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THE JUDICIAL SALARIES LAW IN PENNSYLVANIA.

The year 1873 was towards the latter end of a long and distressing period of financial disturbances and change, beginning during the Civil War and not ending until the resumption of specie payment. During this period, the purchasing power of a dollar went up and down, and up again, with an irregularity and to a degree that were very uncertain and often very painful. It was in this year 1873 that the convention sat to frame a new constitution for the state of Pennsylvania.

In the constitution thus formed during a period of extreme fluctuations in values appear two provisions. They are as follows:

Article V. The Judiciary. Section 18.—"The judges of the supreme court and the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the state. They shall receive no other compensation, fee or perquisites of office, for their services, from any source;

nor hold any other office of profit under the United States, this state or any other state."

Article III. Legislation. Section 13.—"No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment."

In 1903, the legislature of Pennsylvania passed an act fixing the salaries of the judges at sums higher than theretofore had been paid. There is universal approval, it is believed, of the sums fixed as reasonable and moderate. It is an act which the community regard as simple justice. Prices have advanced greatly during the last decade. In recognition of this, salaries have been increased quite generally, in the business world. Last almost of all to receive the attention necessitated by the advance of prices have been the judges of Pennsylvania.

There has been some question with a number of estimable citizens whether this act of justice can operate in favor of judges on the bench at the time of its enactment. They are of opinion that Article III, Section 13, above quoted, renders it impossible to take any thought for the judges except prior to their election. A decent respect for the opinion of these gentlemen leads to a study of the question.

There is in every individual a strange complexity of desires. Wishes run hither and thither and in directions the most opposed. If the individual be multiplied into a large convention, the complexity becomes intensified, and the utmost ability and alertness can scarcely produce a joint production that is harmonious through all its parts. It is very certain, however, that neither the individual nor the convention can have intentions that are destructive of each other. Desires can differ; desires can be opposed; but there cannot be rival intentions in the same being. Where commands are prescribed by a superior authority, and the commands appear to differ, the duty is to construe the demands in such manner that they all may have effect, if a reasonable construction of language will so allow.

That is the duty as to the present question. Let the two sections above recited be so examined.

I.

Article V. The Judiciary. Section 18.—"The judges of the supreme court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the state. They shall receive no other compensation, fee or perquisites of office, for their services, from any source; nor hold any other office of profit under the United States, this state or any other state."

In the formation of a constitution, there is no room for idle or insincere language. The constitution is the fundamental law of the commonwealth. A generation of men, sometimes several generations, will come and will pass away, without witnessing a new formation of the fundamental law. The convention of delegates for such a purpose is so extraordinary an occasion, and the consequences of their work are so momentous, that every sentence, every clause, every word, are scrutinized, searched and weighed. We cannot say of this sentence, this clause nor of this word, that it is naught; nor can we say that it is lightly intended. The mood of the constitution is the imperative. It knows no other. It comes to us from the battlefields and the parliaments of centuries. Grim and stern, it speaks with the voice of the Great Commander.

The lips of the grizzled warrior cannot utter the simpering speech of a schoolgirl, nor can the constitution speak words that have no depth.

Let us see what it is that would be given an affectation of a seriousness it does not possess. It is the injunction that judges shall receive an adequate compensation. It is a portion of a section of which every other portion is meant to be fully obeyed.

"The judges of the supreme court and of the several courts of common pleas, and all other judges required to be learned in the law," is the beginning of the section. Certainly, this part is intended to be obeyed. If the legislature distinguished between judges, appropriating a compensation to some and refusing it in the case of others, the omission would be a serious breach of the provision.

Certainly, too, the provision that the compensation shall be paid "at stated times" is an injunction not to be disregarded. If a political power were low enough to revenge a judicial disapproval of some measure by causing the appropriation for the judicial salary to be hung up over a session of the legislature, the resentment of the citizens at large would be deep, and would flow from the same causes that have given this provision place.

The clause, "which shall be fixed," is likewise intended to receive obedience. We can readily fancy the indignation that would sweep from their places the legislators who would so despise this wholesome injunction that they would restore the ancient recompense of fees from litigants.

"By law," is the next provision, and of it presently more will be said. If the legislature prescribed that a commission, or some bar association, should fix the salaries, the violation of this provision would be plain to all men. Under such a provision in New York, it was held that the board of supervisors could not be authorized to fix the salaries of county judges.[1]

The next provision is that the compensation shall be "paid by the state," and that "they shall receive no other compensation, fee or perquisites of office, for their services, from any source."

