

ABRIDGMENT

OF THE

DEBATES OF CONGRESS,

FROM 1789 TO 1856.

FROM GALE'S AND SEATON'S ANNALS OF CONGRESS; FROM THEIR
REGISTER OF DEBATES; AND FROM THE OFFICIAL
REPORTED DEBATES, BY JOHN A. ELLIS,

BY

THE AUTHOR OF THE THIRTY YEARS' VIEW.

VOL. III.

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Congress, from 1789 to 1856, Vol. 3 (of 16)**

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Transcriber's Note: A number of obvious printer's errors (u for n, inconsistent spelling of Senators' and Representatives' names, punctuation, etc) have been amended. Other than that, the original text remains unchanged.

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EIGHTH CONGRESS.—FIRST SESSION.

BEGUN AT THE CITY OF WASHINGTON, OCTOBER 17, 1803.
PRESIDENT OF THE UNITED STATES,—THOMAS JEFFERSON.
PROCEEDINGS IN THE SENATE.

LIST OF MEMBERS OF THE SENATE.

New Hampshire.—Simeon Olcott, William Plumer.

Vermont.—S. R. Bradley, Israel Smith.

Massachusetts.—Jonathan Mason, Timothy Pickering.

Rhode Island.—Christopher Ellery, Samuel I. Potter.

Connecticut.—James Hillhouse, Uriah Tracy.

New York.—De Witt Clinton, Theodorus Bailey.

New Jersey.—Jonathan Dayton, John Condit.

Pennsylvania.—George Logan, Samuel Maclay.

Delaware.—William H. Wells, Samuel White.

Maryland.—Robert Wright, Samuel Smith.

Virginia.—Wilson C. Nicholas, John Taylor.

North Carolina.—Jesse Franklin, David Stone.

South Carolina.—Pierce Butler, Thomas Sumter.

Georgia.—A. Baldwin, James Jackson.

Tennessee.—William Cocke, Joseph Anderson.

Kentucky.—John Breckenridge, John Browne.

Ohio.—Thomas Worthington, John Smith.

MONDAY, October 17, 1803.

The first session of the eighth Congress, conformably to the Constitution of the United States, commenced at the city of Washington, agreeably to the Proclamation of the President of the United States for that purpose; and the Senate assembled on this day.

PRESENT:

SIMEON OLCOTT and WILLIAM PLUMER, from New Hampshire;

TIMOTHY PICKERING, from Massachusetts;

JAMES HILLHOUSE and URIAH TRACY, from Connecticut;

CHRISTOPHER ELLERY and SAMUEL I. POTTER, from Rhode Island;

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont;

DE WITT CLINTON and THEODORUS BAILEY, from New York;

JONATHAN DAYTON and JOHN CONDIT, from New Jersey;

GEORGE LOGAN and SAMUEL MACLAY, from Pennsylvania;

WILLIAM HILL WELLS and SAMUEL WHITE, from Delaware;

ROBERT WRIGHT and SAMUEL SMITH, from Maryland;

JOHN TAYLOR and WILSON CAREY NICHOLAS, from Virginia;

JOHN BROWN and JOHN BRECKENRIDGE, from Kentucky;

JESSE FRANKLIN and DAVID STONE, from North Carolina;

JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee;

ABRAHAM BALDWIN, from Georgia; and

THOMAS WORTHINGTON, from Ohio.

The Vice President being absent, the Senate proceeded to the election of a President, *pro tem.*, as the constitution provides, and the ballots being collected and counted, the whole number was found to be twenty-nine, of which fifteen make a majority. Mr. BROWN had 24, Mr. BALDWIN 2, Mr. DAYTON 2, and Mr. PICKERING 1.

Consequently, the Honorable JOHN BROWN was elected President of the Senate, *pro tempore*.

The credentials of the following Senators were severally read, to wit:

Of JOSEPH ANDERSON, appointed a Senator by the Legislature of the State of Tennessee; of THEODORUS BAILEY, appointed a Senator by the Legislature of the State of New York; of JAMES HILLHOUSE, appointed a Senator by the Legislature of the State of Connecticut; of SAMUEL MACLAY, appointed a Senator by the Legislature of the State of Pennsylvania; of SAMUEL I. POTTER, appointed a Senator by the Legislature of the State of Rhode Island; of ISRAEL SMITH, appointed a Senator by the Legislature of the State of Vermont; of SAMUEL WHITE, appointed a Senator by the Legislature of the State of Delaware; for the term of six years from and after the third day of March last, respectively: also, of THOMAS WORTHINGTON, appointed a Senator by the Legislature of the State of Ohio; of JOHN CONDIT, appointed a Senator by the Executive of the State of New Jersey; of JOHN TAYLOR, appointed a Senator by the Executive of the State of Virginia, in place of S. T. Mason, deceased; of TIMOTHY PICKERING, appointed a Senator by the Legislature of the State of Massachusetts, in the place of Dwight Foster, resigned; and the oath required by law was, by the PRESIDENT, administered to them respectively.

The oath was also administered to SAMUEL SMITH, appointed a Senator by the Legislature of the State of Maryland, for the term of six years from and after the third day of March last.

Ordered, That the Secretary wait on the President of the United States and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the VICE PRESIDENT, they have elected the Hon. JOHN BROWN President of the Senate, *pro tempore*.

The Secretary was directed to give a similar notice to the House of Representatives.

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight

dollars be allowed him weekly for that purpose during the session, and for twenty days after.

Resolved, That each Senator be supplied during the present session with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the usual rate for the annual charge of such papers.

A message from the House of Representatives informed the Senate that a quorum of the House had assembled, and had elected the Hon. NATHANIEL MACON their Speaker, and is ready to proceed to business.

Ordered, That Messrs. CLINTON and BRECKENRIDGE be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

A message from the House of Representatives informed the Senate, that the House agree to the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States, and have appointed a committee on their part.

On motion, *Resolved*, That two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

The Senate proceeded to the choice of a Chaplain on their part, and the ballots having been collected and counted, the whole number was twenty-eight; of which fifteen make a majority. Mr. GANTT had 15 votes, and Mr. M'CORMICK 13.

Consequently, the Rev. Dr. GANTT was elected.

Mr. CLINTON reported, from the joint committee appointed for the purpose, that they had waited on the PRESIDENT OF THE UNITED STATES, and that he had acquainted them that he would make a communication to the two Houses, by message, immediately.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In calling you together, fellow-citizens, at an earlier day than was contemplated by the act of the last session of Congress, I have not been insensible to the personal inconveniences necessarily resulting from an unexpected change in your arrangements. But matters of great public concernment have rendered this call necessary, and the interest you feel in these will supersede, in your minds, all private considerations.

Congress witnessed, at their late session, the extraordinary agitation produced in the public mind by the suspension of our right of deposit at the port of New Orleans, no assignment of another place having been made according to treaty. They were sensible that the continuance of that privation would be more injurious to our nation than any consequences which could flow from any mode of redress; but, reposing just confidence in the good faith of the Government whose officer had committed the wrong, friendly and reasonable representations were resorted to, and the right of deposit was restored.

Previous, however, to this period, we had not been unaware of the danger to which our peace would be perpetually exposed whilst so important a key to the commerce of the western country remained under a foreign power. Difficulties too were presenting themselves as to the navigation of other streams, which, arising within our territories, pass through those adjacent. Propositions had therefore been authorized for obtaining, on fair conditions, the sovereignty of New Orleans, and of other possessions in that quarter, interesting to our quiet, to such extent as was deemed practicable; and the provisional appropriation of two millions of dollars, to be applied and accounted for by the President of the United States, intended as part of the price, was considered as conveying the sanction of Congress to the acquisition proposed.^[1] The enlightened Government of France saw, with just discernment, the importance to both nations of such liberal arrangements as might best and permanently promote the peace, interests, and friendship of both; and the property and sovereignty of all Louisiana, which had been restored to them, has, on certain conditions, been

transferred to the United States, by instruments bearing date the 30th of April last. When these shall have received the constitutional sanction of the Senate, they will, without delay, be communicated to the Representatives for the exercise of their functions, as to those conditions which are within the powers vested by the constitution in Congress. Whilst the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the Western States, and an uncontrolled navigation through their whole course, free from collision with other Powers, and the dangers to our peace from that source, the fertility of the country, its climate and extent, promise, in due season, important aids to our Treasury, an ample provision for our posterity, and a wide spread for the blessings of freedom and equal laws.

With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into our Union; for rendering the change of government a blessing to our newly adopted brethren; for securing to them the rights of conscience and property; for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them, and for ascertaining the geography of the country acquired. Such materials for your information relative to its affairs in general, as the short space of time has permitted me to collect, will be laid before you when the subject shall be in a state for your consideration.

The small vessels authorized by Congress, with a view to the Mediterranean service, have been sent into that sea, and will be able more effectually to confine the Tripoline cruisers within their harbors, and supersede the necessity of convoy to our commerce in that quarter. They will sensibly lessen the expenses of that service the ensuing year.

A further knowledge of the ground in the north-eastern and north-western angles of the United States has evinced that the boundaries established by the treaty of Paris, between the British territories and ours in those parts, were too imperfectly described to be susceptible of execution. It has therefore been thought worthy of attention, for preserving and cherishing the harmony and useful intercourse subsisting between the two nations, to remove, by timely arrangements, what unfavorable incidents might otherwise render a ground of future misunderstanding. A convention has

therefore been entered into, which provides for a practicable demarcation of those limits, to the satisfaction of both parties.

An account of the receipts and expenditures of the year ending 30th September last, with the estimates for the service of the ensuing year, will be laid before you by the Secretary of the Treasury, so soon as the receipts of the last quarter shall be returned from the more distant States. It is already ascertained that the amount paid into the Treasury for that year has been between eleven and twelve millions of dollars; and that the revenue accrued, during the same term, exceeds the sum counted on as sufficient for our current expenses, and to extinguish the public debt within the period heretofore proposed.

We have seen with sincere concern the flames of war lighted up again in Europe, and nations, with which we have the most friendly and useful relations, engaged in mutual destruction. While we regret the miseries in which we see others involved, let us bow with gratitude to that kind Providence, which, inspiring with wisdom and moderation our late Legislative Councils, while placed under the urgency of the greatest wrongs, guarded us from hastily entering into the sanguinary contest, and left us only to look on and to pity its ravages. These will be the heaviest on those immediately engaged. Yet the nations pursuing peace will not be exempt from all evil. In the course of this conflict let it be our endeavor, as it is our interest and desire, to cultivate the friendship of the belligerent nations by every act of justice, and of innocent kindness; to receive their armed vessels with hospitality from the distresses of the sea, but to administer the means of annoyance to none; to establish in our harbors such a police as may maintain law and order; to restrain our citizens from embarking individually in a war in which their country takes no part; to punish severely those persons, citizen or alien, who shall usurp the cover of our flag for vessels not entitled to it, infecting thereby with suspicion those of real Americans, and committing us into controversies for the redress of wrongs not our own; to exact from every nation the observance, towards our vessels and citizens, of those principles and practices which all civilized people acknowledge; to merit the character of a just nation, and maintain that of an independent one, preferring every consequence to insult and habitual wrong. Separated by a wide ocean from the nations of Europe, and from the political interests which entangle them together, with productions

and wants which render our commerce and friendship useful to them, and theirs to us, it cannot be the interest of any to assail us, nor ours to disturb them. We should be most unwise, indeed, were we to cast away the singular blessings of the position in which nature has placed us, the opportunity she has endowed us with, of pursuing, at a distance from foreign contentions, the paths of industry, peace, and happiness; of cultivating general friendship, and of bringing collisions of interest to the umpire of reason rather than of force. How desirable, then, must it be, in a Government like ours, to see its citizens adopt, individually, the views, the interests, and the conduct, which their country should pursue, divesting themselves of those passions and partialities which tend to lessen useful friendships, and to embarrass and embroil us, in the calamitous scenes of Europe! Confident, fellow-citizens, that you will duly estimate the importance of neutral dispositions towards the observance of neutral conduct, that you will be sensible how much it is our duty to look on the bloody arena spread before us, with commiseration, indeed, but with no other wish than to see it closed, I am persuaded you will cordially cherish these dispositions in all discussions among yourselves, and in all communications with your constituents; and I anticipate, with satisfaction, the measures of wisdom which the great interests now committed to you will give *you* an opportunity of providing, and *myself*, that of approving and of carrying into execution with the fidelity I owe to my country.

TH. JEFFERSON.

OCT. 17, 1803.

The Message was read, and five hundred copies thereof ordered to be printed for the use of the Senate.

TUESDAY, October 18.

PIERCE BUTLER, appointed a Senator by the Legislature of the State of South Carolina, for the unexpired time for which the late John Ewing Colhoun was elected to serve, produced his credentials, which were read, and the oath required by law was administered to him by the President.

JAMES JACKSON, from the State of Georgia, attended.

The credentials of SAMUEL SMITH, a Senator from the State of Maryland, were read.

FRIDAY, October 21.

JOHN QUINCY ADAMS, appointed a Senator by the Legislature of the State of Massachusetts, for six years, commencing the 4th day of March last, produced his credentials, which were read; and the oath required by law was administered to him by the President.

Mr. CLINTON, after a few prefatory observations on the necessity of designating the persons, severally, whom the people should wish to hold the offices of President and Vice-President of the United States, and stating that the State which he represented, as well as others in the Union, had, through the medium of their Legislatures, strongly recommended the adoption of the principle, laid on the table the following motion, which he read; and it was made the order of the day for the next day, and printed.

[The amendment proposed by Mr. Clinton grew out of the attempt in the House of Representatives to elect Mr. Burr President, and to prevent such attempt in future, in the event of an equality of votes between the two highest on the list, it required the electors to discriminate between the presidential and vice-presidential office, and name the persons voted for for each.]

Mr. BRECKENRIDGE gave notice, that he should, to-morrow, ask leave to bring in a bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes.

SATURDAY, October 22.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In my communication to you of the 17th instant, I informed you that conventions had been entered into with the Government of France for the cession of Louisiana to the United States. These, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France in due form, they are communicated to you for consideration in your Legislative capacity. You will observe that some important conditions cannot be carried into execution, but with the aid of the Legislature; and that time presses a decision on them without delay.

The ulterior provisions, also, suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government as time and distance have permitted me to obtain, will be ready to be laid before you in a few days. But, as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require.

TH. JEFFERSON.

OCT. 21, 1803.

The Message was read, and, together with the papers therein referred to, ordered to lie for consideration.

Agreeably to notice given yesterday, Mr. BRECKENRIDGE had leave to bring in a bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes; which bill was read, and ordered to the second reading. The bill is in the following words:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy the territories ceded by France to the United States by the treaty concluded at Paris, on the 30th day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the

authority of the United States, employ any part of the Army and Navy of the United States, and of the force authorized by an act passed the 3d day of March last, entitled “An act directing a detachment from the militia of the United States, and for erecting certain arsenals,” which he may deem necessary: And so much of the sum appropriated by the said act as may be necessary is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

SEC 2.. *And be it further enacted*, That until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person or persons, and shall be exercised by and in such manner, as the President of the United States shall direct.

Amendment to the Constitution.

