpose—I presume that in the construction of those articles, the same rules will be observed, the same principles will be adher'd to, which are observed in the construction of the original compact, the constitution—I well know that in the construction of that instrument, two opinions have gone abroad in the United States, and have their zealous advocates—the one is, that the general government possesses all powers, which it shall deem necessary, and which are not expressly reserved to the states—to this doctrine I have never been a friend, and am surprised to find that it has so many advocates on this day, who support that bill—the other is "that all rights, powers and jurisdictions are reserved to the states, which are not expressly delegated to the general government,"—This is the doctrine which I have always advocated, and which I support on this day by opposing that bill.

Admitting, Sir, my first position to be true—that the same rules of construction must be used in the two cases which I have mentioned, I call upon gentlemen to shew any express surrender of this right of jurisdiction, either by the state of Maryland or that of Virginia—none such appears—and gentlemen must either, adopt the extensive doctrine *of implication* as one of their political tenets, or relinquish that bill.—I will go further Sir, and declare it as my opinion, that the legislatures of those two states never could have intended the surrender of that jurisdiction—I was a member of the legislature of Virginia at that time, and the idea was new unto me until the last year, when the bridge proposition was brought forward—I appeal to the candour of the gentlemen of this committee, and call on them to say, whether it is reasonable to suppose, that those two states, after taking uncommon pains to fix, and render secure, for ever, to themselves and their friends the navigation of this river, after uniting their efforts, to open and improve it to a considerable distance above tide water, would surrender the jurisdiction to any earthly power, thereby putting it in their power to impede it, whenever they please; for be it remembered, that if we have a right to throw up a dam in one place—we have a right to build a bridge in another, if to build a bridge, to draw an artificial line at any place, saying "thus far you shall go, and no further."

For these reasons I am convinced that the right has never been surrendered—that it never was intended—and that it never ought to be relinquished—considering the objections which I have mentioned as sufficient to defeat the bill, I have forborne to examine into its expediency; whether it will prove advantageous to some of the district and injurious to others I will not pretend to say; one thing however appears probable to me, that if by the erection of this dam, the rapidity of the water opposite to Georgetown is increased, and thereby the sand and mud carried to a lower point and there deposited, that point may be at or near the Eastern Branch, which we have established as our Navy Yard, to which heavy vessels get with great difficulty, and from which they may be entirely excluded, should the effect which I apprehend take place; I submit this to the consideration of the friends of this establishment, which is not without its enemies already.

One more word and I am done; if we admit the right to erect a dam, we have the same to build a bridge, and if we grant the one for the accommodation of the people of one part of the district, I know not how we can refuse the other to the inhabitants of the other part—let the friends to the present bill look to this; the division of this House on the last year on that point was very equal, and the admission of the right will certainly give it new friends.

On the passage of the bill the Yeas and Nays were taken, and are as follows:

YEAS—Messrs. Alston, jun. Anderson, Baldwin, Bard, Betton, Bishop, Blackledge, Bryan, G. W. Campbell, Casey, Chamberlin, Chittenden, Clagett, Conrad, Davenport, Dwight, Earle, Elliot, Elmer, Findley, Goddard, Gregg, G. Griswold, R. Griswold, Hanna, Heister, Hoge, Holland, Hunt, Kennedy, Larned, Lewis, jun. Livingston, Lowndes, Lucas, M'Creery, Merriwether, Mitchell, T. Moore, Morrow, Mott, Patterson, Plater, T. M. Randolph, Rhea, (of Ten.) Root, Seaver, Sloan, J. C. Smith, Southard, Stedman, Stephenson, Stewart, Taggart, Tallmage, Tenney, Tibbits, Van Cortlandt, Van Horne, Verplanck, Wadsworth, Whitehill, L. Williams, Winn, Winnston, and Wynns—66.

