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MEMPHIS APPEAL

F. A. TYLER, - - - - EDITOR.

FRIDAY MORNING, : : : : JAN. 14, 1870.

SENATOR DRAKE—BILL AND SPEECH.

The Supreme Court when deciding the case, MARBURY VS. MADISON, by way of illustrating that the Constitution was superior to an ordinary act of Congress, used this argument:

"It is declared that 'no tax or duty shall be levied on articles exported from any State.' Suppose a duty on export of cotton, of tobacco, or of flour, and a suit instituted to recover it, ought judgment to be rendered in such a case, ought the judges to close their eyes on the Constitution and only see the law?"

"The Constitution declares 'that no bill of attainder or *ex post facto* law shall be passed.' If, however, such a bill should be passed, and a person be prosecuted under it, must the Court condemn to death the victims whom the Constitution endeavors to preserve?"

The Senator, commenting on this argument by the Court, says:

"Cases are supposed of Congress passing acts in direct and self-evident repugnancy to the Constitution, and the question is asked whether the courts would be bound to enforce such acts?"

Again:

"The argument drawn by the Court from the argument by the cases supposed, even if considered to possess force, goes to prove nothing but the right of the Court *in just that class of cases*, to hold an act of Congress unconstitutional."

Here is a distinct and unequivocal acknowledgment by the Senator, that "*in just that class of cases*," to-wit: the cases mentioned by the Court, a tax on cotton or flour exported, or an *ex post facto* law, the courts have the power to declare acts of Congress unconstitutional. Elsewhere we have shown his acknowledgment that the Court had; indeed, that it was the only tribunal which has the power to decide upon conflicting laws.

With these two admissions the Senator has left himself nothing to stand upon. It is said to be a maxim with reasoners that from *nothing* nothing remains.

The Senator is inconsistent with himself. In another part of his speech he holds this language: "No power can be drawn to one department of the Government, from a supposed case of possible, self-evident violation of the Constitution by another department, for such a violation is not to be supposed." Now it so happens that the Senator makes out, in his own person, the very case which he says "*is not to be supposed*." In his speech he says there is "a present and urgent need" for Congress to pass his bill, for the reason, that there are a number of cases now pending before the Supreme Court, which call in question the constitutionality of acts of Congress.

With others named by the Senator, the cotton tax case.

It so happens that case calls in question the constitutional power of Congress to tax cotton in transitu to export. If they cannot tax an article of export, can they tax it on its way to be exported? This is precisely one of the "class of cases" which the Supreme Court said could not be taxed, which the Senator admitted to be a "palpable and self-evident violation of the Constitution." And yet, notwithstanding this admission, he is urging upon Congress to arrest and smother the investigation of an act of Congress which perpetrates a palpable violation upon the constitutional rights of citizens in a large section of the country. The Senator supplies the proof not only that it is to be "supposed," but that he is willing and anxious as a Senator, to prevent inquiry, whether the citizens have been wronged or not.

In another part of his speech, fearing he had made an admission fatal to his whole argument, he takes it back by saying: "I mean not to be understood as admitting that even in the extreme cases put by the Court, the judicial power is charged by the Constitution with the protection of the people against the unconstitutional acts of their own representatives. Take those cases, take any case of direct and palpable legislative violation of the Constitution, and what name would you give it? It could be called by no other name than *Revolution!* For its design would be, as its probable effect, to overthrow the Constitution in some of its parts; and any such legislation is, in its very essence, an act of *Revolution!*

We now see what the Senator's doctrines tend to, verifying the old adage "give him rope and he will hang himself." They need no comment. It is trumpet-tongued against rebels; and yet this preacher against rebels is promulgating doctrines which teach the people, rather than submit to the quiet constitutional way of deciding questions by the courts, to take the course which leads to revolution—with revolution to war. And this is the bloody alternative commended by the Senator. The argument overthrows itself, and possibly may the Senator. The people are not yet prepared for such measures, and woe to any simpleton who may follow him.

There is one more chance left for the Senator. "With great heart he heaves away this storm" by calling attention to another decision of the court in the case United States vs. Coombs, in which the court decided, "If upon a just interpretation of the terms of an act, Congress have exceeded their constitutional authority, it would become our duty to say so." "Once concede," says the Senator, "that the constitutionality of an act of Congress is to be determined by the *ratiocinative power* of judges of the courts, and you have a standard which, without disrespect, might be said to be somewhat uncertain."