The order of the day being called for on Mr. CLINTON’S motion of yesterday,

Mr. CLINTON said that, as the resolution was but now printed, and laid before the Senate, it might be proper to refer it to Monday for further consideration, but if it was requisite, by the rules of the Senate, that the resolution must have three separate readings, and on three different days, he should call for a second reading on Saturday, that it might be in readiness for a third reading on Monday, and be ultimately acted upon that day, as the Legislatures of Tennessee and Vermont were in session, and probably must be at the trouble of an extra session to act upon the amendment, unless it could be sent to them before they separated.

Mr. BROWN, of Kentucky, the President *pro tem.* of the Senate, said the written rule of the Senate determined that bills should have three readings, and on different days, without unanimous consent to the contrary; but the resolutions were not included; and that he should be glad of the opinion of the Senate upon the subject.

Mr. TRACY of Connecticut said, that there was no written rule which would reach the case, but the Vice President, upon the ground that they

came within the reason of the rule, had determined that all resolutions which required a joint vote of both Houses to give them efficacy, should take the same course as bills, and have three readings, and on different days, before a final vote; and as this resolution went to the alteration of the supreme law of the land, as the constitution was declared to be, he thought it highly requisite to give the deliberations all the solemnity which was required in passing bills.

Mr. BRADLEY, of Vermont, then offered two amendments to the resolution; one went to the form only, and the other makes a majority of votes of the electors requisite for the choice of Vice President, and in case such majority is not obtained, places the choice of Vice President in the Senate.

Mr. BUTLER, of South Carolina, proposed an amendment by adding a new clause, in substance: "That at the next election of President, no person should be eligible who had served more than eight years, and, in all future elections, no person should be eligible more than four years in any period of eight years."

Mr. DAYTON, of New Jersey, moved to refer the resolution, with all the amendments, to a select committee; he said that it was a subject far too important to be carried in this way. There has been no time to consider it. Something more was due in this instance, than, as it were, offering it one moment, and deciding upon it the next.

Mr. HILLHOUSE, of Connecticut, supported the motion for referring the question to a select committee. He was opposed to entering now upon the business. Why should this subject be hurried? Why not have taken it up last session? We might in that case have had time to consider it. He had not often known a resolution, of the nature of that before the House, disposed of otherwise, in the first instance, than being referred to a committee. He never knew it refused. In a great and free empire, like the United States, this question is of the highest importance—no less than the choice of the First Magistrate. It is laid upon the table to-day, and we are to determine upon it to-morrow. He hoped not, and as he never knew it refused before, he hoped that it would not be adopted now. He wished it to be referred to a select committee; that it should there be examined, line by line, letter by letter. In

the present mode of doing business, it is impossible to act with accuracy. He again trusted and hoped that it would be referred to a select committee.

Mr. JACKSON, of Georgia, wished the business to be immediately proceeded upon. He was an admirer of Mr. Jefferson; he was happy, and he trusted all were happy, while he was President. But, continued Mr. J., we know not who may follow him; we may have a Buonaparte, or one who will be equally obnoxious to the people. He hoped the motions would be incorporated and immediately come before the House.

Mr. WRIGHT, of Maryland, spoke for some time against the resolution going to a committee. He was against the amendment proposed by Mr. BUTLER. A committee might report when they pleased. He therefore thought it necessary to proceed with the question immediately.

Mr. SMITH, of Maryland, wished to have some principles fixed. If the motion and amendments were to go to a committee, he would not tack them together, for by this mode they might both be lost. It has been said that the subject might have been entered into last session. There was then a multiplicity of business of importance before the House, yet this subject might have been entered into. As it stands, this is the proper place to make objections. The mover of the resolution does not say that it shall be determined on Monday; he means that it shall then be before the whole House.

After some desultory observations, in which one member observed that he thought it disorderly, the question on Mr. BUTLER's amendment was put—ayes 16, nays 15.

A committee was then chosen for the purpose, namely:

Mr. BUTLER, Mr. BRADLEY, Mr. CLINTON, Mr. NICHOLAS, and Mr. SMITH.

MONDAY, October 24.

Louisiana Cession.

The bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes, was read the

second time and referred to Messrs. BRECKENRIDGE, DAYTON, and BALDWIN, to consider and report thereon.

Amendment to the Constitution.

Mr. BUTLER, from the committee, to whom was referred, on the 22d inst., the motion for an amendment to the Constitution of the United States, made report, which was read.

Mr. DAYTON moved to strike out all which respected the appointment of a Vice President.

He said the great inducements of the framers of the constitution to admit the office of Vice President was, that, by the mode of choice, the best and most respectable man should be designated; and that the electors of each State should vote for one person at least, living in a different State from themselves; and if the substance of the amendment was adopted, he thought the office had better be abolished. Jealousies were natural between President and Vice President; no heir apparent ever loved the person on the throne. With this resolution for an amendment to the constitution we were left with all the inconveniencies, without a single advantage from the office of Vice President.

Mr. CLINTON.—The obvious intention of the amendment proposed by the gentleman from New Jersey, is to put off or get rid of the main question. It would more comport with the candor of the gentleman to meet the question fairly. Can the gentleman suppose that the electors will not vote for a man of respectability for Vice President? True, the qualifications are distinct, and ought not to be confounded; this will stave off the question till the Legislatures of the States of Tennessee and Vermont are out of session, and the object must be very obvious.

Mr. DAYTON.—The custom of the gentleman from New York has been of late to arraign motives instead of meeting arguments; on Saturday he accused me of wishing to procrastinate, and now the same is repeated.

The reasons of erecting the office are frustrated by the amendment to the constitution now proposed; it will be preferable, therefore, to abolish the office.

Mr. CLINTON.—The charge of the gentleman from New Jersey is totally unfounded that I arraign motives, and do not meet arguments. On Saturday the gentleman accused me of precipitation; I am not in the habit of arraigning motives, as this Senate can witness, and the charge is totally untrue.

Mr. NICHOLAS.—To secure the United States from the dangers which existed during the last choice of President, the present resolution was introduced. It was impossible to act upon, or pass the amendment offered by the member from New Jersey, with a full view of all its bearings at this time. It ought not to stand in the way of the resolution reported by the committee, for two-thirds or three-quarters of the State Legislatures would be in session in two or three months; the Senate had, therefore, better not admit the amendment, even if convinced that it was correct, because it might jeopardize the main amendment of discriminating.

Mr. BUTLER moved a postponement until Wednesday, because the amendment was important, and he had not had sufficient time to make up his mind.

Mr. WORTHINGTON said the same.

This motion was seconded.

The question for postponement was taken, and lost—ayes 15, noes 16.

The amendment of Mr. DAYTON was now before the Senate.

A motion for adjournment was now made and carried—ayes 16, noes 15.

TUESDAY, October 25.

JOHN SMITH, appointed a Senator by the Legislature of the State of Ohio, attended and produced his credentials, which were read, and the oath required by law was administered to him by the President.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 24th instant, the bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes, reported it without amendment.

Ordered, That this bill pass to a third reading.

WEDNESDAY, October 26.

Louisiana Treaty.

The bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes, was read the third time. And, on the question, Shall this bill pass? it was determined in the affirmative—yeas 26, nays 6, as follows:

YEAS.—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, J. Smith, S. Smith, Stone, Taylor, Wells, White, Worthington, and Wright.

NAYS.—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, and Tracy.
[\[2\]](#)

SATURDAY, October 29.

Mr. BRECKENRIDGE, from the committee of conference on the amendments of the House of Representatives to the bill, entitled “An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof,” reported, that the Senate recede from their disagreement to the amendments, and agree thereto, with amendments; and a division of the report was called for.

And, on the question to adopt the report, so far as that the Senate recede from their disagreement to the amendments of the House of Representatives, it passed in the affirmative.

And, on the question to adopt the remaining division of the report, it passed in the negative.

So it was *Resolved*, That the Senate recede from their disagreement to the amendments of the House of Representatives to the said bill, and agree thereto.^[3]

MONDAY, October 31.

On motion, it was,

Resolved, unanimously, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the Hon. STEVENS THOMPSON MASON, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape around the left arm.^[4]

WEDNESDAY, November 2.

Louisiana Treaty.

The Senate resumed the second reading of the bill, entitled “An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same;” and having amended the bill—

On the question, Shall the bill pass?

Mr. WHITE rose and made the following remarks:

Mr. President, by the provisions of the bill before us, and which are thus far in conformity with the words of the treaty, we have until three months after the exchange of ratifications and the delivery of possession to pay this money in. Where, then, is the necessity for such haste on this subject? It seems to me to be anticipating our business unnecessarily, and perhaps unwisely; it is showing on our part a degree of anxiety that may be taken advantage of and operate to our injury, and that may serve to retard the accomplishment of the very object that gentlemen seem to have so much at heart. It is not at present altogether certain that we shall ever have occasion to use this stock, and it will be time enough to provide it when the occasion

arises, when we see ourselves in the undisturbed possession of this mighty boon, or wherefore are we allowed these three months' credit after the delivery of possession? The ratifications have been already exchanged; the French officer who is to make the cession is said to be at New Orleans, and previous to the adjournment of Congress we shall know with certainty whether the First Consul will or can carry this treaty faithfully into operation. We have already passed a bill authorizing the President to take possession, for which I voted, and it will be time enough to create this stock and to make the other necessary arrangements when we find ourselves in possession of the territory, or when we ascertain with certainty that it will be given to us.

But, Mr. President, it is now a well-known fact, that Spain considers herself injured by this treaty, and if it should be in her power to prevent it, will not agree to the cession of New Orleans and Louisiana to the United States. She considers herself absolved from her contract with France, in consequence of the latter having neglected to comply with certain stipulations in the Treaty of St. Ildefonso, to be performed on her part, and of having violated her engagement never to transfer this country into other hands. Gentlemen may say this money is to be paid upon the responsibility of the President of the United States, and not until after the delivery of possession to us of the territory; but why cast from ourselves all the responsibility upon this subject, and impose the whole weight upon the President, which may hereafter prove dangerous and embarrassing to him? Why make the President the sole and absolute judge of what shall be a faithful delivery of possession under the treaty? What he may think a delivery of possession sufficient to justify the payment of this money, we might not; and I have no hesitation in saying that if, in acquiring this territory under the treaty, we have to fire a single musket, to charge a bayonet, or to lose a drop of blood, it will not be such a cession on the part of France as should justify to the people of this country the payment of any, and much less so enormous a sum of money. What would the case be, sir? It would be buying of France authority to make war upon Spain; it would be giving the First Consul fifteen millions of dollars to stand aloof until we can settle our differences with His Catholic Majesty. Would honorable gentlemen submit to the degradation of purchasing even his neutrality at so inconvenient a price? We are told that there is in the hands of the French Prefect at New Orleans a royal order of His Catholic Majesty, founded upon

the Treaty of St. Ildefonso, for the delivery of possession of this territory to France; but which has never been done—the precedent conditions not having been performed on the part of France. This royal order, it is probable, will be handed over to our Commissioner, or to whoever may be sent down to receive possession. We may then be told that we have the right of France, as she acquired it from Spain, which is all she is bound by her treaty to transfer to us; we may be shown the Spaniards, who yet claim to be the rightful owners of the country, and be told that we have the permission of the First Consul to subdue or drive them out, and, according to the words of the treaty, to take possession. Of our capacity to do so I have no doubt; but this we could have done, sir, six months ago, and with one-sixth of fifteen millions of dollars, when they had wantonly violated the sacred obligations of a treaty, had insulted our Government, and prostrated all the commerce of our Western country. Then we had, indeed, a just cause for chastising them; the laws of nations and of honor authorized it, and all the world would have applauded our conduct. And it is well known that if France had been so disposed she could not have brought a single man or ship to their relief; before the news could have reached Europe, she was blockaded in her own ports by the British fleet. But that time was permitted to go by unimproved, and instead of regretting the past, let us provide for the future.

Admitting then, Mr. President, that His Catholic Majesty is hostile to the cession of this territory to the United States, and no honorable gentleman will deny it, what reasons have we to suppose that the French Prefect, provided the Spaniards should interfere, can give to us peaceable possession of the country? He is acknowledged there in no public character, is clothed with no authority, nor has he a single soldier to enforce his orders. I speak now, sir, from mere probabilities. I wish not to be understood as predicting that the French will not cede to us the actual and quiet possession of the territory. I hope to God they may, for possession of it we must have—I mean of New Orleans, and of such other positions on the Mississippi as may be necessary to secure to us for ever the complete and uninterrupted navigation of that river. This I have ever been in favor of; I think it essential to the peace of the United States, and to the prosperity of our Western country. But as to Louisiana, this new, immense, unbounded world, if it should ever be incorporated into this Union, which I have no idea can be done but by altering the constitution, I believe it will be the greatest curse

that could at present befall us; it may be productive of innumerable evils, and especially of one that I fear even to look upon. Gentlemen on all sides, with very few exceptions, agree that the settlement of this country will be highly injurious and dangerous to the United States; but as to what has been suggested of removing the Creeks and other nations of Indians from the eastern to the western banks of the Mississippi, and of making the fertile regions of Louisiana a howling wilderness, never to be trodden by the foot of civilized man, it is impracticable. The gentleman from Tennessee (Mr. COCKE) has shown his usual candor on this subject, and I believe with him, to use his strong language, that you had as well pretend to inhibit the fish from swimming in the sea as to prevent the population of that country after its sovereignty shall become ours. To every man acquainted with the adventurous, roving, and enterprising temper of our people, and with the manner in which our Western country has been settled, such an idea must be chimerical. The inducements will be so strong that it will be impossible to restrain our citizens from crossing the river. Louisiana must and will become settled, if we hold it, and with the very population that would otherwise occupy part of our present territory. Thus our citizens will be removed to the immense distance of two or three thousand miles from the capital of the Union, where they will scarcely ever feel the rays of the General Government; their affections will become alienated; they will gradually begin to view us as strangers; they will form other commercial connections, and our interests will become distinct.

These, with other causes that human wisdom may not now foresee, will in time effect a separation, and I fear our bounds will be fixed nearer to our houses than the waters of the Mississippi. We have already territory enough, and when I contemplate the evils that may arise to these States, from this intended incorporation of Louisiana into the Union, I would rather see it given to France, to Spain, or to any other nation of the earth, upon the mere condition that no citizen of the United States should ever settle within its limits, than to see the territory sold for a hundred millions of dollars, and we retain the sovereignty. But however dangerous the possession of Louisiana might prove to us, I do not presume to say that the retention of it would not have been very convenient to France, and we know that at the time of the mission of Mr. Monroe, our Administration had never thought of the purchase of Louisiana, and that nothing short of the fullest conviction on the part of the First Consul that he was on the very eve of a war with

England; that this being the most defenceless point of his possessions, if such they could be called, was the one at which the British would first strike, and that it must inevitably fall into their hands, could ever have induced his pride and ambition to make the sale. He judged wisely, that he had better sell it for as much as he could get than lose it entirely. And I do say that under existing circumstances, even supposing that this extent of territory was a desirable acquisition, fifteen millions of dollars was a most enormous sum to give. Our Commissioners were negotiating in Paris—they must have known the relative situation of France and England—they must have known at the moment that a war was unavoidable between the two countries, and they knew the pecuniary necessities of France and the naval power of Great Britain. These imperious circumstances should have been turned to our advantage, and if we were to purchase, should have lessened the consideration. Viewing, Mr. President, this subject in any point of light—either as it regards the territory purchased, the high consideration to be given, the contract itself, or any of the circumstances attending it, I see no necessity for precipitating the passage of this bill; and if this motion for postponement should fail, and the question on the final passage of the bill be taken now, I shall certainly vote against it.