NAYS—Messrs. Alexander, Bedinger, Boyd, Boyle, Brown, Butler, Clark, Clay, Crowninshield, Dawson, Dickson, Early, Eppes, Eustis, Goodwyn, Griffin, Hasbrouck, Holmes, Jones, Knight, Leib, M'Cord, N. R. Moore, New, Newton, jun. Olin, Palmer, J. Randolph, Rea, (of Penn.) Riker, Rodney, Sammons, Sandford, Smilie, J. Smith, Stanford, Thompson, and Varnum—38.

WEDNESDAY, December 19.

Debate on the report of the committee of Elections on the petition of sundry citizens of the county of Washington, in the state of Pennsylvania, complaining of an undue election and return of John Hoge, to serve in this House as one of the representatives for said state.

Mr. Elliot said, that the very comprehensive and argumentative examination of this question, which had been made by the gentleman from Pennsylvania (Mr. Findley) would probably have been conclusive to his mind, had any doubt existed on the subject.——Without repeating, however, any of the arguments of that gentleman, a candid consideration of the provisions of the constitution relative to this subject, will evince the correctness of the position taken by the committee of elections. In the second section of the first article of the constitution it is declared, that "when vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies." It is an established principle that a constitutional delegation of a general power includes a grant of all the subordinate and incidental powers requisite to give effect to the principal one, unless restrained, limited, or placed elsewhere by another part of the constitution. What is the power given to the state executives by this clause of the constitution? Not merely, as some gentlemen seem to believe, an authority to issue writs of election, but to give to those writs a certain operation and effect, that of filling a vacancy. They have authority to issue writs of election, to cause elections to be holden in consequence, and the vacancies filled. Is the power here given to the executives of the states limited or taken away, by any other part of the constitution? If not, I shall not suffer myself to enquire into the discretion or indiscretion with which it has been exercised on the present occasion, as I believe the constitution has placed it beyond our powers of inquisition or censure? By the fourth section of the constitution, it is declared, that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each state, by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators." The words *by law*. in this section, are peculiarly emphatical. Congress can do nothing on the subject, but by law—the state legislatures may act by resolutions, and in that manner senators are commonly chosen. This section appears to have been intended to regulate the general election of the whole number of senators and representatives, to which a state is entitled, and to have no application to the case of vacancies. But if this construction be not the correct one, it will be necessary to adopt this construction of the two clauses taken together, that although the state legislatures have a right to regulate the elections in cases of vacancy, yet the executive possesses a complete discretion upon the subject until the legislature interferes. Such we are told has uniformly been the practical construction in Pennsylvania.——Two questions only are to be answered—Was the election in the present instance held in pursuance of the exercise of a power delegated by the constitution? Certainly it was—Was it regularly and legally conducted? It appears to have been conducted, except as to time, conformably to the laws of Pennsylvania, which govern other elections. Believing that under the peculiar circumstances of the case, no injustice has been done, and believing that the election was constitutionally conducted, I shall vote in favour of the report of the committee.

Mr. Lucas. Believing as I do that the report under consideration involves an important question I cannot forbear to add a few remarks. It appears that representatives in Congress may be elected under two different circumstances, periodically by general elections, accidentally by special elections. The election of the sitting member, which is the subject of the report, is a special election, an election held to fill the vacancy of Wm. Hoge resigned. It is not alleged, that any illegal votes have been given, or any fraud practised, in conducting that election. It is merely contended by those opposed to the report that the election ought to be set aside, because the time, place, and manner of holding the election have not been according to law, or because the power of prescribing the time, manner, and place, had been assumed by an improper authority.

