This the legislature could not do, because the prescription in the organic law of the oath of fidelity to government was equivalent to forbidding any other oath of that nature, or of adding to, or varying it; though the legislature might, and usually did, in addition to this, require an oath for the faithful performance of the duties of office. They also decided that the ordinance of the convention (it being a body of limited powers, called only to act on the revenue laws of the United States) gave no authority to the legislature to exact the oath refused by the applicants. So that the Commission was directed to be issued to McCrady without taking the oath imposed by the law. Can human ingenuity discover any difference between this case and that presented under the law of Congress? Can Congress add to, or detract from, the oath to support the Constitution of the United States, any more than a State legislature, in regard to that prescribed by the constitution of the State?

The legislature of Virginia by act, once required her public functionaries, extending to advocates at the bar, to take an oath that they had not engaged, and would not engage, in any duel. Her Courts proceeded to enforce this law. Mr. B. Watkins Leigh,[271] then at the bar, objected to it as applying a test not authorized by the Constitution, and in an argument of remarkable power, so demonstrated it, that Chief Justice Roane,[272] expressing the opinion of the Court, declared the former opinion in favor of the law "an off-hand and erroneous one;" and no further required this oath of any practitioner in that Court. It was in this argument of Mr. Leigh that he declares that "these test laws were the first weapons young oppression would learn to handle; weapons the more odious since, though barbed and poisoned, neither strength nor courage was requisite to wield them."

---

[271] Benjamin Watkins Leigh (1781-1849), of Virginia, was an aristocrat and intellectual who considered himself a master of the English language. He graduated from William and Mary College (1802), studied law, and conducted highly successful practices first in Petersburg and then in Richmond. He supervised preparation of the Virginia code of 1819, was an influential member of the Virginia legislature, was commissioner to South Carolina in 1833, and was a United States senator (1834-1836); he chose to resign rather than to obey instructions from the state legislature. *Dictionary of American Biography*, 152-153; *Biographical Directory of Congress*, 1210.

[272] Judge Spencer Roane (1762-1822), of Virginia, attended the College of William and Mary and was admitted to the Virginia bar in 1787. He served in the Virginia legislature prior to launching a distinguished career as jurist in 1789. Not surprisingly, he was a Jeffersonian strict constructionist in constitutional matters. Roane believed in a union of dignified and powerful states, each able to assure individual rights. While he was a staunch advocate of independence and supremacy for the Virginia judiciary, he vigorously opposed the expansive tendencies of the Marshall Supreme Court. *Dictionary of American Biography*, XV, 642-643.