The further consideration of the bill was postponed until to-morrow.

THURSDAY, November 3.

Louisiana Treaty.

The bill, entitled “An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the Convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same,” was read the third time; and, having been amended, on the question, Shall this bill pass as amended?

Mr. WELLS said: Mr. President, having always held to the opinion that, when a treaty was duly made under the constituted authorities of the United States, Congress was bound to pass the laws necessary to carry it into effect; and as the vote which I am about to give may not at first seem to conform itself to this opinion, I feel an obligation imposed upon me to state,

in as concise a manner as I can, the reasons why I withhold my assent from the passage of this bill.

There are two acts necessary to be performed to carry the present treaty into effect—one by the French Government, the other by our own. They are to deliver us a fair and effectual possession of the ceded territory; and then, and not till then, are we to pay the purchase money. We have already authorized the President to receive possession. This co-operation on our part was requisite to enable the French to comply with the stipulation they had made; they could not deliver unless somebody was appointed to receive. In this view of the subject, the question which presents itself to my mind is, who shall judge whether the French Government does, or does not, faithfully comply with the previous condition? The bill on your table gives to the President this power. I am for our retaining and exercising it ourselves. I may be asked, why not delegate this power to the President? Sir, I answer by inquiring why we should delegate it? To us it properly belongs; and, unless some advantage will be derived to the United States, it shall not be transferred with my consent. Congress will be in session at the time that the delivery of the ceded territory takes place; and if we should then be satisfied that the French have executed with fidelity that part of the treaty which is incumbent upon them first to perform, I pledge myself to vote for the payment of the purchase money. This appears to me, arguing upon general principles, to be the course which ought to be pursued, even supposing there were attending this case no particular difficulties. But in this special case are there not among the archives of the Senate sufficient documents, and which have been withheld from the House of Representatives, to justify an apprehension that the French Government was not invested with the capacity to convey this property to us, and that we shall not receive that kind of possession which is stipulated for by the treaty? I am not permitted, by the order of this body, to make any other than this general reference to those documents. Suffice it to say that they have strongly impressed me with an opinion that, even if possession is rendered to us, the territory will come into our hands without any title to justify our holding it.

Mr. JACKSON.—Mr. President: The honorable gentleman (Mr. WELLS) has said that the French have no title, and, having no title herself, we can derive none from her. Is not, I ask, the King of Spain's proclamation, declaring the

cession of Louisiana to France, and his orders to his Governor and officers to deliver it to France, a title? Do nations give any other? I believe the honorable gentleman can find no solitary instance of feofment or conveyance between States. The treaty of St. Ildefonso was the groundwork of the cession, and whatever might have been the terms to be performed by France, the King of Spain's proclamation and orders have declared to all the world that they were complied with. The honorable gentleman, however, insists that there is no consideration expressed in the treaty, and therefore it must be void; if the honorable gentleman will but look attentively at the ninth article, I am persuaded he will perceive one: the conventions are made part of the treaty; they are declared to have execution in the same manner, as if they had been inserted in the treaty; they are to be ratified in the same form, and at the same time, so that the one shall not be distinct from the other. What inference can possibly be drawn, but that the payments to be made by them were full consideration for Louisiana? But the honorable gentleman lays stress on that part of the treaty which declares that "the First Consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States the territory," &c.; inferring from thence that our title rests on the friendship of Buonaparte alone. Sir, let my opinion of the present Government of France be what it may, and I confess it is not very favorable, Buonaparte, by the consent of the nation, is placed at its head; he is the organ through which the will of the nation is expressed, and is and must be respected as such by all other Powers. No nation has a right to interfere with the rule or police of another. It is enough that the nation wills it, and Buonaparte's act is the act of the whole nation, which cannot recall it, even if Buonaparte should cease to govern and another form of government be adopted. Last session we were impressed with the necessity of taking immediate possession of the island of New Orleans in the face of two nations, and now we entertain doubts if we can combat the weakest of those Powers; and we are further told we are going to sacrifice the immense sum of fifteen millions of dollars, and have to go to war with Spain for the country afterwards; when, last session, war was to take place at all events, and no costs were equal to the object. Gentlemen seem to be displeased, because we have procured it peaceably, and at probably ten times less expense than it would have cost us had we taken forcible possession of New Orleans alone, which, I am persuaded, would have involved us in a war which would have saddled us

with a debt of from one to two hundred millions, and perhaps have lost New Orleans, and the right of deposit, after all. I again repeat, sir, that I do not believe that Spain will venture war with the United States. I believe she dare not; if she does, she will pay the costs. The Floridas will be immediately ours; they will almost take themselves. The inhabitants pant for the blessings of your equal and wise Government; they ardently long to become a part of the United States. An officer, duly authorized, and armed with the bare proclamation of the President, would go near to take them; the inhabitants by hundreds would flock to his standard, the very Spanish force itself would assist in their reduction; it is composed principally of the Irish brigade and Creoles—the former disaffected, and the latter the dregs of mankind. With two or three squadrons of dragoons, and the same number of companies of infantry, not a doubt ought to exist of the total conquest of East Florida by an officer of tolerable talents. Exclusive, however, of the loss of the Floridas, to use the language of a late member of Congress, the road to Mexico is now open to us, which, if Spain acts in an amicable way, I wish may, and hope will, be shut, as respects the United States, for ever. For these reasons, I think, sir, Spain will avoid a war, in which she has nothing to gain and every thing to lose.

Mr. President, the honorable gentleman appears to be extremely apprehensive of vesting the powers delegated by the bill, now on its passage, in the President, and wishes to retain it in the Legislature. Is this a Legislative or an Executive business? Assuredly, in my mind, of the latter nature. The President gave instructions for, and, with our consent, ratified the treaty. We have given him the power to take possession, which his officers are at this moment doing; and surely, as the ostensible party, the representative of the sovereignty to whom France will alone look, he ought to possess the power of fulfilling our part of the contract. Gentlemen, indeed, had doubted, on a former occasion, the propriety of giving the President the power of taking possession and organizing a temporary government, which every inferior officer, in case of conquest or cession, from the general to the subaltern, if commanding, has a right to do; but I little expected these doubts after we had gone so far. For my part, sir, I have none of those fears. I believe the President will be as cautious as ourselves, and the bill is as carefully worded as possible; for the money is not to be paid until after Louisiana shall be placed in our possession.

Mr. WRIGHT.—Mr. President, I presumed from the observations of the honorable gentleman from Delaware, (Mr. WELLS,) that he had not minutely attended to the provisions of this bill, on which the transfer of this stock is made expressly to depend. The treaty has in the most guarded manner secured us in the possession of the ceded territory, as a condition precedent to the payment of the purchase money, and this bill has expressly provided that no part of the stock shall be transferred till the possession stipulated by the treaty shall have been obtained. Not such a possession as the gentleman has said the President may be satisfied with—"the delivery of a twig and turf, or the knocker of a door." The treaty has defined the possession intended: it is the possession of Louisiana, the island and city of New Orleans, with the forts and arsenals, the troops having been withdrawn from thence. But, sir, from his remarks, it would seem that his objections to this bill had been predicated on his want of confidence in the Executive, as he has expressed his fears that the stock would be transferred, before the prerequisite conditions had been performed. He says, we ought to be satisfied that the possession stipulated by the treaty shall have been delivered up before we pass this bill. Has he forgot that, by the constitution, the President is to superintend the execution of the law? Or has he forgot that treaties are the supreme law of the land? Or why, while he professes to respect this constitution, does he oppose the commission of the execution of this law to that organ of the Government to which it has been assigned by the constitution? Why, I ask, does he distrust the President? Has he not been, throughout the whole of this business, very much alive to the peaceful acquisition of this immense territory, and the invaluable waters of the Mississippi? a property which, but the other day, we were told was all-important, and so necessary to our political existence that if it was not obtained the Western people would sever themselves from the Union. This property, for which countless millions were then proposed to be expended, and the best blood of our citizens to be shed, and which then was to be had at all hazards, *per fas aut per nefas*, seems now to have lost its worth, and it would seem as if some gentlemen could not be satisfied with the purchase, because our title was not recorded in the blood of its inhabitants. But that this is not the wish of the American people, has been unequivocally declared by their immediate representatives in Congress, as well as by this House, who had each expressed their approbation of the peaceful title we had acquired, by majorities I thought not to be misunderstood. And the

gentleman, although he voted for the ratification of the treaty, now again calls on us to investigate the title. It is certainly too late.

Mr. PICKERING said, if he entertained the opinion just now expressed by the gentleman from Delaware, (Mr. WELLS,) of the binding force of all treaties made by the President and Senate, he should think it to be his duty to vote for the bill now under consideration. "The constitution, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land."—But a treaty to be thus obligatory, must not contravene the constitution, nor contain any stipulations which transcend the powers therein given to the President and Senate. The treaty between the United States and the French Republic, professing to cede Louisiana to the United States, appeared to him to contain such an exceptionable stipulation—a stipulation which cannot be executed by any authority now existing. It is declared in the third article, that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States." But neither the President and Senate, nor the President and Congress, are competent to such an act of incorporation. He believed that our Administration admitted that this incorporation could not be effected without an amendment of the constitution; and he conceived that this necessary amendment could not be made in the ordinary mode by the concurrence of two-thirds of both Houses of Congress, and the ratification by the Legislatures of three-fourths of the several States. He believed the assent of each individual State to be necessary for the admission of a foreign country as an associate in the Union; in like manner as in a commercial house, the consent of each member would be necessary to admit a new partner into the company; and whether the assent of every State to such an indispensable amendment were attainable, was uncertain. But the articles of a treaty were necessarily related to each other; the stipulation in one article being the consideration for another. If, therefore, in respect to the Louisiana Treaty, the United States fail to execute, and within a reasonable time, the engagement in the third article, (to incorporate that territory into the Union,) the French Government will have a right to declare the whole treaty void. We must then abandon the country, or go to war to maintain our possession. But it was to prevent war that the pacific measures of the last winter were adopted—they were to "lay the foundation for future peace."

Mr. P. had never doubted the right of the United States to acquire new territory, either by purchase or by conquest, and to govern the territory so acquired as a dependent province; and in this way might Louisiana have become a territory of the United States, and have received a form of government infinitely preferable to that to which its inhabitants are now subject.

Mr. DAYTON.—As the honorable gentleman from Massachusetts has quoted what was suggested by me in a former debate, to deduce from it an inference which the information I gave can by no means warrant, I must be allowed the liberty of correcting him. When I said that there existed an essential difference between the French and Spanish officers at New Orleans as to the real boundaries of the province of Louisiana, I did not mean to insinuate that this disagreement extended so far as an opposition to the French taking possession. It was a question of limits only, varying, however, so much in extent as would have produced a serious altercation between those two countries, although closely allied.

The Spanish Governor had taken it upon himself to proclaim that the province lately ceded and about to be given over to France would be confined on the east of the Mississippi to the river Iberville, and the lakes Maurepas and Pontchartrain, or in other words to the island of New Orleans; but the French Prefect on the contrary declared that he neither had nor would give his assent to the establishment of those limits, which would be regarded no longer than until the arrival of their troops.

The same gentleman (Mr. PICKERING) has said that the advocates of this measure seem to rely much more upon their power than upon their right, and in this assertion I am compelled to say that he has done us very great injustice. The title of the French is founded upon the often quoted treaty of St Ildefonso, confirmed by the royal order signed by the King of Spain himself, so lately as the 15th October, 1802, directing the delivery of the “colony of Louisiana and its dependencies as well as of the city and island of New Orleans, without any exception, to General Victor, or other officer duly authorized by that Republic to take charge of the said delivery.”

When at New Orleans in July last, I obtained from the best source a translated copy of that royal order, and can aver that it absolutely directs possession to be given without reservation or condition. It is not, and cannot

be, denied that the lately ratified treaty of Paris transfers to us completely all the title acquired by France in virtue of the first treaty and order alluded to. We have, then, most incontestably, the right of possession, and our object now is, by passing the bill before us to obtain the possession itself, which we can certainly never effect, consistently with good faith, if the reasonings and objections of my honorable friends from Delaware and Massachusetts should prevail. We are asked by the same gentlemen what will be the consequence if it shall appear that the royal order has been revoked? I answer, first, that it is not in the least degree probable, for neither of them pretend to have heard of such revocation, nor is it intimated in the confidential communications before the Senate. But admitting for argument's sake that it were revoked, of what avail could it be against a third party, who had in the mean time become a *bona fide* purchaser? Shall one nation give to another a written, formal evidence of transfer of territory, and revoke it at pleasure, especially after a third shall have been tempted and induced by that very evidence of title to contract for the purchase of it? Would an act so fraudulent be countenanced between individuals in a court of equity? Could it be justified between nations in a high court of honor? The honorable gentleman from Delaware has taken a more delicate ground of objection. He has insinuated that there exists in the knowledge of the Senate, the evidence of a serious opposition to our possessing that country, which, if known to the other branch of the Legislature, would probably have defeated this bill in its progress there. Allusions artfully made in this manner to documents communicated under the injunction of secrecy, place us in an embarrassing situation. Forbidden by our rules to expose the papers referred to, even in argument, we can only declare what impressions they have made upon ourselves. Every Senator must understand him, every one must have heard and read, and weighed deliberately the contents of those documents, and, for myself, I am free to avow my belief, that, if known to every member of the other House, they would have had no effect against this bill, but would rather have quickened and ensured its progress, for such is the influence they have upon me.

Mr. TAYLOR.—There have been, Mr. President, two objections made against the treaty; one that the United States cannot constitutionally acquire territory; the other, that the treaty stipulates for the admission of a new State into the Union; a stipulation which the treaty-making power is unable to

comply with. To these objections I shall endeavor to give answers not heretofore urged.

Before a confederation, each State in the Union possessed a right, as attached to sovereignty, of acquiring territory, by war, purchase, or treaty. This right must be either still possessed, or forbidden both to each State and to the General Government, or transferred to the General Government. It is not possessed by the States separately, because war and compacts with foreign powers and with each other are prohibited to a separate State; and no other means of acquiring territory exist. By depriving every State of the means of exercising the right of acquiring territory, the constitution has deprived each separate State of the right itself. Neither the means nor the right of acquiring territory are forbidden to the United States; on the contrary, in the fourth article of the constitution, Congress is empowered “to dispose of and regulate the territory belonging to the United States.” This recognizes the right of the United States to hold territory. The means of acquiring territory consist of war and compact; both are expressly surrendered to Congress and forbidden to the several States; and no right in a separate State to hold territory without its limits is recognized by the constitution, nor any mode of effecting it possible, consistent with it. The means of acquiring and the right of holding territory, being both given to the United States, and prohibited to each State, it follows that these attributes of sovereignty once held by each State are thus transferred to the United States; and that, if the means of acquiring and the right of holding, are equivalent to the right of acquiring territory, then this right merged from the separate States to the United States, as indispensably annexed to the treaty-making power, and the power of making war; or, indeed, is literally given to the General Government by the constitution.