By "*ratiocinative powers*" we understand what other powers could be used by the court than these? By what other method than by comparing the law with the Constitution, and then reasoning as to the object, intent and effect of each, could the court arrive at a correct conclusion?

Let us follow up the Senator. He says: "The Congress may pass and the President may approve a bill, after a full and able discussion in both Houses of its constitutionality, or it may be passed by a two-thirds vote over the President's veto, and yet the law be held unconstitutional by five of the nine judges, whose opinion, shaped by their order in a judgment entry, strikes it down. Four of the court one way, four the other way, and the ninth man, possibly the weakest of all, sits umpire over the exercise of the nation's sovereignty by its Congress, and as his opinion is *pro* or *con*, arrests or permits to proceed."

The Senator's remedy is to take from the Supreme Court the power to make decisions, and vest it in Congress.

Let us see how it would work in Congress. Congress, as every one knows, is composed of all sorts of men, of every profession; lawyers, doctors, merchants, farmers, horse traders, pedlers, shoemakers, soapmakers, tailors, tanners, and some of no trade whatever. "Jacks at all, good at none." Let us suppose a great constitutional question such as the legal tender bill before them; that it has passed the Senate by one vote, and that the House consists of two hundred and forty-one members. The question is up for final decision. One hundred and twenty for, one hundred and twenty against, and the fate of the bill is made to depend upon the vote of one man, and that man is a soapboiler, who knows all about *grease*, but never looked into a law book, read a decision, or the Constitution; who, in fact, is very ignorant, so ignorant that if all he knew was written and printed, it would not make one page of a small primer; whereas, if all he did *not know* could be printed, it would make the largest book ever seen by mortal eyes. And yet that man's vote, the weakest man in Congress, "sits umpire" in determining one of the gravest and greatest constitutional questions ever introduced before any tribunal.

To this complexion must come at last the Senator's programme?

We wish in stating this case not to be understood as reflecting on men of any trade or profession. Our object is to point out the absurdity of the Senator's doctrines.

Not content with the preposterous claim for Congress to expound laws, the Senator claims that Congress wields the sovereignty of the nation.

To strengthen this position, he makes the following quotations from BLACKSTONE: "Sovereignty and legislature are convertible terms."

Again:

"An act of Parliament is the exercise of the highest authority that this kingdom acknowledges upon earth."

"This description," the Senator says, "applies to an act of Congress in relation to any subject over which the Constitution gives it legislative power. In that field its acts are as *omnipotent* as those of Parliament over any subject."

This sounds like a very pompous pretension and grating to American ears. The restraining words, "*over which the Constitution gives it legislative power*," is a monstrous "getting down stairs," if not into the cellar; the play of "Othello" without *Desdemona;* a big door without a house behind it.

Congressmen are but the agents of the people. As the people cannot in *propria persona* meet to transact their business, they depute their agents, with strict letters of instruction. "Thus far shalt thou go, and no farther." Every legislative body over which the Constitution gives it "legislative power" may claim to be likewise as omnipotent as the British Parliament. Indeed, every constable, for the purpose of serving writs and collecting money, to the extent of his power is also *omnipotent*.

Omnipotence is not in our vocabulary, nor in our Government like that of Great Britain. The Government of Great Britain is a hereditary monarchy. In the language of Lord COKE, the King is *principium et finis*, the beginning and end. Sir WILLIAM BLACKSTONE, from whose writings the Senator draws his maxims, ascribes to the King ubiquity and immortality; that law, justice, offices, honor, all flow from him; that the people, Parliament, Church, army, navy, highways, laws, peace, are, by virtue of his prerogative, his.

The Parliament in part of its composition is hereditary. The Constitution of Great Britain is composed of unwritten laws and maxims. Their Magna Charta, Bill of Rights, etc., are bulwarks to protect the people against the prerogative of the Crown. They claim they can do as they please, and are *omnipotent*. The people are divided into castes—earls, dukes, lords, counts, barons, common people and beggars.