This is likewise one that admits of no evasion. Should the city of Philadelphia appropriate money in aid of the compensation afforded by the state to the judges of the local courts, as that city did and as Pittsburg did, previously to the present constitution, it would be seen that the local appropriation was unlawful, and the money would be declined.

The section, continuing its prohibition, concludes, "nor hold any other office of profit under the United States, this state or any other state." There is no one who will say that this prohibition can be ignored. Should a judge undertake the office of one of the departments, or should he be appointed attorney-general, while still assuming to con-

[1] *Healey* v. *Dudley*, 5 Lansing, 115.

tinue as judge, not only would the scandal be great, but the dual holding would be void.

These, then, are the serious, militant neighbors of the provision under consideration. If we construe the provision requiring the payment of adequate compensation as merely an amiability, the section is as follows:

All judges shall receive compensation. A command.

At stated times. A command.

An adequate compensation. A polite remark.

Which compensation shall be fixed. A command.

By law. A command.

Paid by the state, with prohibition of other compensation. A command.

Judges shall hold no other office of profit. A command.

Constitutions are not formed for the conveyance of kind regards. Their purposes are serious, their language mandatory. What reason can any one assign, who says that one provision, that requiring adequate compensation, is not intended to receive obedience? Why, then, is it given presence in a fundamental instrument?

The words are the language of care. The jealousy of the constitution in respect to it is evidenced by the safeguards as well as by the limitations which surround it. There is an emphasis in the very presence of the injunction, exclusively relating to judges, and not repeated elsewhere on behalf of any other officials. It is expected, undoubtedly, that all officials receiving compensation shall be adequately paid, but none of the solicitude of Article V, Section 18, is found expressed on their behalf. A reference to provisions in respect to the salaries of other officials may be of interest.

"Magistrates in Philadelphia shall be compensated only by fixed salaries, to be paid by said county." (Article V, Section 12.) This is not an injunction on their behalf. It is a correction of the former faulty system of paying those officials by fees.

Article XIV, Section 5.—"The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive into the treasury of the county or

state, as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants, all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him." This is not an injunction to protect. It is a corrective measure, placed in the constitution to break up the old fee system.

Article II, Section 8.—"The members of the general assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for services upon committee or otherwise. No member of either house shall, during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term." The solicitude in this section is to guard against a possible abuse.

These three provisions are of a nature entirely different from that of Section 18 in Article V. They are not protective of the official, but corrective of faults anticipated or else existing under former methods. Section 18, on the contrary, has as a specific object a care for the reputable support of the judges of the commonwealth.

There is the strongest reason for this distinction in favor of the judges. A judge is usually elected to the bench when in middle life or near that time. If a district judge, he serves for ten years, and in Pennsylvania he is apt to be re-elected for a second or a third term. If a Supreme Court judge, he serves for twenty-one years.

The constitution excludes him from many sources of income, and propriety excludes him from many others. The business of his profession is taken from him, and when his term expires he is without professional connections. The situation is familiar to every one. It is one peculiar. It exists as to judges alone, of all the public officials. A few years is the limit for the longest term of any non-judicial officer. If for an interval he, too, is denied general sources of profit, the exclusion is soon gone. He is not retired from active life, as is the case with a large proportion of judges when placed upon the bench. Certainly, therefore,

there is a vigor in a command in the constitution that the judicial salary shall be adequate.

But why should reasons of the foregoing nature be presented? They exist, they are sound. Yet other reasons will more spontaneously occur to the citizens. The judges are set aside to promote justice in the community, to restrain crime, and to allay strife. Theirs is a work exalted, honorable. The public will certainly desire that these officials shall have adequate compensation whether values go down or up.

This requirement that the compensation shall be "adequate" is not confined to the outset of the judicial career. It protects the whole term. The constitution prescribes that the judges "shall at stated times receive for their services an adequate compensation." This is not a provision that at the first stated time the compensation shall be adequate. The language is "stated times," and it applies without any modification to the second of the stated times, to the last of them, and to them all. Those who say that the constitution troubles itself only with the beginning of the term strip off the plural quality of the words, "stated times." They do worse. They ignore the reason of the injunction. That reason is a care for the independence of the judge. Is there any one in the whole state of Pennsylvania who will undertake to say that this independence is less important later in the term than at the beginning? It has been said that the judge knows when he assumes the office what the salary is for the term, and that he must content himself with what he engaged to receive as adequate. Let us make no such mistake. The question is not a private one. It concerns deep public interests. The public good requires that the judge shall receive an adequate compensation, and a willingness to accept something less could have no bearing. The constitution, and not a judge's personal feelings, prescribes the rule; and it is for the general assembly, and not for a judge, to apply it, saving his liberty to retire.