Turning to the second section of the constitution of the United States we find this provision; "when vacancies happen in the representation from any state, the executive thereof shall issue writs of election to fill such vacancies." From this it appears that the governor is only vested in part with the powers to cause an election to be holden, that is the power of issuing a writ of election, which gives him the initiative, but this initiative does not destroy the power placed by the fourth section of the same constitution in the state legislature, which is that "the times, places and manner of holding *elections* for Senators and representatives shall be prescribed in each state by the legislature thereof." The words *holding elections* indisputably include all kinds of elections; a special election is not less an election than a general one, and unless the constitution express an exception to that general principle, it follows necessarily, that none but the state legislature or Congress have the power of prescribing the times, places, and manner of holding elections for representatives. Thus from the provision in the constitution, which vests the executive of each state with the power to issue writs to fill vacancies, and from the provision which vests the state legislature with the power to prescribe the times, places, and manner of holding elections, it appears that the powers necessary to cause elections to be held to fill vacancies are divided between the executive and legislative powers; the first is directed to issue writs of election; the second to prescribe the time, places, and manner for holding the same, both are bound by a constitutional injunction equally imperative; thus that an election to fill a vacancy be legal, the executive and legislative must have co-operated to that election by the exercise of their respective constitutional powers. If the election under consideration hath been holden under the authority of but one of these powers, it is not according to the constitution, in-as-much as the constitutional exercise of the power of the one without the concurrence of the other is but a lame power.

The report states that this election was held without the concurrence of the legislature; that is, that the state legislature hath omitted to prescribe by law the times, places, and manner of holding elections to fill vacancies. This being the case, the power of causing this election to be holden was incomplete, and if its deficiency was supplied, it was by an authority other than that designated in the constitution.

But a gentleman from Connecticut (Mr. Griswold) contends that by the constitution of the United States in the second section of the first article, requiring the executive authoriy of each state to issue writs of election to fill vacancies, the executive became vested with the absolute power of causing elections to be holden, and that all other powers necessary to carry that act into effect are implied and can lawfully be exercised.

To this it may be answered, that the constitution of the United States hath been careful in distinguishing between the substance and forms of Elections; the substance of elections, which consists in the right of electors, and the result of the exercise of that right, hath been sufficiently expressed; the legislatures of each state have been expressly vested by the constitution with the power of regulating the forms, which consist in prescribing the times, places, and manner of holding elections. If the construction of the gentleman from Connecticut were correct, the consequence would be, that two provisions of the constitution would militate against each other; that is, that the executive would from the power he hath to issue writs of election to fill vacancies derive by implication the power of prescribing the times, places and manner, that is, would have by implication a power which the constitution expressly vests in the legislatures of each state, and which appears to be a subject of such importance, that Congress is empowered to control the state legislatures in that very case. The gentleman from Connecticut hath gone further; he hath said that admitting for a moment that the power vested in each state legislature to prescribe the time, places, and manner of holding elections, which he believes extends only to general elections, should extend to elections to fill vacancies, yet that in-as-much as the legislature of Pennsylvania did omit to legislate on that subject, the governor had a right to supply the omission by assuming that power. To this argument I answer that as none of the constituted authorities can transfer by any act whatever the power lodged by the constitution in any of them, by a stronger reason no transfer of power can be made by their omission to act. The security of our political system rests principally upon the constitutional partition of the constitutional powers. The constitution does not only require that none but the powers which it grants should be exercised; it also requires that they should be exercised only by the authorities to which they are confided; and to contend that the omission of the legislature to legislate entitles the executive to perform acts of legislation is a position too preposterous to require refutation.

It hath been urged that it would be out of the power of the state legislature to prescribe the time of holding elections in pursuance of the writ of the executive to fill vacancies, because the governor issues his writ under the immediate authority of the federal constitution, and this power cannot be impaired or receive modifications by a legal state legislative act; it hath been added that this election to fill a vacancy being the result of a contingency, the time cannot be prescribed by law. I grant that the time cannot be absolutely prescribed, but I contend that it can be prescribed relatively, and so it is prescribed too by the law of Pennsylvania regulating the times, places, and manner of holding elections to fill vacancies in the state legislature? Upon the issuing of a writ by the speaker of either House, a time is fixed, which bears a relation to the time of issuing the writ, or proclaiming the election in pursuance of the writ, and as this relative prescription of time does not limit or abridge the power of a speaker, so a similar relative prescription of time with respect to the time of proclaiming an election under the writ of the governor would not abridge or impair the exercise of his right.

Independent of the radical deficiency of the election alluded to in the report on constitutional grounds, it cannot in any