

# WESTERN SUN

EACH CENTURY HAS ITS PECULIAR MODE OF DOING BUSINESS, AND MEN GUIDED MORE BY CUSTOM THAN BY REASON, FOLLOW WITHOUT ENQUIRY, THE MANNERS WHICH ARE PREVALENT IN THEIR OWN TIME.—HUM.

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For the Western Sun.

The Judges and the Legislature.

MR. STOUT,

Pursuing the idea of the influential gentleman, there is another important topic for consideration.

By the ordinance all magistrates and other civil officers, not otherwise directed, shall during the continuance of the territorial government, be appointed by the governor—the exception includes the secretary and the judges.

If a new power be given to a certain person, by the designation of that certain person, all other persons are excluded from the exercise of the power.—11. Rep. 64, Fosters case.

Now admitting the propriety of the modifications and extensions of the jurisdiction of the judges as claimed by the legislature in the passage of the judiciary law, still the judges were not empowered to act. They were neither appointed or commissioned by the governor. The designation of the presidents (the judges by name) of the Circuit courts, was in the form of a law, the joint act of the governor and the two houses of the legislature. This idea of the influential gentleman, directly inculpates the governor and the legislature. The governor in permitting the legislature to participate with him in the pretended appointment of those officers, parted with a power, the exercise of which belongs exclusively to himself, & in the approval of the law, committed a palpable breach of the trust confided to him by the general government; the two houses also in intrenching on that prerogative of the governor, were guilty of a flagrant usurpation.\*

In the first number an analysis of the ordinance and acts of congress, in regard to

\* However, it would seem that the governor is really not liable to this imputation, which ignorance and zeal have cast upon him. To excuse the legislature and inculpate the judges, the most monstrous absurdities have been propagated, without percei-

the relative powers and duties of the judges and the legislature, has been given; and the result is the establishment of the following facts and conclusion. The legislature passed a law, by which they abridged, augmented, annihilated the jurisdiction of the judges, derived from the general government; but the legislature are expressly prohibited from passing any law repugnant to the laws of the U. States; a law of the U. States, however, prescribes and establishes a jurisdiction for the judges; the law of the legislature, must then, in so far as it intrenches on the jurisdiction of the judges, be repugnant to the laws of the U. S. and therefore void.

From our second number it appears, that the ordinance is a new law, creating a new jurisdiction; that it must, consequently, be construed strictly; and that its affirmative phraseology implies a negative of the exercise of all other powers than those expressly given. These positions cannot be controverted, nor the authorities quoted disproved by any opposing decisions, either in England or the U. States. It also appears that if, in respect to the judiciary law, the judges were to be considered as territorial judges only, they were on the same footing with every other citizen, and had the privilege of accepting or declining their supposed new appointments; but that, at all events, they were prohibited from acting as such, unless they had been commissioned by the governor, in pursuance of a law for that purpose. And it has now been demonstrated that the judiciary act cannot be considered as a commission to the judges, inasmuch as the appointment of all magistrates and other civil officers is expressly limited to the governor.

And hence it is clear that whether the ordinance is considered with a view to its

view that they concluded against the very men they were officiously and presumptuously endeavoring to exculpate. It was first said, that no idea was entertained that the law was compulsory on the judges—then, that the law was to be considered as a commission to the judges—then, that although it was constitutional, yet that it imposed no obligation on the judges; but he said that as it might, the judges were still censurable for not executing the law—and for the last nine months the phases of the Moon have not been more various, than the crudities which shame, resentment, ignorance and injustice have advanced to bolster up this abominable law. Consulting the law, it is clear that the legislature believed it was constitutional and binding the judges, as judges appointed for the territory, by the U. States—that the judges had no option—that they must either violate their duty, or obey the law; its language is plain; its terms explicit and peremptory. After arranging the Circuit, the law declares that, "for each of the Circuits, one of the Judges of the General court, shall preside as a Circuit Judge." If the legislature had doubts (and it is to be believed the house of representatives had) it is probable that it was expected, that the memorial to congress would remove them. Disappointed there, something was to be done to excuse the modif. the intelligent, and the immaculate gentlemen of the legislature; the territory was loaded with silly falsehoods, and the most erroneous and outrageous principles were advanced in prosecuting this crusade against truth and justice. But more of this hereafter.

general object, or the literal meaning of its terms; whether it is examined and tested by the rules of construction recognized in the courts of England, or those of the U. States; or whether the judges are to be considered as U. States judges for the territory, or those of the territory only, they were alike prohibited from conforming to the law.†‡

There is another strong feature in the case that may be properly mentioned—about the time of the passage of the judiciary law, the legislature petitioned congress for an absolute control over the judges; it is said that a bill conformably to the prayer of the memorial was reported, and after debate, rejected by a large majority of the house of representatives upon the ground of the unconstitutionality of that law—and Mr. Jennings' circular letter is appealed to for proof of the fact.