It is for the general assembly, because in no other way can the injunction be given effect. The judicial terms are so long that the reasonable expense of living is apt to alter

to a considerable degree. One need not have reached middle age to understand this. The decided rise in prices in the last decade probably has seemed somewhat notable to most of us; but there have been decades where the changes were extreme. No one can look into the future and pronounce what will be adequate in the latter years of the term of a district judge. Still less can he do so for the latter portion of the term of a justice of the Supreme Court. The only way to give effect to the constitution in its requirement that the judges at stated times shall receive adequate compensation is to intrust the subject to the legislature. This the constitution does. It provides that the adequate compensation "shall be fixed by law." The word, "law," in this connection, means statute. The ordinary nature of a statute is its liability to be changed by the power which enacted it. There are statutes which have something of permanence from outside sources. Acts of assembly, when they are grants or contracts, may be beyond the possibility of repeal or alteration. Acts of assembly prescribing the salaries of officials in general cannot be disturbed as to those officials. In these cases, something beyond the qualities of a pure and simple statute have been added. This is so because of express direction to that effect in constitutional law. Unless the constitution qualifies the statute, it is subject to the discretion of the legislature. Unless Section 13 of Article III applies, there is nothing to qualify the language, "which shall be fixed by law." The Section 18, which uses the language, does not itself indicate any other than the ordinary meaning of the word, "law," or statute. If the unusual is intended, why does the constitution not so explain itself as it uses the words? It takes particular care to make such explanation with respect to members of the assembly. Article II, Section 8, thus reads.—"The members of the general assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for services upon committee or otherwise. No member of either house shall, during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term."

The reason why the constitution does not qualify the meaning of the word, "law," as used in Section 18, Article V, is because it uses the word in its ordinary meaning. The very appropriateness of the ordinary use of the word to the requirement of adequacy of compensation throughout the judicial term, this very appropriateness has a significance which should not be overlooked. If in a section of the constitution a word is used which, taken in its ordinary meaning, affords an effective means of enforcing the section, that meaning is the one adopted. If some unusual meaning is suggested that gives no effect to the section, but leaves the section "idle and nugatory," it will not be received. Still less will it be accepted, if in addition to the objection of unfamiliar meaning it leads to results grotesque and unjust. Just such results would follow any departure in Section 18 from the ordinary meaning of the words, "by law." If the provision of compensation is inflexible during the whole of a judge's term, then we have the new and inexperienced judge receiving higher compensation than his revered associates. This is surely a grotesque result.

The exceptional use of the words, "by law," would produce injustice. If the conditions of society require that the new judge receive the higher salary, the requirement must exist just as strongly as to the judges already on the bench. To grant the increase in the one case, and to withhold it in the other, is to make a distinction, and that against the more experienced official. This is surely unjust. Such is the grotesqueness, and such is the injustice, if we give to the words, "by law," the exceptional instead of the ordinary meaning.

This injustice has already been pointed out by others. The answer has been made that no injustice would be done, for were not the laborers who were engaged at the eleventh hour paid by the lord of the vineyard the sum paid to those who had borne the burden and heat of the day? When the householder was reproached for this, his defence was not that those who came at the eleventh hour earned as great a sum as those who had toiled all the day long. His defence was that he had paid the laborers in general

what he and they had stipulated for; and that as to those who came at the last, he could do what he would with his own; that is, he had a perfect right to make them and them alone a gift. Is there any one who is ready to say that the compensation to the new judge, so far as it exceeds the old rate, is a gift? Such a suggestion would be both unwelcome and unjust. The excess is not a gift by the commonwealth of Pennsylvania. It is given in a loyal obedience to the mandate in the constitution that the judges shall receive adequate support. It is earned, it is proper, it affords no more than the "adequate compensation" enjoined upon the general assembly. This being so, it becomes manifest that in the case of the judges of older tenure the adequate compensation is not rendered, unless they also receive the increase.

This view would probably be the view of every one, were it not for a few objections which to some seem to exist.

