THE EVENING NEWS.

Tuesday, . . April 21, 1874.

[CONTINUED.]

TERRITORIAL COURTS AND JUDGES.

DEBATE IN THE U. S. SENATE, APRIL 7, 1874.

Mr. CONKLING. The Senator from California does not discuss this case as it was understood by the Committee on the Judiciary. In the first place the committee did not understand, I had never heard before myself, that there was or had been any difficulty or complaint touching a failure to establish districts and locate courts properly in those districts. It was to such a difficulty or complaint that the Senator addressed a part of his argument. No such thing is in the case as it reached the committee. The whole subject was of a different character. It related to the matter to which the Senator adverted in another part of his remarks, namely, the choice which judges might have between district and district in a Territory. It was that and nothing else. The committee determined upon this substitute, not upon hearsay, not by guess-work, not by caprice, but upon an understanding which I think would be quite satisfactory to the Senator from California and every other Senator.

In the first place, the committee had before them statements made by the judges themselves, and from those statements it turned out that there was one difficulty which the Senator from Iowa forgot to mention in his statement; there was not only a diversity arising from the circumstance that in one Territory the Legislature assigned judges, in another Territory the governor, and in another the court, but there was difficulty in the fact that a majority of the judges in some cases could not do it; in other words, the statute was held to mean that the whole court with unanimity must act, or it was no action at all. Thus contrariety and thus difficulty had ensued. Several of the judges, speaking for themselves in their own letters, said that if it could be done by the court or a majority of the court, if a member was absent, or could not act, or there was discord, the whole case would be provided for and the difficulty would be at an end. This was the opinion of other persons also; and when my honorable friend from California says that all the Delegates from all the Territories are adverse to this amendment, my impression is that he goes much too far. I have conversed with some of the delegates in regard to it myself, and I think upon an understanding and discussion it will turn out that really no such thing exists as a unanimous opposition by the Delegates from the Territories.

Mr. SARGENT. Will the Senator allow me a moment?

Mr. CONKLING. Certainly.

Mr. SARGENT. I will state that the Delegates from Colorado, Wyoming, Arizona, and Montana came over to the Senate and told me that they were opposed to this provision, and I understood—I distinctly heard some of them state—that that was the unanimous opinion of the Delegates.

Mr. CONKLING. I so heard the Senator state before.

Mr. MITCHELL. I desire to state that the Delegate from Washington Territory also makes the same objection.

Mr. CONKLING. I listened to that statement before when the Senator from California made it; and I repeat my statement that I think he will find that the Delegates from the Territories are not unanimously opposed to this provision. Doubtless the Senator has reason for what he says. I think I have reason for what I say. However that may be, as between these conflicting modes of doing it, the Senate is brought to comprehend the merits of the proposition; and upon that I desire to say one word.

The Senator from California thinks it would be wise to set the Legislature at work in the first place, and if that fails, then we might take some other mode of doing it. The Committee on the Judiciary thought that a double chance and a double provision was better: first, to allow the judges to do it, and if they failed, then in the same bill to confer upon the Legislature the power to act.

Mr. SARGENT. That is also provided in the House bill; first, to confer the power on the Legislature, and if they fail, then to authorize the judges to act.

Mr. CONKLING. If my friend would listen to what I am saying he would see that I am addressing myself to that very fact; and I say that puts the cart before the horse; and if the Senator will hear me I am going to state why. I say the committee reversed that order; and they did it not at hazard, but because they thought it was wise to do so, to allow the judges, in the first place, to make satisfactory provision, if they could, without invoking any of the forces or opportunities which surround a legislative competition for a choice of districts, and if the judges failed or refused, then, without further legislation by Congress, to confer upon the Legislature the power, and enjoin upon the Legislature the duty, of setting the matter right. That seemed to the committee to be wise, and for several reasons, to one or two of which I will refer.

There is nothing exceptional in this case in committing such a power to the judges. The highest court in the land, sitting in the Capitol, does the same thing. Has there ever been any difficulty in allowing the Chief Justice, as the organ of the court, to distribute the judges in the various circuits? Not at all. It would be rather an odd thing to provide that Congress should do it, and if Congress failed to do it, then that the court might do it, and to assume, as this debate assumes, that there must necessarily be some impropriety or ill-motive in the court if they attempted to do it.

Mr. SARGENT. If my friend will allow me a moment, do I understand him to say that the power which he speaks of goes to the question of fixing the boundaries of the districts in the United States and fixing the times and places of holding courts therein?

Mr. CONKLING. I had not said that. It would not have been true if I had said it.

Mr. SARGENT. That is what this bill provides, and therein it differs from the illustration which the Senator gives.

Mr. CONKLING. I thought I had disposed of that element in the case by correcting a statement made by the Senator before, which I sought to do by saying that there is no complaint in respect of the boundaries of the districts or the places where the courts are held. That question is not up, as we should say in court, and therefore it is not necessary to consider it. On the contrary, I repeat again, and I ask the Senate to observe it, that the only matter in question upon this bill is as to the allotment of judges in these districts. There is no pretense of anything else.

Mr. SARGENT. The Senator dismisses everything else; but I wish to say that that is one of the objections made by the Delegates to the bill; one which they dwelt upon with me, and one which I urged in the few remarks that I made.

(TO BE CONTINUED.)

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