The Government of the United States is modeled after no other. It is *sui generis*. The framers of the Constitution and those who adopted it, were wise, practical, learned men, deeply versed in the history of all governments. When they undertook the task of forming a government, they may be said to have stood on an apex, from which they could look down upon the history of nations. With the fierce and turbulent democracies of ancient Republics, with the Republic of Venice, with the Amphyctionic Council, with the Achean League, the Germanic, the Swiss Confederation, the United Netherlands; with the Monarchies of all countries, with the experiments in the colonies, with the Confederation—they were as familiar as with their household gods.

These, with their virtues, triumphs and advancements, in letters, arts, arms and conquests; with their perfections and imperfections, passed in review before them for their instruction and guidance. Like bees, they gathered honey from every flower, and appropriated that which was good.

The Constitution of the United States was the result of their labors. The easiest system of government ever adopted by mortal man, if administered with virtue, patriotism and prudence, and with the intent of those who framed it.

The people, not Congress, possess the absolute sovereignty. The legislative, executive and judical departments have their respective spheres, alike represent the sovereignty of the people—one not more than another—and all their powers are limited. In framing the organic law, the sovereign power assigned to each such powers as they pleased, and withheld to themselves such as they pleased.

In creating a legislative department, they divided it into two branches, House of Representatives and Senate. The House of Representatives were to be the immediate representatives of the people. They were elected only for two years. Knowing the instability of republics, as Mr. HAMILTON expressed it, "the first to be seen, and the last to be lamented by the philosophical engineer" in the erection of the Senate—they endeavored to give that branch more stability, made them more immediately the representatives of States—elected for six years—that they might restrain the excesses of the House of Representatives, and, if need be, by their wisdom, moderation and patriotism, protect the people against themselves. If there are many like Senator DRAKE, it is to be feared this conservative check will be lost. In the erection of the executive power, as that power was to represent the whole people, and to execute the laws, they gave him almost the power of a king, without his perogatives—but as that power might be abused—they made him elective for a short period.

To the Legislature was assigned the duty of framing laws upon just such subjects as were specifically enumerated; but for greater precaution, before they could become laws, they were required to be laid before the executive, for his approval or disapproval. As laws had to be construed, and as legislative bodies had not the wisdom, and could not be trusted to sit in judgment on their own acts, they created another department, called the Judicial Department. As this department had no patronage, no power, no enmities to punish, no ambition to gratify, they were removed from the people, that they might not be swayed by their tumults, passions, ambitions or prejudices—that they might decide uprightly and justly, protect the Constitution, the States and the people—the weak against the machinations, usurpations and encroachments of the powerful. They were made entirely independent of the other departments, held their offices for life, that, like the sun, they might move in their lofty sphere, high above the angry elements beneath, and decide laws without fear, favor or affection.

To them the people look, as a safeguard against lawlessness, oppression and encroachments of their constitutional rights. This security for life, liberty and property, is the fairest flower that blooms in the garden of liberty; and woe to those like Senator DRAKE, who, imagining themselves clothed with the omnipotence of the British Parliament, shall attempt to abridge their powers or destroy them. It is said to be one of the misfortunes of greatness to be erratic. This adage has lost nothing of truth in its application to Senator DRAKE. The Senator, in his unchastened ambition, whilst claiming for Congress, in the language of BLACKSTONE, the *omnipotent* power of the British Parliament, forgot that it was this very claim of *omnipotent power* to tax the colonies in all cases whatsoever, which caused the colonies as one man to spring to their feet, and respond in tones of thunder from Lexington and Bunker Hill. That out of this conflict, a new nation was ushered into existence, full-armed, who vindicated their claims to sovereignty and nationality, by repudiating the omnipotent power of the British Parliament.

Whilst this bloody conflict was waging on this side of the Atlantic, great and learned orators on the other side, unterrified by the frowns of power, were pleading our cause with zeal, eloquence and patriotism unsurpassed.

"Resistance to your acts was necessary as it was just; and your vain declaration of the *omnipotence* of Parliament, and your imperious doctrine of the necessity of submission, will be found equally impotent to convince or to enslave your fellow subjects in America," was the heroic language of Lord CHATHAM in the House of Lords. And of whom EDMUND BURKE said: "A name that keeps the name of this country respectable in every other on the globe.