The objection is made that unless we include judges within the protection of Section 13 of Article III, they will be at the mercy of every legislature, for then there will be nothing to prevent a diminution of the salaries of judges in office. The constitution of Pennsylvania, and the constitutions of the other states, contain many provisions that have been won by heroes and statesmen in days gone by. The times change, and we change with them. Some of these time-honored defences of freedom were devised against a foe whose attacks need no longer be feared. King James suspended the chief justice, Coke, and committed lawyers to the Fleet, for resenting his interference with the regular courts. The defences of this day against attacks on the judiciary are ample.

This fear for the judges does certainly seem to be a chimera.

The necessity of relying upon the discretion of the legislature cannot alter the character of the command. As well might a guardian think his duty performed on supplying but the one raiment for all seasons of the year.

The fear has been expressed that the judges will be made the plaything of the successive assemblies, who will raise and lower their salaries with a series of rapid movements

far from gratifying. This is quite a fantasy for sober Pennsylvania.

II.

The constitution of New York contained early a provision prohibiting the increase or diminution of the compensation of high state officials while in office. Among these officials were the judges of the higher courts. The purpose of such prohibition was considered in 1851, in *Conner* v. *Mayor, etc., of New York*,[2] in the Court of Appeals.

Ruggles, Ch. J., said: "The manifest object of these prohibitions was to secure the independence of the executive and the judiciary, and to prevent the exercise of undue influence by one of the great departments of the government over the others. Before the provisions were ordained, the power of increasing and diminishing the salaries of the governor and justices of the supreme court had been exercised at the pleasure of the legislature. In 1813 the annual salary of the governor was fixed at $5,000, and so remained until the third of April, 1821, when it was reduced to $4,000, from and after the day of passing the act. This was during the time for which Mr. Clinton was elected to the office. In 1813 the salaries of the chancellor and justices of the supreme court were fixed at $3,500 each. In 1816 they were raised to $4,500, and in 1820 they were reduced to $3,500. These offices were held during good behavior."

The prohibition remains in the present constitution of New York. Article VI, Section 12, of that instrument is as follows: "The judges and judges hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms." The terms of these judges are for fourteen years.

This prohibition, so far as it relates to increase, is one which the federal convention refused to sanction, and which was refused a place in the constitutions of Pennsylvania of 1790 and 1838. The difficulty is in the impossibility of devising one that is effectual. If the prohibition

[2] 1 Selden, 285.

should be omitted, then, under the New York theory, a legislative coercion of the judiciary might be attempted. If values should so change that a compensation would become inadequate, a difficulty in the other direction would arise. Whether the legislature is given power or whether power is denied, in respect to the compensation, there is no satisfactory safeguard. Seeing this, the constitution of Pennsylvania has finally abandoned an attempt which cannot create reliance.

In the article on legislation is the following:

"No law shall extend the term of any public officer, or increase his salary or emoluments, after his election or appointment."

The history of this section, so far as the writer has discovered through a careful examination of the Debates, is as follows:

On the 112th day, on June 4, 1873, the article on legislation being before the convention, Section 10, as it then was [7, now], was called up, as follows:

"Section 10.—The legislature shall not pass any local or special law," etc.

Clause 22, "Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury," was adopted, just as it now stands in the constitution. Mr. Harry White arose and said:

"I desire to offer an amendment at this point as an additional paragraph. As originally reported there is an omission, and a very important omission. The amendment is to insert as a new paragraph the following:

" 'Creating, increasing or decreasing the salaries, perquisites or allowances of public officers during the term for which they were elected.' "

The amendment was agreed to.[3]

Such apparently was the origin of this section. Its absence next after a section having regard to fines, penalties and forfeitures was looked on as an omission "at that point." It would seem from this that it was viewed as in the nature of a paragraph protecting the public treasury, which was correct enough, as will be seen; and the loca-

[3] V Debates, 285.

tion finally given to it, with just such sections both before and after it, is a striking confirmation of this view.

There was much more vital principle in the section than possibly was realized at the outset. Fundamental American principles were concerned; but before passing on to these, the commercial or financial element may continue to receive attention.

In the election or appointment of public officials in general, there is something of the *quid pro quo*. The field of choice is greater or less, as the salary and the term are more or less considerable. Were the salary greater, or the term longer, some more capable citizen might perhaps be secured for the office. Had the salary been less, or the term shorter, the citizen accepting might have declined. Thus we discern the measure of the counting-room, the insistence on a fair return. If the salary could be altered during the term, or if the term itself could be lengthened, by the legislature, an official would be in office whose engagement on the new terms had not been sanctioned by the voters. Considerations of this sort governed the location of the section. An examination of Article III shows that this is so. The section was dropped away from the one concerning fines and forfeitures, and placed several sections down, bringing it to the middle of sections having as the especial object the acquisition of a proper return on the expenditure of public moneys.