Having proved, sir, that the United States may constitutionally acquire, hold, dispose of, and regulate territory, the other objection to be considered is, whether the third article of the treaty does stipulate that Louisiana shall be erected into a State? It is conceded that the treaty-making power cannot, by treaty, erect a new State, however they may stipulate for it. I premise, that in the construction of this article, it is proper to recollect that the negotiators must be supposed to have understood our constitution. It became very particularly their duty to do so, because, in this article itself, they have recited “the principles of the constitution” as their guide. Hence,

it is obvious, they did not intend to infringe, but to adhere to those principles; and therefore, if the article will admit of a construction consistent with this presumable knowledge and intention of the negotiators, the probability of its accuracy will be greater than one formed in a supposition that the negotiators were either ignorant of that which they ought to have known, or that they fraudulently professed a purpose which they really intended to defeat. The following construction is reconcilable with what the negotiators ought to have known, and with what they professed to intend.

Recollect, sir, that it has been proved that the United States may acquire territory. Territory, so acquired, becomes from the acquisition itself a portion of the territories of the United States, or may be united with their territories without being erected into a State. A union of territory is one thing; of States, another. Both are exemplified by an actual existence. The United States possess territory, comprised in the union of territory, and not in the union of States. Congress is empowered to regulate or dispose of territorial sections of the Union, and have exercised the power; but it is not empowered to regulate or dispose of State sections of the Union. The citizens of these territorial sections are citizens of the United States, and they have all the rights of citizens of the United States; but such rights do not include those political rights arising from State compacts or governments, which are dissimilar in different States. Supposing the General Government or treaty-making power have no right to add or unite States and State citizens to the Union, yet they have a power of adding or uniting to it territory and territorial citizens of the United States.

The territory is ceded by the first article of the treaty. It will no longer be denied that the United States may constitutionally acquire territory. The third article declares that “the inhabitants of the ceded territory shall be incorporated in the Union of the United States.” And these words are said to require the territory to be erected into a State. This they do not express, and the words are literally satisfied by incorporating them into the Union as a Territory, and not as a State. The constitution recognizes and the practice warrants an incorporation of a Territory and its inhabitants into the Union, without admitting either as a State. And this construction of the first member of the article is necessary to shield its two other members from a charge of surplusage, and even absurdity. For if the words “the inhabitants

of the ceded territory shall be incorporated in the Union of the United States” intended that Louisiana and its inhabitants should become a State in the Union of States, there existed no reason for proceeding to stipulate that these same inhabitants should be made “citizens as soon as possible, according to the principles of the Federal Constitution.” Their admission into the Union of States would have made them citizens of the United States. Is it not then absurd to suppose that the first member of this third article intended to admit Louisiana into the Union as a State, which would instantly entitle the inhabitants to the benefit of the article of the constitution declaring, that “the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,” and yet to have gone on to stipulate for citizenship, under the limitation “as soon as possible, according to the principles of the Federal Constitution,” after it had been bestowed without limitation? Again, the concluding member of the article is to bestow “protection in the mean time;” incorporating this stipulation, and the stipulation for citizenship, with the construction which accuses the treaty of unconstitutionality, the article altogether must be understood thus: “The inhabitants of the ceded territory shall be taken into the Union of States, which will instantly give them all the rights of citizenship, after which they shall be made citizens as soon as possible; and after they are taken into the Union of States, they shall be protected in the interim between becoming a State in the Union, and being made citizens, in their liberty, property, and religion.”

By supposing the first member of the article to require that the inhabitants and their territory shall be incorporated in the Union, in the known and recognized political character of a Territory, these inconsistencies are avoided, and the article reconciled to the constitution, as understood by the opposers of the bill; the stipulation also for citizenship “as soon as possible” according to the principles of the constitution, and the delay meditated by these words, and the subsequent words “in the mean time,” so utterly inconsistent with the instantaneous citizenship, which would follow an admission into the Union as a State, are both fully explained. Being incorporated in the Union as a Territory, and not as a State, a stipulation for citizenship became necessary; whereas it would have been unnecessary had the inhabitants been incorporated as a State, and not as a Territory. And as they were not to be invested with citizenship by becoming a State, the delay which would occur between the incorporation

of the Territory into the Union and the arrival of the inhabitants to citizenship according to the principles of the constitution, under some uniform rule of naturalization, exhibited an interim which demanded the concluding stipulation, for “protection in the mean time for liberty, property, and religion.” As a State of the Union, they would not have needed a stipulation for the safety of their “liberty, property and religion;” as a Territory, this stipulation would govern and restrain the undefined power of Congress to make “rules and regulations for Territories.”

Mr. TRACY.—Mr. President: I shall vote against this bill, and will give some of the reasons which govern my vote in this case.

It is well known that this bill is introduced to carry into effect the treaty between the United States and France, which has been lately ratified. If that treaty be an unconstitutional compact, such a one as the President and Senate had no rightful authority to make, the conclusion is easy, that it creates no obligation on any branch or member of the Government to vote for this bill, or any other, which is calculated to carry into effect such unconstitutional compact.

The third and seventh articles of the treaty are, in my opinion, unconstitutional.

The third article is in the following words:

“The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and, in the mean time, they shall be maintained in the free enjoyment of their liberty, property, and the religion they profess.”

The obvious meaning of this article is, that the inhabitants of Louisiana are incorporated, by it, into the Union, upon the same footing that the Territorial Governments are, and, like them, the Territory, when the population is sufficiently numerous, must be admitted as a State, with every right of any other State.

Have the President and Senate a constitutional right to do all this?

When we advert to the constitution, we shall find that the President, by and with the advice and consent of the Senate, may make treaties. Now, say gentlemen, this power is undefined, and one gentleman says, it is unlimited.

True, there is no definition in words of the extent and nature of the treaty-making power. Two modes of ascertaining its extent have been mentioned: one is, by ascertaining the extent of the same power among the monarchs of Europe, and making that the standard of the treaty-making power here; and the other is, to limit the power of the President and Senate, in respect to treaties, by the constitution and the nature and principles of our Government.

Upon the first criterion, it is obvious that we cannot obtain any satisfactory definition of the treaty-making power, as applicable to our Government.

The paragraph in the constitution, which says that “new States may be admitted by Congress into this Union,” has been quoted to justify this treaty. To this, two answers may be given, either of which are conclusive in my favor. First, if Congress have the power collectively of admitting Louisiana, it cannot be vested in the President and Senate alone. Secondly, Congress have no power to admit new foreign States into the Union, without the consent of the old partners. The article of the constitution, if any person will take the trouble to examine it, refers to domestic States only, and not at all to foreign States; and it is unreasonable to suppose that Congress should, by a majority only, admit new foreign States, and swallow up, by it, the old partners, when two-thirds of all the members are made requisite for the least alteration in the constitution. The words of the constitution are completely satisfied by a construction which shall include only the admission of domestic States, who were all parties to the Revolutionary war, and to the compact; and the spirit of the association seems to embrace no other. But I repeat it, if the Congress collectively has this power, the President and Senate cannot, of course, have it exclusively.

I think, sir, that, from a fair construction of the constitution, and an impartial view of the nature and principles of our association, the President and Senate have not the power of thus obtruding upon us Louisiana.

The seventh article admits for twelve years the ships of France and Spain into the ceded territory, free of foreign duty. This is giving a commercial

preference to those ports over the other ports of the United States; because it is well known that a duty of forty-four cents on tonnage, and ten per cent. on duties, are paid by all foreign ships or vessels in all the ports of the United States. If it be said we must repeal those laws, and then the preference will cease, the answer is, that this seventh article gives the exclusive right of entering the ports of Louisiana to the ships of France and Spain, and if our discriminating duties were repealed this day, the preference would be given to the ports of the United States against those of Louisiana, so that the preference, by any regulation of commerce or revenue, which the constitution expressly prohibits from being given to the ports of one State over those of another, would be given by this treaty, in violation of the constitution. I acknowledge, if Louisiana is not admitted into the Union, and that if there is no promise to admit her, then this part of our argument will not apply; but, in declaring these to be facts, my opponents are driven to acknowledge that the third article of this treaty is void, which answers every purpose which I wish to establish, that this treaty is unconstitutional and void, and that I have, consequently, a right to withhold my vote from any bill which shall be introduced to carry it into effect. I acknowledge, sir, that my opinion ever has been, and still is, that when a treaty is ratified by the constituted authorities, and is a constitutional treaty, every member of the community is bound by it, as a law of the land; but not so by a treaty which is unconstitutional. The terms of this treaty may be extravagant and unwise, yet, in my legislative capacity, that can form no excuse for an opposition; we may have no title, we may have given an enormous sum, we may have made a silly attempt to destroy the discriminating duties, yet, if the treaty be not unconstitutional, every member of the Government is bound to carry it into effect.

Mr. BRECKENRIDGE observed, that he little expected a proceeding so much out of order would have been attempted, as a re-discussion of the merits of the treaty on the passage of this bill; but as the gentlemen in the opposition had urged it, he would, exhausted as the subject was, claim the indulgence of the Senate in replying to some of their remarks.

No gentleman, continued he, has yet ventured to deny, that it is incumbent on the United States to secure to the citizens of the western waters, the uninterrupted use of the Mississippi. Under this impression of duty, what has been the conduct of the General Government, and

particularly of the gentlemen now in the opposition, for the last eight months? When the right of deposit was violated by a Spanish officer without authority from his Government, these gentlemen considered our national honor so deeply implicated, and the rights of the western people so wantonly violated, that no atonement or redress was admissible, except through the medium of the bayonet. Negotiation was scouted at. It was deemed pusillanimous, and was said to exhibit a want of fellow-feeling for the western people, and a disregard to their essential rights. Fortunately for their country, the counsel of these gentlemen was rejected, and their war measures negatived. The so much scouted process of negotiation was, however, persisted in, and instead of restoring the right of deposit, and securing more effectually for the future our right to navigate the Mississippi, the Mississippi itself was acquired, and every thing which appertained to it. I did suppose that those gentlemen, who at the last session so strongly urged war measures for the attainment of this object, upon an avowal that it was too important to trust to the tardy and less effectual process of negotiation, would have stood foremost in carrying the treaty into effect, and that the peaceful mode by which it was acquired would not lessen with them the importance of the acquisition. But it seems to me, sir, that the opinions of a certain portion of the United States with respect to this ill-fated Mississippi, have varied as often as the fashions. [Here Mr. B. made some remarks on the attempts which were made in the old Congress, and which had nearly proved successful, to cede this river to Spain for twenty-five years.] But, I trust, continued he, these opinions, schemes, and projects will for ever be silenced and crushed by the vote which we are this evening about to pass.

Permit me to examine some of the principal reasons which are deemed so powerful by gentlemen as to induce them to vote for the destruction of this treaty. Unfortunately for the gentlemen, no two of them can agree on the same set of objections; and what is still more unfortunate, I believe there are no two of them concur in any one objection. In one thing only they seem to agree, and that is to vote against the bill. An honorable gentleman from Delaware (Mr. WHITE) considered the price to be enormous. An honorable gentleman from Connecticut, who has just sat down, (Mr. TRACY,) says he has no objection whatever to the price; it is, he supposes, not too much. An honorable gentleman from Massachusetts (Mr. PICKERING) says that France acquired no title from Spain, and therefore our

title is bad. The same gentleman from Connecticut (Mr. TRACY) says he has no objection to the title from France; he thinks it a good one. The gentleman from Massachusetts (Mr. PICKERING) contends that the United States cannot under the constitution acquire foreign territory. The gentleman from Connecticut is of a different opinion, and has no doubt but that the United States can acquire and hold foreign territory; but that Congress alone have the power of incorporating that territory into the Union. What weight, therefore, ought all their lesser objections to be entitled to, when they are at war among themselves on the greater one?

The same gentleman has told us, that this acquisition will, from its extent, soon prove destructive to the confederacy.

This, continued Mr. B., is an old and hackneyed doctrine; that a republic ought not to be too extensive. But the gentleman has assumed two facts, and then reasoned from them. First, that the extent is too great; and secondly, that the country will be soon populated. I would ask, sir, what is his standard extent for a republic? How does he come at that standard? Our boundary is already extensive. Would his standard extent be violated by including the island of Orleans and the Floridas? I presume not, as all parties seem to think their acquisition, in part or in whole, essential. Why not then acquire territory on the west, as well as on the east side of the Mississippi? Is the Goddess of Liberty restrained by water courses? Is she governed by geographical limits? Is her dominion on this continent confined to the east side of the Mississippi? So far from believing in the doctrine that a republic ought to be confined within narrow limits, I believe, on the contrary, that the more extensive its dominion the more safe and more durable it will be. In proportion to the number of hands you intrust the precious blessings of a free government to, in the same proportion do you multiply the chances for their preservation. I entertain, therefore, no fears for the confederacy on account of its extent.

I had hoped, sir, that the gentleman from Connecticut, (Mr. TRACY,) from the trouble he was so good as to give himself yesterday in assisting to amend this bill, would have voted for it; but it seems he is constrained to vote to-day against it. He asks, if the United States have power to acquire and add new States to the Union, can they not also cede States? Can they not, for example, cede Connecticut to France? I answer they cannot; but for none of the reasons assigned by him. The Government of the United States

cannot cede Connecticut, because, first, it would be annihilating part of that sovereignty of the nation which is whole and entire, and upon which the Government of the United States is dependent for its existence; and secondly, because the fourth section of the fourth article of the constitution forbids it. But how does it follow as a consequence, that because the United States cannot cede an existing State, they cannot acquire a new State? He admits explicitly that Congress may acquire territory and hold it as a territory, but cannot incorporate it into the Union. By this construction he admits the power to acquire territory, a modification infinitely more dangerous than the unconditional admission of a new State; for by his construction, territories and citizens are considered and held as the property of the Government of the United States, and may consequently be used as dangerous engines in the hands of the Government against the States and people.

Could we not, says the same gentleman, incorporate in the Union some foreign nation containing ten millions of inhabitants—Africa, for instance—and thereby destroy our Government? Certainly the thing would be possible if Congress would do it, and the people consent to it; but it is supposing so extreme a case and is so barely possible, that it does not merit serious refutation. It is also possible and equally probable that republicanism itself may one day or other become unfashionable, (for I believe it is not without its enemies,) and that the people of America may call for a king. From such hypotheses it is impossible to deduce any thing for or against the construction contended for. The true construction must depend on the manifest import of the instrument and the good sense of the community.

The same gentleman, in reply to the observations which fell from the gentleman from South Carolina, as to the admission of new States, observes, that although Congress may admit new States, the President and Senate, who are but a component part, cannot. Apply this doctrine to the case before us. How could Congress by any mode of legislation admit this country into the Union until it was acquired? And how can this acquisition be made except through the treaty-making power? Could the gentleman rise in his place and move for leave to bring in a bill for the purchase of Louisiana and its admission into the Union? I take it that no transaction of this or any other kind with a foreign power can take place except through

the Executive Department, and that in the form of a treaty, agreement, or convention. When the acquisition is made, Congress can then make such disposition of it as may be expedient.

Mr. ADAMS.—It is not my intention to trespass long upon the patience of the Senate, on a subject which has already been debated almost to satiety; but, as objections on constitutional grounds have been raised against the bill under discussion, I wish to say a very few words in justification of the vote which I think it my duty to give.