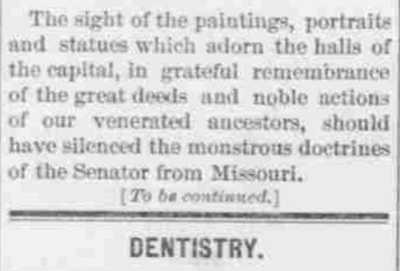
"Clarum et venerabile nomen
"Gentibus, et multum nostræ quod proderat urbi."

The sight of the paintings, portraits and statues which adorn the halls of the capital, in grateful remembrance of the great deeds and noble actions of our venerated ancestors, should have silenced the monstrous doctrines of the Senator from Missouri.

[*To be continued.*]

DENTISTRY.

DENTISTRY.



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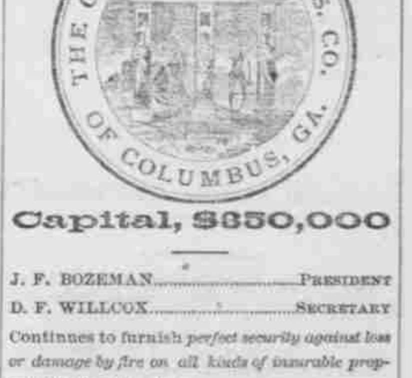

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Phalon's Vitalia

is for one sole purpose, that of reproducing, with absolute certainty, the natural color of the hair. It is not intended as a daily dressing, nor for removing scurf or dandruff; nor for curing baldness; nor for stimulating the growth of the hair.—These objects may be accomplished after the color has been fixed with the Vitalia, by Phalon's Chemical Hair Invigorator.

THE VITALIA is a harmless and unequaled preparation for the reproduction of the original hue of gray hair, and nothing else. This is accomplished in from two to ten applications, according to the depth of shade required. Sold by all druggists.

NOTICE.

SEVERAL responsible persons having been elected constables in the city districts, and having given good bonds and are now ready to take all proper business, I will, from and after this date, deputize no special constables. The following regular constables will have boxes at my office:
T. S. Mallory, Fourteenth Civil District.
James S. Bailey, Thirteenth Civil District.
ja16 HUME F. HILL, No. 4 Court Street.

Cotton Land for Sale.

ABOUT 3000 acres of the richest cotton land of Chicot county, Ark., the finest cotton region in the world; it is high bank land; formerly Belle Point, one of the first selections on the river; 1500 acres cleared, balance timber, readily salable as wood or lumber; leveed fronting on the river, and encircled by a beautiful lake; it has the great advantage of independence of the levees of the main shore, and can be made a most secure and beautiful domain. Valued, before the war, at $150,000; it is now offered so low that the profits of a single full crop will pay for it. If not sold by 15th January, 1870, it will be [illegible]

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Assets over : : : : : : : $654,000 00
Annual Income over : : : : 500,000 00

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It is with much pleasure the Managers of this Company tender to its Policy Holder and the public their congratulations on its success for the past two years, its present condition and future prospects. Policies issued on all the improved plans of Life Insurance. We refer the general public to our policy holders.

H. D. BULKLEY, Special Agent. B. F. WHITE, Jr., State Agent for Tenn

THE

SOUTHERN LIFE

INSURANCE COMPANY,

General Office, 17 Madison St., Memphis, Tenn.

ASSETS 1st NOVEMBER, 1869, OVER - $600,000

Dividends to Policy-Holders, July 1, 1869,---40 PER CENT.

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PLANTERS or merchants designing to purchase Gin Stands will do well to bear in mind that we are Sole Agents for "E. CARVER & CO.'S" IMPROVED COTTON GINS. The unequaled beauty of the staple of cotton ginned on these well known Gin Stands, the lightness of their improved running gear, increased yield of lint, and many other acknowledged advantages, make them more desirable than in former years, when, as now, they were the favorite. jy9

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Treatise on Chronic Diseases furnished free, on application. de15 daw

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THE oldest Yard in Memphis; established in 1847. With a full stock of logs, seasoned and dressed lumber on yard, are prepared to furnish any quantity and dimensions of cypress or poplar, at short notice. A large stock of Doors, Blinds and Sash, glazed or unglazed; Laths, Shingles, Cedar Fence-posts, Pine and Poplar Flooring, always on hand. Our motto is, quick sales and small profits.