Contrasted with the judiciary act, the memorial exhibits a singular aspect. What new power could the legislature want? If the law was valid,†‡ no other power could be conferred, in respect to the judges, than they had already exercised, except that of impeachment and removal from office.

*Slim Simon.*

†‡ It is 27 years since the ordinance was adopted; and between the judges and the legislature, there never was any difficulty before. Congress prescribed and limited the jurisdiction of the judges; but as to the time when; the place where; and the manner in which the judges should exercise the jurisdiction with which they were invested, it was left with the legislature to provide. There is no difficulty in all this; and to be understood, it is only necessary to state the case. Why congress should have made this arrangement, is best known to them selves. Some years since an attempt was made by the legislature to interfere with the jurisdiction of the judges, it was promptly controled by the veto of the governor.—Eighteen months, or two years ago, some good people were alarmed lest we should fall under a *Genococracy*. Under what kind of government are we now?

†‡ But the house of representatives in their answer to the governor declare, that "the legislature at their last session had doubts of their own of blinding the judges of the general court, with the assistant judges." They doubt! and yet the constitutionality of the law is unflinchingly asserted—an outrageous clamor raised against the judges, because they refused to execute it—a batch of new judges created, and to pay them—dollars added to the tax list; the territory in debt, and our treasury unable to discharge current demands. The answer, it is understood, was written by the *sapient*; and when he and his sage compeers had doubts, ought the judges to be censured because they had theirs? Blinding the judges, is one of the great questions in dispute; and yielding that, there is an end of the matter.

For the Western Sun.

*VICE, against VIRTUE.*

This being the adjourned audience day, virtue after consultation with her advocate Truth, filed her brief as follows, mutatis mutandis.

1st. With pain, horror and detestation, it is confessed that the plaintiffs' power has been but too extensive over the conduct, if not the hearts of mankind. But Virtue

contends that Vices' age cannot justify her principles nor her universality sustain her baneful influence.

2d. With similar sentiments, its acknowledged that there are many in place and power, & many others commanding wealth, who have not only obtained those stations, and situations by your nefarious and infamous ethics, but who still retain them by the same means. From whence your influence (as you observe) is to be seen in the statesmen, the powerful and the rich, but because of your prevalence, I flattered if you will, by all the fiends of darkness, & it follow that I am not as far from you as you as the Sun is to artificial & preferable as light is to darkness. O he who rides upon the winds, & unbounded ether, will not, in our judgment, reward the vicious.

3d. With sympathetic feelings for the depravity of Gods' beings, I created after his own likeness. It is admitted that you Vice, with hitherto train, have and do continually draw into your vortex, by your enticing allurement, both male and female, of all ages and conditions. And because I may be, fain to tell, but a word, a name without a being, or an asocial appendage, cast off by the gay the frivolous or the ambitious, does it therefore follow, that my empire should not be established in the hearts of mankind, and yours be expelled?

The court being willing to hear the arguments of the respective counsels, grant a further day herein until the ensuing audience.

*Prolabor.*

Muskets and Rifles.

*U. S. Ordnance Department, Washington City, Nov. 19, 1814.*

PROPOSALS will be received at the United States Ordnance Department, Washington city, from companies or individuals, in any section of the southern or western states, for the supply of the following articles:

*Muskets with Bayonets.*

A wiper to each Musket and twelve screw drivers and bullet screws to every hundred Muskets.

*Rifles.*

With each Rifle a wiper and bullet mould, and eleven ball screws and screw drivers with every hundred Rifles.

Patterns for the Muskets and Rifles will be furnished; and the articles, when completed for delivery, will be inspected by an officer to be appointed by this department. Satisfaction will be required for the faithful performance of the contracts.

The proposals will state the prices, and the number agreed to be furnished in specified periods; as also the places of delivery.

Contracts for an immediate or early supply are desired; but they will also be continued for certain quantities throughout the succeeding year or years, as may be agreed upon.

In any district where there may be an officer of the Ordnance department stationed, the proposals may be made through him if preferred.

*PRINTING*

IN ALL ITS VARIETY, NEATLY AND ACCURATELY EXECUTED AT THIS OFFICE.