THE WEEKLY ECHO.

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THE WEEKLY ECHO.

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Proscription House Bill.

The Senate has now under consideration the House bill, "directing the Governor of the State to enforce the third section of the fourteenth amendment to the United States Constitution, and the provisions of article ninety-nine of the Louisiana Constitution."

This extraordinary bill, passed by the House on the 4th day of July, in violation of law, which prohibits all proceedings of a public character on that ever memorable day, may yet fail in the Senate. But, if it does not, we hope the Governor will pause before giving it his official sanction.

The purpose and purport of this act is to enable the Governor, in the first place, to oust all officers now discharging the functions of their respective offices, whenever, *on an exparte examination, or no examination at all*, His Excellency may be satisfied that the incumbent is not qualified under the proposed fourteenth amendment to the Federal Constitution and under the ninety-ninth article of the State constitution; and, in the second place, if such officers are not in possession of their respective offices, to withhold from them their commissions. In both cases, however, he is to declare the office vacant and to make the appointment.

The act concludes with the reservation, that the officers so ousted, or whose commissions are withheld, shall not be "prevented from contesting before any competent court, with any person, who may be appointed to such office, his right thereto."

The whole merit of the bill is in the last section, for its effect is to throw the burden of proof of non-disqualification upon the ousted officer, instead of leaving it where, according to law, precedent and common sense, it was heretofore left, that is, upon the party averring the disqualification. The presumption is necessarily in favor of qualification, and not of disfranchisement; and if the charge be that the officer has forfeited his right to vote and occupy office, that charge must, before it can affect him, be substantiated; nor can he, from the mere fact of an accusation being brought, be placed in a position to be forced to take the initiative of proving the negative proposition—that he did not commit the disqualifying act—that he did not violate the obnoxious law or constitutional provision.

Hence it is that under the sense of the gross injustice to be thus perpetrated by the act, its authors could not but provide that the Governor be "required to inquire into the qualifications of all persons holding or claiming to hold an office," etc. But what kind of inquiry? Is the Executive to sit as a judicial tribunal, to hear the charges, and, after giving a full opportunity of defence to the accused officer, to render a decree seating or unseating him? That would be in the very teeth of Art. 73 of the Constitution, providing that: "The judicial power shall be vested in a Supreme Court, in District Courts, in Parish Courts, and in Justices of the Peace." The Governor cannot exercise judicial functions—and it requires judicial functions to determine whether the officer has or has not a vested right to his office. The Governor, throughout the constitution, is but an executive officer. Nowhere does it allow him to exercise judicial functions.

It is not amiss to inquire into the practical effects of this bill, if an attempt be made to inforce it; for it is not expected that officers, whose vested rights are thus trampled upon, will remain passive and suffer the Executive appointee to take the office and enjoy the emoluments, while he would have to adopt the slow remedy of a lawsuit to have his rights recognized, and the wrong tardily and nearly always unprofitably redressed.

Either the Governor must resort to brute force to oust the obnoxious incumbent—a rather dangerous experiment from the moment that the bayonet has ceased to rule—or the Executive appointee must go to the courts to enforce the action of the Governor. The latter remedy defeats the bill in question, and leaves all parties exactly in the situation in which they stood independently of this act. The other remedy is a dangerous experiment, beyond the pale of the law; it is a game at which two can play, and is a plain invitation to violence and bloodshed. So much for the incumbent officers.

As to those who have only been elected it is proposed to withhold their commissions. Now, the commission does not give the office; it is evidence of election to office. The declaration by the Governor of a vacancy determined by him does not of itself make a vacancy. The injured party need not have a commission to take the oath of office and otherwise qualify, and the refusal of the Governor to issue a commission can in no case affect his vested right to the office. Unless the outgoing officer collusively retains the office the refusal to issue a commission to his successor will not prevent the latter from becoming an incumbent.

So, after all, there must be more than the action of the Governor under this bill in order to defeat the right of the party elected to be inducted into office; there must be concert of action or collusion between the Governor and the officer whose term of office has expired. In this contingency only will the injured officer be compelled to assume the position of plaintiff in the courts, in order to vindicate his rights, and such a course will place in no enviable position the incumbent who, notwithstanding the expiration of his term, would openly and above board continue to reap and enjoy emoluments which are not his but his neighbor's.