M. E. & J. W. COCHRAN, Office and Yard foot of Washington St.

LEGAL NOTICES.

Administrator's Notice.

HAVING filed with the Clerk of the County Court my settlement as administrator of the estate of N. H. Stout, deceased, I will apply for confirmation of the same at the next February Term, 1870, of said Court. All persons interested may attend and enter their objections, if any they have.
December 31, 1869. CHARLES STOUT. ja1

Attachment Suit.

State of Tennessee, Shelby county. Before Thomas B. Mynatt, Justice of the Peace in and for said county.
Davis & Baugh vs. P. S. Harrell.

AFFIDAVIT having been made and bond given as required by law, and attachment having been issued and returned before me, levied, etc., on the property of defendant, and defendant not to be found in my county:

It is therefore ordered, That the said defendant appear before me, at my office, in the city of Memphis, Shelby county, Tennessee, on the 4th day of February, 1870, at 10 o'clock a.m., and make defense to said suit, or the same will be tried exparte; and that a copy of this notice be published in the Memphis Appeal for four successive weeks.
January 5, 1870. THOS. B. MYNATT, J. P. ja6

TRUSTEE'S SALE.

BY virtue of a Deed of Trust executed to me on the 7th day of May, 1868, by James K. Bates, now deceased, and duly recorded in the Register's office of Shelby county, Tennessee, in Book 68, pages 119 and 120, and for the purpose of paying the debts secured thereby and therein described, I will, on

Saturday, 5th of February, 1870,

Between the hours of 10 o'clock a.m. and 12 o'clock m., in front of the office of Kortrecht & Craft, No. 51 South Court street, in the city of Memphis, sell, at public auction, to the highest bidder, for cash, the following real estate conveyed by said Trust Deed, situate in Shelby county, Tennessee, and described as follows, to-wit: Being lots one, two, three, four, five, fifteen, sixteen and seventeen, in Block eight (8), in the town of Fort Pickering, in said Shelby county. All equity of redemption is waived by said Trust Deed. The title is believed to be good, but I sell and convey only as Trustee.
ja7 THOMAS G. SCARBROUGH, Trustee.

Attachment Suit.

Law Court of Memphis—Partee, Burleson & Co., Plaintiffs, vs. G. W. Riddelle, Defendant. CLERK'S OFFICE, December 30, 1869.

AFFIDAVIT for attachment having been made in this case in pursuance of section 3455 of the Code of Tennessee, and attachment having been issued and returned by the proper officer "levied, etc.," on the property of the defendant, G. W. Riddelle:

It is therefore ordered, That said defendant appear at the Courthouse, in the city of Memphis, Tenn., on or before the second Monday in February next, and defend this suit, or the same will be taken for confessed as to him and the case set for hearing exparte; and that a copy of this order be published once a week, for four consecutive weeks, in the Memphis Appeal.

A copy: ALFRED MATTHIAS, Clerk.
Clapp, Vance & Anderson, Attorneys for Plaintiffs. ja9

NOTICE TO CREDITORS.

No. 403, N. R.—In the Chancery Court of Memphis, Tennessee.—Sam. S. Spicer, Executor of H. C. Horton, dec'd, vs. J. B. Sharpe, et al.

IN this cause, on the 23d day of December, 1869, an order was entered, directing publication to be made for all persons interested in the estate of H. C. Horton, dec'd, to come forward, exhibit their demands, and have themselves made parties to the bill in this suit, etc.; also, enjoining all persons claiming to be creditors of said estate from instituting suits at law upon their demands:

It is therefore ordered, That ALL SUCH PARTIES make their appearance herein, at the courthouse, in the city of Memphis, Tenn., on or before the first Monday in March, 1870, and file and establish their claims as aforesaid, according to law, or the same will be barred and the cause proceeded with exparte; and that a copy of this order be published once a week, for four successive weeks, in the Memphis Appeal.

A copy—attest,
AUGUSTON ALSTON, Clerk and Master.
By R. J. BLACK, Deputy Clerk and Master.
Estes & Jackson, Solicitors for Complainant. de29

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AMES, BEATTIE & CO.,

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OFFER ALL KINDS OF

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AT THE LOWEST RATES.

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