The objections against the passage of the bill, as far as my recollection serves me, are two: the first, started by the honorable gentleman from Delaware who opened this debate; the second, urged by several of the other members who have spoken upon the question.

The gentleman from Delaware admits the necessity of making the provision for carrying into execution, on our part, the treaty which has been duly ratified by the Senate, *provided* we can obtain complete and undoubted possession of the territory ceded us by France, in that treaty. But he observes, that the term possession is indefinite; that it may mean nothing more than the delivery of a twig, or of the knob of a door. That, from sources of the authenticity of which we have no reason to doubt, we are informed that Spain is very far from acquiescing in the cession of this territory to us; that probably the Spanish officers will not deliver peaceable possession; and that we ought not to put out of our own hands the power of withholding the payment of this money, until it shall be ascertained, beyond all question, that the territory, for which it is the consideration, is in our hands. But, sir, admitting that the word possession were of itself not sufficiently precise, I think, with the gentleman last up, that the fourth and fifth articles of the treaty, read by him, render it so in this instance. The fourth, stipulating that the French commissary shall do *every act necessary* to receive the country from the Spanish officers, and transmit it to the agent of the United States—and the fifth, providing, not only that all the *military posts* shall be delivered to us, and that the troops, whether of France or Spain, shall cease to occupy them, but that those troops shall all be embarked within three months after the ratification of the treaty. Now, when the country has been formally surrendered to us, when all the military posts are in our hands, and when all the troops, French or Spanish, have been embarked, what possible adverse possession can there be to contend against

ours? Until all these conditions shall have been fulfilled on the part of France, neither the convention nor the bill before us requires the payment of money on ours; and we may safely trust the execution of the law to the discretion of the President of the United States. For, even if I could see any reason for distrusting him in the exercise of such a power, under different circumstances, which I certainly do not, still, in the present case, his own interest, and the weight of responsibility resting upon him, are ample security to us, against any undue precipitation on his part, in the payment of the money. On the other hand, I am extremely solicitous that every tittle of the engagements on our part in these conventions should be performed with the most scrupulous good faith, and I see no purpose of utility that can be answered by postponing the determination on the passage of this bill.

But it has been argued that the bill ought not to pass, because the treaty itself is unconstitutional, or, to use the words of the gentleman from Connecticut, an extra-constitutional act; because it contains engagements which the powers of the Senate were not competent to ratify, the powers of Congress not competent to confirm, and, as two of the gentlemen have contended, not even the Legislatures of the number of States requisite to effect an amendment of the constitution are adequate to sanction. It is therefore, say they, a nullity; we cannot fulfil our part of its conditions, and on our failure in the performance of any one stipulation, France may consider herself as absolved from the obligations of the whole treaty on her. I do not conceive it necessary to enter into the merits of the treaty at this time. The proper occasion for that discussion is past. But, allowing even that this is a case for which the constitution has not provided, it does not in my mind follow, that the treaty is a nullity, or that its obligations, either on us or on France, must necessarily be cancelled. For my own part, I am free to confess, that the third article, and more especially the seventh, contain engagements placing us in a dilemma, from which I see no possible mode of extricating ourselves but by an amendment, or rather an addition to the constitution. The gentleman from Connecticut, (Mr. TRACY,) both on a former occasion, and in this day's debate, appears to me to have shown this to demonstration. But what is this more than saying, that the President and Senate have bound the nation to engagements which require the co-operation of more extensive powers than theirs, to carry them into execution? Nothing is more common, in the negotiations between nation and nation, than for a minister to agree to and sign articles beyond the

extent of his powers. This is what your ministers, in the very case before you, have confessedly done. It is well known that their powers did not authorize them to conclude this treaty; but they acted for the benefit of their country, and this House by a large majority has advised to the ratification of their proceedings. Suppose then, not only that the ministers who signed, but the President and Senate who ratified this compact, have exceeded their powers. Suppose that the other House of Congress, who have given their assent by passing this and other bills for the fulfilment of the obligations it imposes on us, have exceeded their powers. Nay, suppose even that the majority of States competent to amend the constitution in other cases, could not amend it in this, without exceeding their powers—and this is the extremest point to which any gentleman on this floor has extended his scruples—suppose all this, and there still remains in the country a power competent to adopt and sanction every part of our engagements, and to carry them entirely into execution. For, notwithstanding the objections and apprehensions of many individuals, of many wise, able and excellent men, in various parts of the Union, yet such is the public favor attending the transaction which commenced by the negotiation of this treaty, and which I hope will terminate in our full, undisturbed and undisputed possession of the ceded territory, that I firmly believe if an amendment to the constitution, amply sufficient for the accomplishment of every thing for which we have contracted, shall be proposed, as I think it ought, it will be adopted by the Legislature of every State in the Union. We can therefore fulfil our part of the conventions, and this is all that France has a right to require of us.

Mr. NICHOLAS.—Mr. President: The gentlemen on the other side differ among themselves. The two gentlemen from Delaware say, that if peaceable possession is given of Louisiana this bill ought to pass; the other gentlemen who have spoken in opposition to it have declared, that if they believed the constitution was not violated by the treaty, they should think themselves bound to vote for the bill. To this Senate it cannot be necessary to answer arguments denying the power of the Government to make such a treaty; it has already been affirmed, so far as we could affirm it, by two-thirds of this body; it is then only now necessary to show that we ought to pass the bill at this time. In addition to the reasons which have been so ably and forcibly urged by my friends, I will remark, that the treaty-making power of this Government is so limited, that engagements to pay money cannot be carried into effect without the consent and co-operation of Congress. This was

solemnly decided, after a long discussion of several weeks, by the House of Representatives, which made the appropriations for carrying the British treaty into effect, and such I believe is the understanding of nine-tenths of the American people, as to the construction of their constitution. This decision must be also known to foreigners, and if not, they are bound to know the extent of the powers of the Government with which they treat. If this bill should be rejected, I ask gentlemen whether they believe, that France would or ought to execute the treaty on her part? It is known to the French Government that the President and Senate cannot create stock, nor provide for the payment of either principal or interest of stock; and if that Government should be informed that a bill, authorizing the issue of stock to pay for the purchase, "after possession shall be delivered," had been rejected by the only department of our Government competent to the execution of that part of the treaty, they would have strong ground to suspect that we did not mean to execute the treaty on our part; particularly when they are informed, that the arguments most pressed in opposition to the bill were grounded upon a belief that the Government of the United States had not a constitutional power to execute the treaty. Of one thing I am confident, that if they have the distrust of us which some gentlemen have this day expressed of them, the country will not be delivered to the agents of our Government should this bill be rejected.

The gentleman from Connecticut (Mr. TRACY) muse consider the grant of power to the Legislature as a limitation of the treaty-making power, for he says, "that the power to admit new States and to make citizens is given to Congress, and not to the treaty-making power;" therefore an engagement in a treaty to do either of these things is unconstitutional. I cannot help expressing my surprise at that gentleman's giving that opinion, and I think myself justifiable in saying, that if it is now his opinion, it was not always so. The contrary opinion is the only justification of that gentleman's approbation of the British treaty, and of his vote for carrying it into effect. By that treaty a great number of persons had a right to become American citizens immediately; not only without a law, but contrary to an existing law. And by that treaty many of the powers specially given to Congress were exercised by the treaty-making power. It is for gentlemen who supported that treaty, to reconcile the construction given by them to the constitution in its application to that instrument, with their exposition of it at this time.

If the third article of the treaty is an engagement to incorporate the Territory of Louisiana into the Union of the United States, and to make it a State, it cannot be considered as an unconstitutional exercise of the treaty-making power; for it will not be asserted by any rational man that the territory is incorporated as a State by the treaty itself, when it is expressly declared that “the inhabitants shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution.” Evidently referring the question of incorporation, in whatever character it was to take place, to the competent authority; and leaving to that authority to do it, at such time, and in such manner, as they may think proper. If, as some gentlemen suppose, Congress possess this power, they are free to exercise it in the manner that they may think most conducive to the public good. If it can only be done by an amendment to the constitution, it is a matter of discretion with the States whether they will do it or not; for it cannot be done “according to the principles of the Federal Constitution,” if the Congress or the States are deprived of that discretion, which is given to the first, and secured to the last, by the constitution. In the third section of the fourth article of the constitution it is said, “New States may be admitted by the Congress into this Union.” If Congress have the power, it is derived from this source; for there are no other words in the constitution that can, by any construction that can be given to them, be considered as conveying this power. If Congress have not this power, the constitutional mode would be by an amendment to the constitution. If it should be conceded then that the admission of this territory into the Union, as a State, was in the contemplation of the contracting parties, it must be understood with a reservation of the right of this Congress or of the States to do it, or not; the words “admitted as soon as possible,” must refer to the voluntary admission in one of the two modes that I have mentioned; for in no other way can a State be admitted into this Union.

The question was then taken on the passage of the bill, and carried in the affirmative—yeas 26, nays 5, as follows:

YEAS—Messrs. Adams, Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Plumer, Potter, Israel Smith, John Smith, Stone, Taylor, Worthington, and Wright.

NAYS—Messrs. Hillhouse, Pickering, Tracy, Wells, and White.

FRIDAY, November 4.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

By the copy now communicated of a letter from Captain Bainbridge, of the Philadelphia frigate, to our Consul at Gibraltar, you will learn that an act of hostility has been committed on a merchant vessel of the United States, by an armed ship of the Emperor of Morocco. This conduct on the part of that power is without cause and without explanation. It is fortunate that Captain Bainbridge fell in with and took the capturing vessel and her prize; and I have the satisfaction to inform you that about the date of this transaction, such a force would be arriving in the neighborhood of Gibraltar, both from the east and from the west, as leaves less to be feared for our commerce, from the suddenness of the aggression.

On the 4th of September, the Constitution frigate, Captain Preble, with Mr. Lear on board, was within two days' sail of Gibraltar, where the Philadelphia would then be arrived with her prize; and such explanations would probably be instituted as the state of things required, and as might perhaps arrest the progress of hostilities.

In the mean while, it is for Congress to consider the provisional authorities which may be necessary to restrain the depredations of this power, should they be continued.

TH. JEFFERSON.

Nov. 4, 1803.

The Message and papers therein referred to were read and ordered to lie for consideration.

THURSDAY, November 10.

The credentials of JOHN CONDIT, appointed a Senator by the Legislature of the State of New Jersey, for the time limited in the Constitution of the United States, were presented and read.

Ordered, That they lie on file.

FRIDAY, November 11.

The PRESIDENT communicated a letter from De Witt Clinton, late a Senator from the State of New York, stating that he had resigned his seat in the Senate.

MONDAY, November 14.

The PRESIDENT administered the oath required by law to Mr. CONDIT, a Senator from the State of New Jersey.

TUESDAY, November 15.

Mr. WORTHINGTON presented the petition of a number of the inhabitants of the Indiana Territory, praying to be set off into a separate district, for reasons therein stated.

Ordered, That it be referred to Mr. BRADLEY and others, the committee to whom were referred on the 7th instant, petitions on the same subject, to consider and report thereon to the Senate.

WEDNESDAY, November 23.

Amendment to the Constitution.

The Senate resumed the consideration of the report of the committee to whom was referred the motion for an amendment to the constitution in the mode of electing the President and the Vice President of the United States; whereupon, the President *pro tem.* (Mr. BROWN) submitted to the consideration of the Senate the following question of order:

“When an amendment to be proposed to the constitution is under consideration, shall the concurrence of two-thirds of the members present be requisite to decide any question for amendments, or extending to the merits, being short of the final question?”

[A debate took place on this proposition, tedious, intricate, and desultory, which it was very difficult to follow, and often to comprehend.]

The proposition offered by the President was then called up for decision, whether two-thirds were necessary—ayes 13, noes 18.

Mr. BUTLER desired to know from the President if the question now decided did not require a majority of two-thirds?

The PRESIDENT said, according to the rule of the House, the question required only a principal majority to decide.

Mr. DAYTON’s motion for striking out what related to the Vice President was called for, and the question taken on striking out—ayes 12, noes 19.

The report of the committee at large being then under consideration,

Mr. NICHOLAS moved to strike out all following the seventh line of the report, to the end, for the purpose of inserting the following:

“In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person voted for as President, having a majority of the votes of all the Electors appointed, shall be the President; and if no person have such majority, then from the three highest on the list of those voted for as President, the House of Representatives shall choose the President in the manner directed by the constitution. The person having the greatest number of votes as Vice President, shall be the Vice President; and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the constitution; but no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.”

Mr. ADAMS objected to the number “three” instead of five, and wished five to be restored, as the House of Representatives had already agreed to it. He asked for a division of the question; which was not agreed to.

Upon the question for striking out being put, it was carried without a dissenting voice, and the amendment of Mr. NICHOLAS adopted in the report, leaving the number blank.

Mr. DAYTON moved to fill up the blank with the number five; upon the question being put, it was lost—only eleven rose in the affirmative.

Mr. ANDERSON moved to strike out the word “two” in the nineteenth line—ayes 6. Lost.

Mr. S. SMITH then moved to fill the blank with the word “three;” which was carried—ayes 18, noes 13.

Mr. ADAMS suggested an objection to the amendment as it stood, which appeared to arise out of the treaty of cession of Louisiana. His original idea was adverse to the limitation to natural-born citizens, as superfluous; but, as it stood, the terms upon which Louisiana was acquired had rendered a change necessary, for it appeared to him that there was no alternative, but to admit those born in Louisiana as well as those born in the United States to the right of being chosen for President and Vice President.

Mr. BUTLER said that, if there was a numerous portion of those who were already citizens of the United States who can never aspire to, nor be eligible for, those situations under the constitution, he did not see how this supposed alternative could be upheld. The people of Louisiana, under the treaty and under the constitution, will clearly come under the description of naturalized citizens. While he was up, he would take the opportunity of speaking to the question at large, and to examine the motives which produced this amendment; the principal cause of solicitude, on this subject, he understood to be the base intrigues which were said to have been carried on at the Presidential election.

Mr. WRIGHT called to order; and a short altercation on the point of order took place.

Mr. BUTLER proceeded. He had on a former day asked if he might, in this stage of the discussion, take a view of the whole subject; the House had decided in the affirmative. When the proposition was first laid before the

House, he had felt a disposition in favor of it; his mind had been shocked by those base intrigues, which had taken place at the late Presidential election, and he was hurried by indignation into a temper which a little cool reflection and some observation on a particular mode of action in that House, had checked and corrected, and finally convinced him that much caution was required in a proceeding of that nature, and that, in all human probability, such a scene of intrigue may never occur again; that it became questionable whether any steps whatever were necessary. Upon a careful review of the subject, it appeared to him that an alteration might make matters worse; for though at present there has been afforded, by a course of accidents and oversights, room for intrigue, it would be preferable to leave it to the care and discretion of the States at large to prevent the recurrence of the danger, than put into the hands of four of the large States the perpetual choice of President, to the exclusion of the other thirteen States. It was a reasonable principle that every State should, in turn, have the choice of the Chief Magistrate made from among its citizens. The jealousy of the small States was natural; and he would not tire the House by bringing to their ears arguments from the history of Greece, because the subject must be familiar to every member of that House, and, indeed, to every school-boy. He would not weary them with the painful history of the conflicts of Athens and Sparta, for the supremacy of Greece, and the fatal effects of their quarrels and ambition on the smaller States of that inveterate confederacy of Republics. Their history is that of all nations in similar circumstances; for man is man in every clime, and passion mingles in all his actions. If the smaller States were to agree to this amendment, it would fix for ever the combination of the larger States, and they would not only choose the President but the Vice President also in spite of the smaller States. It would ill become him who had been a member of that convention which had the honor of forming the present constitution to let a measure such as the present pass without the most deliberate investigation of its effects. Before the present constitution was adopted all the States held an equal vote on all national questions; by the constitution their sovereignty was guaranteed, and the instrument of guarantee and right, he had subscribed his name to as a Representative from South Carolina, and had used all the zeal and influence of which he was possessed to promote its adoption. To give his assent to any violation of it, or any unnecessary innovation on its principles, would be a deviation from morality.