Our Solons have not had time to study the new constitution. They will, upon more mature reflection, find out their mistake in time to prevent this, or similar other bills, from becoming laws. Haply they are struck with judicial blindness, and may not remember St. Paul's injunction that it is not everything even that is lawful, that is expedient. Let them remember that he who sows the wind will reap the whirlwind.

N. O. Times.

THE LATE LEGISLATIVE EMBROGLIO.

The Appeal to the General for Redress—The General's Views on the Situation.

The following letter has been received by the Committee of the Senate and House of Representatives, in reply to a communication asking the Commanding General's interference to seat certain Democratic members, who, having been legally elected, were excluded from their seats by the exaction of the unnecessary test oath of 1862:

HEAD'QRS FIFTH MILITARY DISTRICT,
New Orleans, La., July 7, 1868.

Hon. W. F. Blackman, F. L. Jewell, B. E. Chancey, L. P. Eriant, C. B. Pratt, Committee of the Senate, House of Representatives, New Orleans, La.:

Gentlemen—I am instructed by the Brevet Major General Commanding to acknowledge the receipt of your communication of the 1st inst., representing that the presiding officer of the Senate and the temporary Speaker of the House, upon calling their respective bodies together at the date of their meeting, proceeded in violation of the constitution of the State, of the instruction of the General of the Army and the Commanding General of the Fifth Military District, to exact of the members the oath prescribed by the act of Congress of July 2, 1862, thereby excluding from seats and from participation in the organization of the General Assembly members entitled by law to the same.

In conclusion, you "appeal in behalf of the people of Louisiana, for redress, and ask that the Military Commander, by virtue of his authority, place the said excluded members in their seats."

In reply thereto, I am instructed by the Commanding General to say, that while these proceedings in the General Assembly are in his opinion illegal, unjust and oppressive, and known to be in opposition to the will of the General in Chief, he deems that the interests of law, of order and of the people of the State in this crisis of their affairs cannot best be subserved by interfering with force of arms to correct the abuses complained of. The restoration of the State to its proper relations in the Union is, by act of Congress, contingent upon the ratification by a legally constituted and organized (no other could have been contemplated) Legislature. The entire matter then may well be submitted to Congress for its decision and action.

Your communication, therefore, with a copy of this letter, will be forwarded to the General of the Army and to the Chairman of the Reconstruction Committee at Washington.

Very respectfully,
Your obedient servant,
B. B. KEELER,
Assistant Sec'y of Civil Affairs.

ANECDOTE OF THOMAS F. MARSHALL.

The Hon. Thomas F. Marshall, of Kentucky, once a prince of good fellows, was defending a man charged with murder in Jessamine County, Judge Lusk presiding. The testimony against the prisoner was strong, and Tom struggled hard on the cross examination, but to little purpose, for the old judge was inflexible in his determination to rule out all the improper testimony offered on the part of the defense. At last Tom worked himself into a high state of excitement, and remarked that "Jesus Christ was convicted upon just such rulings of the court that tried him."

"Clerk," said the judge, "enter a fine of ten dollars against Mr. Marshall."

"Well, this is the first time I ever heard of any body being fined for abusing Pontius Pilate," was the quick response of Tom.

Here the judge became very indignant, and ordered the clerk to enter another fine of twenty dollars.

Tom arose with that peculiar, mirth provoking expression that no one can imitate, and addressed the court with as much gravity as circumstances would permit, as follows:

"If your honor pleases, as a good citizen, I feel bound to obey the order of this court, and intend to do so in this instance; but, as I don't happen to have thirty dollars about me, I shall be compelled to borrow it of some friend, and, as I see no one present whose confidence and friendship I have so long enjoyed as your honor's, I make no hesitation in asking the small favor of a loan for a few days, to square up the amount of the fines that you have caused the clerk to enter against me."

This was a stumper. The judge looked at Tom, and then at the clerk, and finally said,

"Clerk, remit Mr. Marshall's fines; the State is better able to lose thirty dollars than I am."

GEORGE H. WELLS,
Attorney at Law,
Lake Charles, Calcasieu Parish, La.
Practices in Calcasieu, St. Landry and Lafayette.
Feb. 15, 1868.—1y.