Section 10 guards payments to officers of the general assembly.

Section 11 prohibits extra compensation on contracts, etc.

Section 12 prohibits personal interests of public officials in public contracts.

Section 13 is the one under consideration.

Section 14 requires that revenue bills must originate in the House.

Section 15 concerns appropriation bills.

Section 16 requires that payments shall be made on warrants drawn on particular appropriations.

Section 17 guards against abuse in appropriations to charities.

In the midst of these sections is the one we are considering. It is a place appropriate enough, if it relate only to the executive officials. Members of the general assembly are covered by a separate section altogether, Section 8 of Article II. Nor would considerations of *quid pro quo* be proper, in the election of senators and representatives. Their salaries are not fixed as measures of the value of their services, but merely as a reasonable support. Even in the case of executive officials, such considerations would sometimes be inappropriate. They apply so generally, however, so far as respects the executive officials, that they have controlled the position of the Section 13.

Is there any one who will say that the salaries paid the judges is the measure of their services, or intended in any way as such? No such idea is entertained. How vast, how enduring, is the power and the influence of the Supreme Court of the United States. It affects the welfare of an empire, the decisions affect generations even in the remote future! Yet the salaries of the members of this august tribunal do not equal salaries quite familiar in business enterprises.

The section, so far as it concerns salaries, is wholly inapplicable to the judiciary. It is easy, now, to understand the delegates who twice voted down the proposition to insert in the constitution a prohibition of any increase in the salaries of judges in office at the time of any such attempt to increase, and who yet refused to add to Section 13 of Article III an exception taking judges out of its application. They saw that judges were already sufficiently guarded. The debates do show, indeed, an insistence by some of the members that the section included the judiciary; but the constitution cannot be controlled by the opinions of individual delegates.

There is, however, one fundamental American principle enforced in Section 13 of Article III that might include judges were their terms short. When the provision which grew into Section 13 was introduced in the convention, it was as follows:

Section 10, next after clause 22 respecting remissions of fines, penalties and forfeitures: "The legislature shall not

pass any local or special law . . . creating, increasing or decreasing the salaries, perquisites or allowances of public officers during the term for which they were elected." This was agreed to.[4] This introduction of a new section evidently excited much more attention among the members than is shown by the debates. The section was an imperfect recognition of a vital principle in American public affairs. The imperfection was soon noticed, and on the next day, June 5, 1873, the section was again brought up, but with a vigor and an extent far more suitable. It was taken out of Section 10 (now 7), limiting special and local legislation, and given a section to itself, as its importance demanded. It was made Section 15 (13, now). The consideration of the *quid pro quo* still controlled its position, as has been shown; but the fundamental principle of the section was asserted more effectually. This time the section read as it stands to-day, as follows: "No law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment." The principle is explained in the case of *People* v. *Bull.*[5]

Folger, J., said: "And as the term fixed for this office by the legislature was to be filled by an election to it, the legislature had not the power, by changing the term, to put or keep one in the office otherwise than by an election. The officer must be elected; and the legislature could not, by changing the term after one election, take from the people the right, which they had reserved, to choose who should be the officer. The defendant was elected for six years. For so long the people made known their will that he should use the office. Non-constat that they would have willed that he should use it for nine years. Whether they would or not, the power so to do was reserved to them, and it is an unwarrantable assumption by the legislature to undertake to exercise it. There is no difficulty in giving simultaneous and according effect to both of the constitutional provisions above noticed. If the legislature sees proper cause for extending the term of an office, it should at the same time provide for an

[4] V Debates, 252.

[5] 46 N. Y. 61.

election to fill that extended term. The lengthened duration may be, and should be, so provided for as not to begin until after the electors have had the opportunity of declaring their will as to the incumbent for the new term. It is said that where one has once been elected to an office, he still remains an elected officer, though the legislature extend the term of his office and thus continue him in office for a term longer than the electors have chosen him for."