The question was immediately taken on the report and carried—yeas 20, nays 11.

Mr. ADAMS said, that though he had voted for the amendment, he disapproved of the alteration from five to three. He felt, however, though a representative of a large State, a deep interest in this question. Was there no champion of the small States to stand up in that House and vindicate their rights?

Mr. DAYTON was not here as champion of the small States; but, as the representative of one of them, he was ready to enter his protest against being delivered over bound hand and foot to four or five of the large States. The gentleman from South Carolina had offered arguments on the subject irrefutable. The little portion of influence left us he has demonstrated to be now about to be taken away, and the gentleman from Massachusetts, (Mr. ADAMS,) after aiding the effort with his vote, has taken mercy upon us, and after he has helped to knock us down, asks us why we do not stand up for ourselves.

Mr. S. SMITH was not surprised to find those who were members of the old Congress, in which the subject of large and small States was frequently agitated, familiar with the subject of those days. Under the present constitution he had been ten years in Congress and had never heard the subject agitated, nor the least ground given for any apprehension on this subject; he had seen the small States possess all the advantages secured to them without even a moment's jealousy. The State he represented was once considered a large State; the increase of others in population, however, had rendered it properly belonging to neither class; it was an intermediate State; but from the natural progression of the Union it must be ranked among the small States. In this view then he could speak dispassionately, and the small States could not with reason be apprehensive that a State, which must speedily take rank among them, could be indifferent to their rights if there were the least cause for apprehension.

He had moved for the insertion of three instead of five, with this precise and special intention, that the people themselves should have the power of electing the President and Vice President; and that intrigues should be thereby for ever frustrated. The intention of the convention was that the election of the chief officers of the Government should come as

immediately from the people as was practicable, and that the Legislature should possess the power only in such an exigency as accident might give birth to, but which they had considered as likely to occur. Had it not been for these considerations, the large States never would have given up the advantages which they held in point of numbers. If the number five were to be continued, and the House of Representatives made the last resort, he would undertake to say, that four times out of five the choice would devolve upon them.

Mr. HILLHOUSE.—In avoiding rocks he feared we were steering for quicksands. The evils that are past we know; those that may arrive we know not. The object proposed is to provide against a storm, a phenomenon not rare or unfrequent in republics. You are called upon to act upon a calculation that all the States in the Union will vote for the same persons, or that each of two parties opposed in politics will have an individual candidate. Suppose the two candidates who had the highest votes on the late election had been the champions of two opposite parties, and that neither would recede, what then would be the consequence; according to the gentleman from Maryland, a civil war! When men are bent on a favorite pursuit, they are too apt to shut out all consequences which do not bear out their object. Thus gentlemen can very well discover the danger they have escaped, but they do not perceive that the opposition of two powerful candidates gives, besides the hazard of civil war, the hazard of placing one of them on a permanent throne. The First Magistracy of this nation is an object capable of exciting ambition; and no doubt it would one day or other be sought after by dangerous and enterprising men. It was to place a check upon this ambition that the constitution provided a competitor for the Chief Magistrate, and declared that both should not be chosen from the same State. Here also was a guard against State pride, and this guard you wish to take away; and what will be the consequence? Instead of two or three or five, you will have as many candidates as there are States in the Union. By voting for two persons without designation, the States stood a double chance of a majority, besides the chance of a majority of all the States in the House of Representatives. For once or twice there may be such an organization of party as will secure for a conspicuous character the majority of votes. But that character cannot live always. The evil of the last election will recur, and be greater, because the whole field will be to range in.

He hoped this amendment would not be hastily adopted. The subsisting mode was the result of much deliberation and solemn compromise, after having long agitated the convention. It is now attacked by party, whatever gentlemen may say to the contrary; the gentleman from South Carolina has confessed it. If gentlemen will suffer themselves to look forward without passion, great good may come from the present mode; men of each of the parties may hold the two principal offices of the Government; they will be checks upon each other; our Government is composed of checks; and let us preserve it from party spirit, which has been tyrannical in all ages. These checks take off the fiery edge of persecution. Would not one of a different party placed in that chair tend to check and preserve in temper the overheated zeal of party? he would conduct himself with firmness because of the minor party; he would take care that the majority should have justice, but he would also guard the minority from oppression. If we cannot destroy party we ought to place every check upon it. If the present amendment pass, nine out of ten times the election will go to the other House, and then the only difference will be that you had a comedy the last time, and you'll have a tragedy the next. Though it was impossible to prevent party altogether, much more when population and luxury increase, and corruption and vice with them, it was prudent to preserve as many checks against it as was practicable. He had been long in Congress and saw the conflicting interests of large and small States operate; the time may not be remote when party will adopt new designations; federal and republican parties have had their day, their designations will not last long, and the ground of difference between parties will not be the same that it has been; new names and new views will be taken; it has been the course in all nations. There has not yet been a rotation of offices in which the small States could look for their share, but the time may, it will come when the small will wrestle with the large States for their rights. Each State has felt that though its limits were not so extensive as others, its rights were not disregarded. Suffer this confidence to be done away, and you may bid adieu to it; three or four large States will take upon them in rotation to nominate the Executive, and the second officer also. This will be felt. A fanciful difference in politics is the bugbear of party now, because no other, no real cause of difference has subsisted. But remedy will create a real disease. States like individuals may say we will be of no party, and whenever this shall happen blood will follow.

Mr. BRADLEY moved an adjournment. The motion was agreed to.

THURSDAY, November 24.

Amendment to the Constitution.

The consideration of the report on the amendment to the constitution being taken up, the amendment as directed to be printed on the preceding day, was taken up, and read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment be proposed to the Legislatures of the several States as an amendment to the constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as a part of the said constitution, viz:

In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person voted for as President having a majority of the votes of all the Electors appointed, shall be the President, and if no person have such majority, then from the three highest on the list of those voted for as President, the House of Representatives shall choose the President in the manner directed by the constitution. The person having the greatest number of votes as Vice President, shall be Vice President; and in case of an equal number of votes for two or more persons for the Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the constitution; but no person constitutionally ineligible to the office of President, shall be eligible to that of the President of the United States.

Mr. BRADLEY did not approve of the amendment as it now stood; he could not see why the Vice President should not be chosen by a majority, as well as the President. He considered the possibility of the Vice President becoming President by any casualty, as a good reason for both being chosen

by the same ratio of numbers. If it should be carried as the amendment now stands, the office of Vice President would be hawked about at market, and given as change for votes for the Presidency. And what would be the effect?—that it might so happen that a citizen chosen only for the office of Vice President, might by the death of the President, though chosen only by a plurality, become President, and hold the office for three years eleven months and thirty days. He did not approve of many arguments which he had heard on the preceding day, and however disposed to concur in the principle of designation for the two offices, he could not give it his vote in the present shape. He would, in order to render the report more congenial with his wishes, move to strike out the following words beginning with the words *shall*, in the thirteenth line, to *constitution*, in the eighteenth. The motion was seconded.

Mr. TRACY opposed the striking out, as not in order, it being an amendment to an amendment already received by the House. He thought, however, it would be in order to reconcile the whole, and then any part might be amended.

The PRESIDENT said that the motion for amending the amendment was not in order; but if the member from Vermont, or any other gentleman of the majority on the question yesterday chose to move for a recommittal, or even to refer the report to a select committee, it would be in order.

Mr. BRADLEY then renewed his motion as before, for striking out and inserting after the 13th line; this amendment he thought of great importance, as under the constitution as it now stands the Vice President must be a person of the highest respectability, well known, and of established reputation throughout the United States; but if the discriminating principle prevails without some precautions such as the amendment proposed, that assurance would be lost; and he should not be surprised to hear of as many candidates for Vice President as there are States, as the votes for President would be offered in truck for votes for Vice President, and an enterprising character might employ his emissaries through all the States to purchase them, and your amendment lays the foundation for intrigues. He was desirous that he who is to be set up as candidate for the Vice President should as at present be equally respectable, or that there should be none—that at least he should be the second man in

the nation; adopt the designating principle, without the most guarded precautions, and you lose that assurance.

Mr. HILLHOUSE accorded with the gentleman's amendment, as it naturally grows out of the principles of the report. There was not a word in the constitution about voting for the Vice President, no vote in fact is given for such an office; the alteration to designation alters the whole thing; and as the gentleman has expressed, will send the Vice President's office into market to be handed about as change for the candidate supported by larger States; he would prefer leaving the choice of President and Vice President at once to the larger States than take it in this way. In calm times any government may work well, but he wished in calm times to provide against storm. If we designate any, then designate both and on equal terms.

Mr. JACKSON said, that though coming from a small State he had not been instructed, and was therefore at perfect liberty to act according to the best of his judgment; though his State was now, in regard to population, small, and though it were to remain so, he could have but one opinion on this subject. He saw abundance of reason for preferring three to five. The constitution under the present form has directed the choice to be made from five. But the reason of this was consistent with the result to be produced; the electors were to vote for two persons indiscriminately, but with the restriction of voting for one only belonging to the State where the vote was given. The voting for two would necessarily bring forward four candidates, and a fifth possibly, for we saw in the two elections before the last that there was one more than the four, though in each case the fifth had but one vote; he alluded to the vote for Mr. Jay. In the amendment proposed you are called upon to designate for each office, and there can be little apprehension of having more than two or three principal candidates; and for twenty years to come he had no apprehension of a greater number of candidates if this amendment prevails.

Mr. WRIGHT.—We need not be told in this house, that the constitution was the result of a compromise, or that care was taken to guard the rights of each State; these things we must be very ignorant, indeed, not to know. But does it therefore follow that it is not susceptible of amendment or correction under experience? Does it follow, because, for mutual interest and security, this compromise was made, that we are precluded from effecting any greater good? No man would accuse him of a wish to see the interest of any

State impaired. But we can preserve the spirit and intention of the constitution in full vigor, without impairing any interests. And this is to be done, by the discriminating principle; it fulfills the intention, and it forefends the recurrence of that danger from which you have once escaped. By this principle, each elector may name his man for each office, and this can be done whether the number be three or five. For the latter number he was disposed; because already adopted by the other House, and he did not wish to delay its progress. If we were to form a constitution, he would provide that there should be only two candidates presented to the House. But he did not rely on any number so much as on the discriminating principle.

Mr. NICHOLAS.—Several gentlemen profess much reluctance to make any change in the constitution; he would make no such profession; and though he should be as jealous of improper alterations, or the introduction of principles incompatible with Republican Government, he would not hesitate to make any alteration calculated to promote, or secure the public liberty upon a firmer basis; nay, if it could be made better he would expunge the whole book. Gentlemen who are for adhering so closely to the constitution, appear not to consider that a choice of President from the number three, is more in the spirit of the constitution than from five; and preserves the relation that the election of two persons, under the present form, holds to the number five. A reason equally forcible with him was, that, by taking the number three instead of five, you place the choice with more certainty in the people at large, and render the choice more consonant to their wishes. With him, also, it was a most powerful reason for preferring three, that it would render the Chief Magistrate dependent only on the people at large, and independent of any party or any State interest. The people held the sovereign power, and it was intended by the constitution that they should have the election of the Chief Magistrate. It was never contemplated as a case likely to occur, but in an extreme case, that the election should go to the House of Representatives. What, he asked, would have been the effect, had Mr. Jay been elected when he had only one vote? What, he would ask, would be the impression made upon our own people, and upon foreign nations, had Mr. Aaron Burr been chosen at the last election, when the universal sentiment was to place the present Chief Magistrate in that station? He did not mean any thing disrespectful or invidious towards the Vice President, he barely stated the fact, so well known, and asked, what

would be the effect? Where would be the bond of attachment to that constitution which could admit of an investiture in a case so important, in known opposition to the wishes of the people? The effect would be fatal to the constitution itself; it would weaken public attachment to it, and the affectation, if alone for the small States, would not have been heard of in the deep murmur of discontent.

An adjournment was now called for and carried.

TUESDAY, November 29.

Amendment to the Constitution.

The order of the day being called up on the amendments to the constitution, a considerable time elapsed, when

Mr. DAYTON rose and said, that since no other gentleman thought proper to address the Chair, although laboring himself under a very severe cold, which rendered speaking painful, he could not suffer the question to pass without an effort to arrest it in its progress; and should consider his last breath well expended in endeavoring to prevent the degradation which the State he represented would suffer if the amendment were to prevail.

As to the question immediately before the Senate for filling the blank with five, he felt himself indebted to the member from Tennessee for renewing the subject. He was grateful, also, to the member from Maryland (Mr. WRIGHT) for declaring he would support it, as well as for giving the assurance that he was disposed to consider and spare the interests of the small States as far as possible, consistently with the great object of discrimination.

Every member who had spoken on this subject seemed to have admitted, by the very course and pointing of their arguments, even though they may have denied it in words, that this was really a question between great and small States, and disguise it as they would, the question would be so considered out of doors. The privilege given by the constitution extended to five, out of which the choice of President should be made; and why should the smaller, for whose benefit and security that number was given, now wantonly throw it away without an equivalent? As to the Vice President, his

election had no influence upon the number, because the choice of President in the House of Representatives was as free and unqualified as if that subordinate office did not exist. Nay, he said, he would venture to assert that, even if the number five were continued, and the Vice Presidency entirely abolished, there would not be as great a latitude of choice as under the present mode, because those five out of whom the choice must eventually be made, were much more likely hereafter to be nominated by the great States, inasmuch as their electors would no longer be compelled to vote for a man of a different State. The honorable gentleman from Maryland (Mr. SMITH) has said, he was not surprised that those who had seats in the old Congress, should perplex themselves with the distinctions; but he could tell that gentleman, that it was not in the old Congress he had learnt them, for there he had seen all the votes of the States equal, and had known the comparatively little State of Maryland controlling the will of the *Ancient Dominion*. It was in the Federal Convention that distinction was made and acknowledged; and he defied that member to do, what had been before requested of the honorable gentleman of Virginia, viz: to open the constitution, and point out a single article, if he could, that had not evidently been framed upon a presumption of diversity (he had almost said, adversity) of interest between the great and small States.

