

The Repeal of the Act for the Commutation of the Tonnage Tax.

HOUSE REPRESENTATIVES.

WEDNESDAY, Feb. 26, 1862.

An act to repeal the act approved 7th of March, A. D. 1861, entitled "An act for the commutation of tonnage duties."

The bill was referred to the committee of the whole, Mr. Armstrong (Lycoming), in the Chair. After consideration, the bill was reported back as committed.

The House resumed the consideration of the bill.

Mr. Kaine (Fayette). This is a very important bill. That the Legislature has a right to repeal an act of the preceding Legislature, unless on a particular circumstance, is not to be disputed.

The report of the Committee on the Judiciary General, implies at least, that there were doubts hanging around this question. If the Legislature have not the right, there must be something in the act of last session different from ordinary legislation.

Whether it will be beneficial or not, is a proper consideration before the bond is signed and sealed; but when the State steps in and enforces the morality of making each party comply with the terms of the contract.

Mr. Scott. I agree with the gentleman from Fayette, Mr. Kaine, that this is perhaps one of the most important questions that has come before the Legislature.

The gentleman has made a verbal report (although it was a written report) made by the Judiciary Committee, when the bill was under consideration.

From much that has occurred in our deliberations upon this subject and upon subjects kindred to it which brought the same question before us, I fear that the law of last session was sought to be repealed for two principal reasons.

There are many questions, sir, which would have been properly considered, and which ought to have been considered by the Legislature that passed that law, but which may have nothing to do with the question which we have now before us.

I agree, sir, that there are arguments suggested by the law itself that there are considerations which present themselves to every mind upon reading that law, which would perhaps bring us to a different conclusion from that reached by the last Legislature.

voiced against it. But sir, the question presented to us now is, not whether we ought or would not have voted against the law in its present form, but whether the preceding Legislature, by its act, has placed that law beyond our power.

It is true, sir, as a general principle that no Legislature can bind succeeding Legislatures; but this is true, sir, only of those acts which prescribe general rules. It is true of every act which prescribes the rules to govern the people in their elections; it is true of every act which imposes a penalty for crime, it is true of all acts which prescribe general rules; but it is not true of any law which constitutes a contract between the State and any party, either a corporation or an individual.

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That litigation was pending. Now, sir, I care not what the merits of the controversy were; I care not whether we would have voted for or against the law in its present form, but whether the preceding Legislature, by its act, has placed that law beyond our power.

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of local freight—if, I say, the consideration held out by any one of these proposals was deemed sufficient by the Legislature, it is the duty of the Legislature to pass the law, then, sir, we have in this law all the elements of a contract.

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its importance, both in the amount of money which is involved to the people of Pennsylvania and in the great principles involved. I conceive it to be the duty of every member of this House to give his most serious attention to this question, because a more important one could not be brought before any body, either deliberative or judicial.

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of vitality by seeking to repeal it. If we repeal—revoke, (for that is the meaning of "repeal")—if we call back the law, we agree that from the time of its passage until the time of its repeal, it is a law. But I say, sir, that if this monstrous fraud entered into the procedure of this law, it is no law and cannot be enforced. If that law is founded upon fraud, we may issue our execution upon the judgments of the county at the time the law was passed.

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case of the Sunbury and Erie railroad co. Cooper, it is, I believe, expressly stated in the opinion delivered by Chief Justice Loring, that the court will say that the party who procures an act of the Legislature by fraud shall be permitted to have the benefit of it without any redress to the public. There is, it is broad distinction which I am endeavoring to point out. Now, sir, I take it, in those cases in which the question has been presented whether the court will take judicial cognizance of fraud in a contract between the government, the question has never been raised at the instance of the State; it has always been between other parties. In the opinion delivered in the case of the Sunbury and Erie railroad company vs. Cooper, it is certainly left an open question whether or not, at the instance of the State, the law would not be declared void. Grants by the Commonwealth are declared void. In the case of Harris vs. McHenry a grant of authority from the Lord Proprietary of Maryland was declared void, on a bill filed in chancery. Our courts have declared patents from the Commonwealth void upon similar grounds.

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