And further the court said: "If the legislature can, by extending the term of such an office, continue in it the holder thereof for one year, it may for any number of years; and thus the duration of the term thereof may be perpetuated by legislative power; and the people, after one exercise of the constitutional power of choosing certain of their own officers, be ever after that deprived of it. So the legislature may as well, from time to time, at the expiration of a term, whether the elective term or the legislative extended term approaches, again and again extend it, and continue in office an incumbent distasteful to his legitimate constituency. Thus would the theory of the government be subverted, and its practice be prevented."

This enforcement of the principle by Section 13, however, cannot make the section apply to the judges, for the plain reason that the same protection of the rights of the citizens is given, so far as respects their choice of judges, by Section 18 of Article V. The latter section fixes the judicial terms, and effectually prevents any tenure other than what the electors authorize.

Section 13 of Article III, therefore, cannot relate to the judiciary. So far as it concerns salaries, it is without application, for no one looks upon the judges' salaries with the eye of the merchant in his counting-room; as though for such a sum this lawyer will accept the judgeship, while for such higher sum even this other lawyer can be hired. So far as it relates to tenure of office, the ground is covered by Section 18, Article V.

On May 13, while the section requiring the legislature to afford adequate compensation was before the convention, it was proposed to prohibit any increase of the compensation as to judges elected at the time. The proposi-

tion was voted down. The proposition was renewed on July 1, on second reading, and was again rejected, by a vote of 21 to 51. On October 3, on motion of Mr. Brodhead, the section was amended by striking out the prohibition of diminution of judicial compensation. The clerk stated that this was because Article III, Section 13, covered the subject. In so saying, he expressed views pronounced by delegates on the floor. Whether the convention at large so thought, is matter of conjecture. Many may have assented to Mr. Brodhead's motion because willing to leave the whole subject to the legislature. These delegates did not compose a tumultuous assembly, whirled here and whirled there, without stability or balance. They were serious, deliberate men; and if, after discussion, on separate days in different months they twice rejected a proposition, we cannot allow other provisions introduced for other purposes to fix upon the convention a different intent than that expressed twice by that body when the question was put plainly and squarely. Nor can we allow a schedule introduced to avoid friction and delay, and not serving other than a temporary purpose, to force us from a mature opinion. The voters at the polls, with the constitution before them, would scarcely think of Section 13, Article III, as annulling a valuable portion of Section 18 of Article V. The very annual additions to the judges' salaries, made before the present constitution, attest the impracticability of fixing the compensation for years ahead by irrevocable, unchangeable laws.

The federal convention had the same question before it, and they refused to insert a prohibition of any increase in the salaries of the federal judges.

This has been narrated in a convenient form in Towle's "History and Analysis of the Constitution of the United States." On page 188 an account is given of the formation of the provision respecting the salaries of the federal judges:

"Mr. Hamilton's plan was suggested in a speech on the general subject. He said:

" 'The supreme judicial authority to be vested in judges to hold their offices during good behavior, with adequate

and permanent salaries. The legislature of the United States to have power to institute courts in each state, for the determination of all matters of general concern.'

"Mr. Patterson's plan was as follows:

"That a federal judiciary be established, to consist of a supreme tribunal, the judges of which to be appointed by the executive and to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

"The committee of the whole reported the following:

"That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

"That the national legislature be empowered to appoint inferior tribunals.

"Mr. Gorham moved to amend, by substituting the following for the mode of appointing the judges:

"That the judges be nominated and appointed by the executive, by and with the advice and consent of the second branch."

This proposition was at first rejected by the convention, but subsequently adopted.

"On motion of Mr. G. Morris, the words 'increase or' were stricken out, so as to leave it in the power of the legislature to increase, but not diminish, the salaries.

"The subject was then referred to the committee of detail, who reported as follows:

"That judicial power of the United States shall be vested in one supreme court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

"The judges of the supreme court and of the inferior courts shall hold their offices during good behavior. They

shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

"Mr. Dickinson proposed to add, 'Provided, that they may be removed by the executive, on application by the Senate and House of Representatives.'

"Connecticut alone supported the motion.

"A motion to reinstate the words 'increased or' before 'diminished' was supported by Virginia alone."

We have then an article which is devoted to the judicial department, and which, when it finishes, apparently closes the subject. Officials thereafter mentioned will hence be understood as other than judicial. This interpretation harmonizes the constitution, and gives effect to every sentence, every clause, every word. The contrary interpretation enervates language, and abandons upon a theory the settled policy of the state of Pennsylvania twice before adopted in solemn convention, in 1790 and in 1838.

Luther E. Hewitt.