Mr. ADAMS in a former debate had stated that he had not a wish to avoid or seek for the yeas and nays on any question; on the present occasion, however, he would, when the question was taken, call for the yeas and nays. But his own vote on the final question would be governed by the decision of the number five, and he wished to have some record of his vote, that he might be hereafter able to defend himself against any charge of inconsistency. On the principle of the amendment he had formed his opinion, and he was free to confess, that notwithstanding the many able productions which he had seen against it, he thought it calculated to produce more good than evil. He was not, however, influenced in this opinion by the instructions which had been read in a preceding debate from a former Legislature of Massachusetts to their Senators; he presumed these were not read by way of intimidation. To the instructions of those to whom he owed his seat in that House he would pay every respect that was due, but he did not think that the resolutions of a Legislature passed in March 1799 or 1800 ought to have the same weight. Since that time four total and complete changes had taken place, and probably not one third of those who

gave those instructions now remained. He held a seat in the Legislature himself three years since, but did not perceive any particular anxiety on the subject, and he did not think that the present Legislature would be extremely offended if he were to give a direct vote against what was recommended four years ago.

The constitution was a combination of federative and popular principles. When you argue upon, or wish to change any of its federative principles, you must use analogies as arguments; popular arguments will not apply to federative principles. The House of Representatives was founded on popular principles; in this House the representation is federative, and not popular; it is in its nature aristocratic. The foundation of all popular representation is equality of votes; but even the ratio of representation is different in different States; the numbers in Massachusetts and Virginia, in Vermont and Delaware, are different in their proportions; but still an equality of representation is preserved, and the only difference is in the details. But if you argue upon the principles of the Senate, this equality of popular representation, or by an equal or relatively equal number, will not apply; you must discuss it upon another species of equality, of sovereignties, and the independence of several States federatively connected. Applying principles then to the election of President, if you reduce the number from which the House of Representatives is authorized to choose, do you not attack the principles of the federal compact, rather than the rights of the small States? The Executive, it had been said, is the man of the people; true, and he is also, as was said, though upon different grounds, the man of the Legislature—it was here a combined principle, federative and popular. Virginia had in that House twenty-two popular representatives, in this she has two federative; Delaware has one popular and two federative representatives. And even in the operation of election in the popular branch of Congress, the federative principle is pursued, and the State which has only one popular representative has an equal voice in that instance with the State that has twenty-two popular representatives. It was therefore evident that the attempt to alter the number from five to three, is an attack upon the federative principle, and not upon the small States.

Mr. S. SMITH, when he made the motion for filling up the blank with three, did it after the most deliberate consideration of the theory and the principles of the constitution; which, if he understood it right, intended that

the election of the Executive should be in the people, or as nearly as was possible, consistent with public order and security to the right of suffrage. The provision admitting the choice by the House of Representatives, was itself intended only for an extreme case, where great inconvenience might result from sending a defective election back to the people, as is customary in Massachusetts, where, if the majority is deficient, a new election is required. Our object in the amendment is or should be to make the election more certain by the people. This was to be done most effectually by leaving it to them to designate the persons whom they preferred for each office. As under the present form there was an extreme case, so there might be when the change of number should take place; for, although even with the number three, there was a possibility of the choice devolving on the House of Representatives, yet the adoption of the designating principle and the number three, would render the case less probable. It never was the intention of the framers of the constitution that the election should go to the House of Representatives but in the extreme case; nor was it ever contemplated that about one-fifth of the people should choose a President for the rest, which certainly would be the case if what some gentlemen contended for were to take place. When gentlemen contend for such a power as would transfer the choice from the people, and place it in the hands of a minority so small, how happens it that gentlemen will not bear to hear of the efforts which such arguments or such measures would produce on the larger States? It was not the interest of the small States to combine against the large. Suppose it were possible that the four large States should combine—and a combination of the small States alone could produce such an effect—nine States in the Union have but thirty-two votes out of one hundred and forty-two, yet nine States, with one vote each, make a majority of seventeen, though in relation to population they contain only about one-fifth of the whole; and by such a proceeding the one-fifth might choose a President and Vice President in defiance of the other four-fifths. What would be the consequence of such an election? At a subsequent election the large States would combine, and by the use of their votes they would frustrate every object which the small States might use their efforts to accomplish.

Notwithstanding what had been said concerning the jealousy of States, he could see nothing in it but the leaven of the old Congress, thrown in to work up feelings that had been long still. It was the forlorn hope, the last

stratagem of party; and he was the more disposed to think so, when he saw gentlemen from the large States coming forward as the champions of the small—this might, to be sure, be magnanimity; but if his discernment did not deceive him, it was a stratagem to divide the friends of the amendment. Why was not the same jealousy entertained of the power of thirteen out of seventeen combining and giving absolute law to the other four? Why have gentlemen paid no regard to the experience which they have had from the last election, when less than one third of the members harassed the public mind, kept the Union in agitation, and Congress engrossed to the exclusion of nearly all other business for two weeks? Suppose that the House had been as accessible to corruption as the diets of other nations have been, and that three men, having in their power the votes of three States, had been seized upon, and the election made contrary to the wishes of the people. What would be the effect—on the minds of the people—on the administration of the Government—and on the attachment which the people feel for the constitution itself? He need not attempt to describe the effects. But it is our duty to prevent the return of such dangers, by keeping the election out of that House. And the most effectual mode is to fix the selection from the number three.

Mr. PICKERING had not intended to have spoken on this question so far as it concerned the numbers; but as he should probably vote differently from his colleague, he conceived it proper to give his motives for his vote. His wishes for the entire preservation of the constitution were so strong, that he regretted any change was contemplated to be made in it, and he wished if an alteration was made to keep as near as possible to the spirit of the constitution as it now is, and it appeared to him that the number *three* conformed more to that spirit than the number *five*. He believed it to be the intention of the constitution, that the people should *elect*. As to what gentlemen said concerning the will of the people, he paid but little regard to it. The will of the people! he did not know how the will of the people could be known—how gentlemen came by it; it would not be asserted that it was to be found in the newspapers, or in private society; in truth he believed it never had been fairly expressed on the subject. We have seen an amendment brought forward from New York, but was that an expression of the public opinion? if it was, it was a very remarkable one, for it contained an absurdity—visible to every one. He wished to avoid innovations on the

constitution, and to preserve the combined operation of federative and popular principles upon which it rested unimpaired.

Mr. WORTHINGTON hoped the number three would be adopted in preference to five. Nevertheless he approved so much of the principle of designation in the election of the President and Vice President, that rather than lose it he would vote for it with either number.

The yeas and nays being called for on filling up the blank with the largest number according to order; the votes were—yeas 12, nays 19, as follows:

YEAS.—Messrs. Adams, Bailey, Butler, Condit, Dayton, Hillhouse, Olcott, Plumer, Tracy, Wells, White, and Wright.

NAYS.—Messrs. Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, and Worthington.

The question on the number three being inserted was then put, and the yeas and nays being demanded by one fifth of the members present; they were, yeas 21, nays 10, as follows:

YEAS.—Messrs. Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright.

NAYS.—Messrs. Adams, Butler, Condit, Dayton, Hillhouse, Olcott, Plumer, Tracy, Wells, and White.

The House then adjourned.

FRIDAY, December 2.

Mr. WHITE, of Delaware, rose and addressed the chair as follows:

Mr. President: It may be expected that we, who oppose the present measure, and especially those of us who belong to the smaller States, and who think the interests of those States will be most injuriously affected by its adoption, shall assign some reasons for our opinion, and for the resistance we give it: I will for myself endeavor to do so. I know well the prejudices of many in favor of this proposed amendment to the constitution; I know too, and acknowledge with pleasure, the weight of abilities on the other side of the House by which those prejudices, if I may so be permitted to call them, will be sustained; this might perhaps be sufficient to create embarrassment or even silence on my part, but for the consciousness I feel in the rectitude of my views, and my full reliance on the talents of those with whom I have the honor generally to think and act. Upon a subject of

the nature and importance of the one before us a great diversity of sentiment must be expected, and is perhaps necessary to the due and proper investigation of it. Without detaining the Senate with further preliminary remarks, presuming upon that patience and polite indulgence that are at all times extended by this honorable body to gentlemen who claim their attention, I will proceed immediately to the subject of the resolution; barely premising that notwithstanding the opinions of the gentleman from Virginia (Mr. TAYLOR) and the gentleman from Georgia, (Mr. JACKSON,) whose opinions I highly respect, I must yet think with my honorable friend from New Jersey (Mr. DAYTON) that the Constitution of the United States bears upon the face of it the strongest marks of its having been made under the influence of State classifications. It was a work of compromise, though not formed, as stated by the gentleman from Virginia, by the large States yielding most, but by the smaller States yielding much more to the general good.

It will be recollected that, previous to the adoption of the constitution, on all legislative subjects, in fact, on every measure of the constitution, each State had an equal voice; but very different is the case now, when, in the popular branch of your Government, you see one State represented by twenty-two members, and another by but one, voting according to numbers. So that, notwithstanding the ideas of those gentlemen, and the declaration of an honorable member from Maryland, on my right, (Mr. SMITH,) that, during his ten years' service in Congress, he had never seen anything like State jealousies, State divisions, or State classification, I must be permitted to predicate part of my argument upon this business. Should any gentleman be able to show that the foundation is unsound, the superstructure of course will be easily demolished. Admitting, then, sir, for the sake of argument, that there were no very great objections to this proposed alteration in the mode of electing a President and Vice President, and that it were now part of the constitution, it might be unwise to strike it out, unless much stronger arguments had been urged against than I have heard in favor of it; yet I would not now vote for its adoption.

The United States are now divided, and will probably continue so, into two great political parties; whenever, under this amendment, a Presidential election shall come round, and the four rival candidates be proposed, two of them only will be voted for as President—one of these two must be the

man; the chances in favor of each will be equal. Will not this increased probability of success afford more than double the inducement to those candidates, and their friends, to tamper with the Electors, to exercise intrigue, bribery, and corruption, as in an election upon the present plan, where the whole four would be voted for alike, where the chances against each are as three to one, and it is totally uncertain which of the gentlemen may succeed to the high office? And there must, indeed, be a great scarcity of character in the United States, when, in so extensive and populous a country, four citizens cannot be found, either of them worthy even of the Chief Magistracy of the nation. But, Mr. President, I have never yet seen the great inconvenience that has been so much clamored about, and that will be provided against in future by substituting this amendment. There was, indeed, a time when it became necessary for the House of Representatives to elect, by ballot, a President of the United States from the two highest in vote, and they were engaged here some days, as I have been told, in a very good-humored way, in the exercise of that constitutional right. They at length decided; and what was the consequence? The people were satisfied, and here the thing ended. What does this prove? that the constitution is defective? No, sir, but rather the wisdom and efficiency of the very provision intended to be stricken out, and that the people are acquainted with the nature of their Government; and give me leave to say, if fortune had smiled upon another man, and that election had eventuated in another way, the consequence would have been precisely the same; the great mass of the people would have been content and quiet; and those factious, restless disorganizers, that are the eternal disturbers of all well administered Governments, and who then talked of resistance, would have had too much prudence to hazard their necks in so dangerous an enterprise. I will not undertake to say that there was no danger apprehended on that occasion. I know many of the friends of the constitution had their fears; the experiment however proved them groundless; but what was the danger apprehended pending the election in the House of Representatives? Was it that they might choose Colonel Burr or Mr. Jefferson President? Not at all; they had, notwithstanding what had been said on this subject by the gentleman from Maryland, (Mr. WRIGHT,) a clear constitutional right to choose either of them, as much so as the Electors in the several States had to vote for them in the first instance; the particular man was a consideration of but secondary importance to the country; the only ground of alarm was, lest the House

should separate without making any choice, and the Government be without a head, the consequences of which no man could well calculate.

It has of late, Mr. President, become fashionable to attach very little importance to the office of Vice President, to consider it a matter but of small consequence who the man may be; to view his post merely as an idle post of honor, and the incumbent as a cipher in the Government; or according to the idea expressed by an honorable member from Georgia, (Mr. JACKSON,) quoting, I believe, the language of some Eastern politician, as a fifth wheel to a coach; but in my humble opinion this doctrine is both incorrect and dangerous. The Vice President is not only the second officer of Government in point of rank, but of importance, and should be a man possessing and worthy of the confidence of the nation. I grant, sir, should this designating mode of election succeed, it will go very far to destroy, not the certain or contingent duties of the office, for the latter by this resolution are considerably extended, but what may be much more dangerous, the personal consequence and worth of the officer; by rendering the Electors more indifferent about the reputation and qualification of the candidate, seeing they vote for him but as a secondary character; and which may occasion this high and important trust to be deposited in very unsafe hands. By a provision in the first section of the second article of the constitution, “in case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President”—and he is constitutionally the President, not until another can be made only, but of the residue of the term, which may be nearly four years; and this is not to be supposed a remote or improbable case. In the State to which I have the honor to belong, within a few years past, two instances have happened of the place of Governor becoming vacant, and the duties of the office, according to the constitution of that State, devolving upon the Speaker of the Senate. We know well too, generally speaking, that before any man can acquire a sufficient share of the public confidence to be elected President, the people must have long been acquainted with his character and his merit; he must have proved himself a good and faithful servant, and will of course be far advanced in years, when the chances of life will be much against him. It may indeed, owing to popular infatuation, or some other extraordinary causes, be the ill fate of our country, that an unworthy designing man, grown old and gray in the ways of vice and hypocrisy, shall for a time

dishonor the Presidential chair, or it may be the fortune of some young man to be elected, but those will rarely happen. The convention in constructing this part of the constitution, in settling the first and second offices of the Government, and pointing out the mode of filling, aware of the probability of the Vice President succeeding to the office of President, endeavored to attach as much importance and respectability to his office as possible, by making it uncertain at the time of voting, which of the persons voted for should be President, and which Vice President; so as to secure the election of the best men in the country, or at least those in whom the people reposed the highest confidence, to the two offices—thus filling the office of Vice President with one of our most distinguished citizens, who would give respectability to the Government, and in case of the Presidency becoming vacant, having at his post a man constitutionally entitled to succeed, who had been honored with the second largest number of the suffrages of the people for the same office, and who of consequence would be probably worthy of the place, and competent to its duties. Let us now, Mr. President, examine for a moment the certain effect of the change about to be made, or what must be the operation of this designating principle, if you introduce it into the constitution. Now the Elector cannot designate, but must vote for two persons as President, leaving it to circumstances not within his power to control which shall be the man: of course he will select two characters, each suitable for that office, and the second highest in vote must be the Vice President; but upon this designating plan the public attention will be entirely engrossed in the election of the President, in making one great man. The eyes of each contending party will be fixed exclusively upon their candidate for this first and highest office; no surrounding object can be viewed at the same time, they will be lost in his disc. The office of President is, in point of honor, profit, trust, and influential patronage, so infinitely superior to any other place attainable in this Government, that, in the pursuit and disposal of it, all minor considerations will be forgotten, every thing will be made to bend, in order to subserve the ambitious views of the candidates and their friends. In this angry conflict of parties, amidst the heat and anxiety of this political warfare, the Vice Presidency will either be left to chance, or what will be much worse, prostituted to the basest purposes; character, talents, virtue, and merit, will not be sought after in the candidate. The question will not be asked, is he capable? is he honest? But can he by his name, by his connections, by his wealth, by his local situation,

by his influence or his intrigues, best promote the election of a President? He will be made a mere stepping-stone of ambition. Thus, by the death or other constitutional inability of the President to do the duties of the office, you may find at the head of your Government, as First Magistrate of the nation, a man who has either smuggled or bought himself into office; who, not having the confidence of the people, or feeling the constitutional responsibility of his place, but attributing his elevation merely to accident, and conscious of the superior claims of others, will be without restraint upon his conduct, without that strong inducement to consult the wishes of the people, and to pursue the true interests of the nation, that the hope of popular applause, and the prospect of re-election, would offer. Such a state of things might be productive of incalculable evils; for it is, as I fear time will show, in the power of a President of the United States to bring this Government into contempt, and this country to disgrace, if not to ruin.

Mr. PLUMER said that he had generally contented himself with expressing his opinion by a silent vote, but on a question which affected the rights of the smaller States, (one of which he had the honor to represent,) he requested the indulgence of the Senate to a few observations.

He said the constitution had provided only two methods for obtaining amendments, and both are granted with great caution. If two-thirds of the several State Legislatures apply, Congress shall call a convention who are to propose amendments, which, when ratified by the conventions of three-fourths of the States, will be valid. If this mode is adopted, Congress have nothing to do but to ascertain the fact, whether the necessary number of States require a convention. If they do, a convention must be called. The State Legislatures are only to apply for a convention. They can neither propose nor decide the amendments.

The other mode is, if two-thirds of both Houses of Congress deem it necessary to propose amendments, and three-fourths of the State Legislatures ratify them, they are valid. This is the present mode. The State Legislatures have nothing to do till after Congress has proposed the amendments, and then it is their exclusive province either to ratify or reject them. But they have no authority to direct or even request Congress to propose particular amendments for themselves to ratify. Instructions on this subject are therefore improper. It is an assumption of power, not the exercise of a right. It is an attempt to create an undue influence over

Congress. It is prejudging the question before it is proposed by the only authority that has the constitutional right to move it. If these instructions are obligatory, our votes must be governed, not by the convictions of our own judgments, or the propriety and fitness of the measure, but by the mandates of other Legislatures. This would destroy one of the checks that the constitution has provided against innovation. State Legislatures may, on some subjects, instruct their Senators; but on this, their instructions ought not to influence, much less bind us, to propose amendments, unless we ourselves deem them necessary.

The Senate consists of two members from each State; and in this case, the concurrence of two-thirds of all the Senate are necessary. A majority of the Senate constitutes a quorum to do business, but that quorum is a majority of all the Senators that all the States are entitled to elect. This applies with equal force to the term "two-thirds of the Senate." But in cases where from necessity a speedy decision is requisite, and where the concurrence of two-thirds is required, the constitution is explicit in confining that two-thirds to the members present, as in cases of treaties and impeachments; and also a fifth of the members present requesting the yeas and nays. If amendments can be constitutionally proposed by two-thirds of the Senate present, it will follow that twelve Senators, when only a quorum is present, may propose them against the will of twenty-two Senators.

This amendment affects the relative interest and importance of the smaller States. The constitution requires the Electors of each State to vote for two men, one of whom to be President of the United States. This affords a degree of security to the small States against the views and ambition of the large States. It gives them weight and influence in the choice. By destroying this complex mode of choice, and introducing the simple principle of designation, the large States can with more ease elect their candidate. This amendment will enable the Electors from four States and a half to choose a President, against the will of the remaining twelve States and a half. Can such a change tend to conciliate and strengthen the Union?

This amendment has a tendency to render the Vice President less respectable. He will be voted for not as President of the United States, but as President of the Senate, elected to preside over forms in this House. In electing a subordinate officer the Electors will not require those qualifications requisite for supreme command. The office of Vice President

will be a sinecure. It will be brought to market and exposed to sale to procure votes for the President. Will the ambitious, aspiring candidate for the Presidency, will his friends and favorites promote the election of a man of talents, probity, and popularity for Vice President, and who may prove his rival? No! They will seek a man of moderate talents, whose ambition is bounded by that office, and whose influence will aid them in electing the President. This mode of election is calculated to increase corruption, promote intrigue, and aid inordinate ambition. The Vice President will be selected from some of the large States; he will have a casting vote in this House; and feeble indeed must his talents be, if his influence will not be equal to that of a member. This will, in fact, be giving to that State a third Senator.

In the Southern States the blacks are considered as property, and the States in which they live are thereby entitled to eighteen additional Electors and Representatives—a number equal to all the Electors and Representatives that four States and a half are entitled to elect. Will you, by this amendment, lessen the weight and influence of the Eastern States in the election of your first officers, and still retain this unequal article in your constitution? Shall property in one part of the Union give an increase of Electors, and be wholly excluded in other States? Can this be right? Will it strengthen the Union?

Mr. TRACY.—I shall attempt to prove, sir, that the resolution before us contains principles which have a manifest tendency to deprive the small States of an important right, secured to them by a solemn and constitutional compact, and to vest an overwhelming power in the great States. And, further, I shall attempt to show that, in many other points, the resolution is objectionable, and, for a variety of causes, ought not to be adopted.

As I shall be obliged, in delineating the main features of this resolution, to mention the great States in the Union as objects of jealousy, I wish it to be understood that no special stigma is intended. “Man is man,” was the maxim expressed in an early part of this debate, by the gentleman from South Carolina, (Mr. BUTLER,) and in application to the subject of government, the maxim is worthy to be written in letters of gold. Yes, sir, “man is man,” and the melancholy truth that he is always imperfect and frequently wicked, induces us to fear his power, and guard against his rapacity, by the establishment and preservation of laws, and well-regulated

constitutions of government. Man, when connected with very many of his fellow-men, in a great State, derives power from the circumstance of this numerous combination; and from every circumstance which clothes him with additional power, he will generally derive some additional force to his passions.

Having premised this, I shall not deem it requisite to make any apology, when I attempt to excite the attention, the vigilance, and even the jealousy of the small, in reference to the conduct of the great States. The caution is meant to apply against the imperfections and passions of man, generally, and not against any State, or description of men, particularly.

It may be proper, in this place, to explain my meaning, when I make use of the words “small” and “great,” as applicable to States.

Massachusetts has been usually called a great State; but, in respect to all the operations of this resolution, she must, I think, be ranked among the small States. The district of Maine is increasing rapidly, and must, in the nature of things, soon become a State. To which event, its location, being divided from what was the ancient Colony of Massachusetts, by the intervention of New Hampshire, will very much contribute. I believe there is a legislative provision of some years’ standing, authorizing a division at the option of Maine. When this event shall occur, Massachusetts, although, in comparison with Connecticut and Rhode Island, she will not be a small State, yet, in comparison with many others, must be so considered. I think myself justifiable, then, for my present purposes, in calling Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Maryland, and South Carolina, small States. They are limited in point of territory, and cannot reasonably expect any great increase of population for many years, not, indeed, until the other States shall become so populous as to discourage emigration, with agricultural views; which may retain the population of the small States as seamen or manufacturers. This event, if it ever arrives, must be distant. A possible exception only may exist in favor of Maine; but, when we consider its climate, and a variety of other circumstances, it is believed to form no solid exception to this statement.

By the same rule of deciding, the residue of the States must be called great; for although Georgia and several others are not sufficiently populous,

at this time, to be considered relatively great States, yet their prospect of increase, with other circumstances, fairly bring them within the description, in respect to the operation of the measure now under consideration.

It will be recollected that, in the various turns which the debate has taken, gentlemen have repeatedly said that the constitution was formed for the people; that the good of the whole was its object; that nothing was discernible in it like a contest of States, nothing like jealousy of small States against the great; and although such distinctions and jealousies might have existed under the first confederation, yet they could have no existence under the last. And one gentleman (Mr. SMITH, of Maryland) has said that he has been a member of this Government ten years, and has heard nothing of great and small States, as in the least affecting the operations of Government, or the feelings of those who administer it.

Propriety, therefore, requires that we attentively examine the constitution itself, not only to obtain correct ideas upon these observations, so repeatedly urged, but to place in the proper light the operations and effects of the resolution in debate. If we attend to the constitution, we shall immediately find evident marks of concession and compromise, and that the parties to these concessions were the great and small States. And the members of the convention who formed the instrument have, in private information and public communications, united in the declaration, that the constitution was the result of concession and compromise between the great and small States. In this examination of the constitution it will be impossible to keep out of view our political relations under the first confederation. We primarily united upon the footing of complete State equality—each State had one, and no State had more than one vote in the Federal Council or Congress. With such a confederation we successfully waged war, and became an independent nation. When we were relieved from the pressure of war, that confederation, both in structure and power, was found inadequate to the purposes for which it was established. Under these circumstances, the States, by their convention, entered into a new agreement, upon principles better adapted to promote their mutual security and happiness. But this last agreement, or constitution, under which we are now united, was manifestly carved out of the first confederation. The small States adhered tenaciously to the principles of State equality; and gave up only a part of that federative principle, complete State equality, and that

with evident caution and reluctance. To this federative principle they were attached by habit; and their attachment was sanctioned and corroborated by the example of most if not all the ancient and the modern confederacies. And when the great States claimed a weight in the councils of the nation proportionate to their numbers and wealth, the novelty of the claim, as well as its obvious tendency to reduce the sovereignty of the small States, must have produced serious obstacles to its admission. Hence it is, that we find in the constitution but one entire departure from the federal principle. The House of Representatives is established upon the popular principle, and given to numbers and wealth, or to the great States, which, in this view of the subject, are synonymous. It was thought, by the convention, that a consolidation of the States into one simple Republic would be improper. And the local feelings and jealousies of all, but more especially of the small States, rendered a consolidation impracticable.

The Senate, who have the power of a legislative check upon the House of Representatives, and many other extensive and important powers, is preserved as an entire federative feature of Government as it was enjoyed by the small States, under the first confederacy.

In the article which obliges the Electors of President to vote for one person not an inhabitant of the same State with themselves, is discovered State jealousy. In the majorities required for many purposes by the constitution, although there were other motives for the regulations, yet the jealousy of the small States is clearly discernible. Indeed, sir, if we peruse the constitution with attention, we shall find the small States are perpetually guarding the federative principle, that is, State equality. And this, in every part of it, except in the choice of the House of Representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of States in the Senate.

This is guarding against almost an impossibility, because the Senators of small States must be criminally remiss in their attendance, and the Legislatures extremely off their guard, if they permit such alterations, which aim at their own existence. But lest some accident, some unaccountable blindness or perfidy should put in jeopardy the federative principle in the Senate, they totally and for ever prohibit all attempts at such a measure. In the choice of President, the mutual caution and concession of the great and

small States is, if possible, more conspicuous than in any other part of the constitution.

He is to be chosen by Electors appointed as the State Legislatures shall direct, not according to numbers entirely, but adding two Electors in each State as representatives of State sovereignty. Thus Delaware obtains three votes for President, whereas she could have but one in right of numbers. Yet, mixed as this mode of choice is, with both popular and federative principles, we see the small States watching its motions and circumscribing it to one attempt only, and, on failure of an Electoral choice, they instantly seize upon the right of a federal election, and select from the candidates a President by States and not by numbers. In confirmation of my assertion, that this part of the constitution was peculiarly the effect of compromise between the great and small States, permit me to quote an authority which will certainly have great weight, not only in the Senate, but through the Union, I mean that of the present Secretary of State, (Mr. Madison,) who was a leading member of the Federal Convention who formed, and of the Virginia Convention who adopted the constitution.

In the Debates of the Virginia Convention, volume 3, page 77, Mr. Madison says, speaking of the mode of electing the President:

“As to the eventual voting by States, it has my approbation. The lesser States and some larger States will be generally pleased by that mode. The Deputies from the small States argued, and there is some force in their reasoning, that, when the people voted, the large States evidently had the advantage over the rest, and, without varying the mode, the interests of the little States might be neglected or sacrificed. Here is a compromise. For in the eventual election, the small States will have the advantage.”

After this view of the constitution, let us inquire, what is the direct object of the proposed alteration in the choice of President?

To render more practicable and certain the choice by Electors—and for this reason: that the people at large, or in other words, that the great States, ought to have more weight and influence in the choice. That it should be brought nearer to the popular and carried further from the federative principle. This claim we find was made at the formation of the constitution.

The great States naturally wished for a popular choice of First Magistrate. This mode was sanctioned by the example of many of the States in the choice of Governor. The small States claimed a choice on the federative principle, by the Legislatures, and to vote by States; analogies and examples were not wanting to sanction this mode of election. A consideration of the weight and influence of a President of this Union, must have multiplied the difficulties of agreeing upon the mode of choice. But as I have before said, by mutual concession, they agreed upon the present mode, combining both principles and dividing between the two parties, thus mutually jealous, as they could, this important privilege of electing a Chief Magistrate.

This mode then became established, and the right of the small States to elect upon the federative principle, or by States, in case of the contingency of electoral failure of choice, cannot with reason and fairness be taken from them, without their consent, and on a full understanding of its operation; since it was meant to be secured to them by the constitution, and was one of the terms upon which they became members of the present confederacy; and for which privilege they gave an equivalent to the great States in sacrificing so much of the federative principle, or State equality.

The constitution is nicely balanced, with the federative and popular principles; the Senate are the guardians of the former, and the House of Representatives of the latter; and any attempts to destroy this balance, under whatever specious names or pretences they may be presented, should be watched with a jealous eye. Perhaps a fair definition of the constitutional powers of amending is, that you may upon experiment so modify the constitution in its practice and operation, as to give it, upon its own principles, a more complete effect. But this is an attack upon a fundamental principle established after a long deliberation, and by mutual concession, a principle of essential importance to the instrument itself, and an attempt to wrest from the small States a vested right, and by it, to increase the power and influence of the large States. I shall not pretend, sir, that the parties to this constitutional compact cannot alter its original essential principles, and that such alterations may not be effected under the name of amendment; but, let a proposal of that kind come forward in its own proper and undisguised shape; let it be fairly stated to Congress, to the State Legislatures, to the people at large, that the intention is to change an important federative feature in the constitution, which change in itself and

all its consequences, will tend to a consolidation of this Union into a simple republic; let it be fairly stated, that the small States have too much agency in the important article of electing a Chief Magistrate, and that the great States claim the choice; and we shall then have a fair decision. If the Senators of the small States, and if their State Legislatures, will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan adopted by our constitution for choosing a President. The Electors are to nominate two persons, of whom they cannot know which will be President; this circumstance not only induces them to select both from the best men; but gives a direct advantage into the hands of the small States even in the electoral choice. For they can always select from the two candidates set up by the Electors of large States, by throwing their votes upon their favorite, and of course giving him a majority; or, if the Electors of the large States should, to prevent this effect, scatter their votes for one candidate, then the Electors of the small States would have it in their power to elect a Vice President. So that, in any event, the small States will have a considerable agency in the election. But if the discriminating or designating principle is carried, as contained in this resolution, the whole, or nearly the whole right and agency of the small States, in the electoral choice of Chief Magistrate, is destroyed, and their chance of obtaining a federative choice by States, if not destroyed, is very much diminished.

The whole power of election is now vested in the two parties; numbers and States, or, great and small States; and it is demonstration itself, if you increase the power of the one, in just such proportion you diminish that of the other. Do the gentlemen suppose that the public will, when constitutionally expressed by a majority of States, in pursuance of the federative principle of our Government, is of less validity, or less binding upon the community at large, than the public will expressed by a popular majority? The framers of your constitution, the people who adopted it, meant, that the public will, in the choice of a President, should be expressed by Electors, if they could agree, and if not, the public will should be expressed by a majority of the States, acting in their federative capacity, and that in both cases the expression of the public will should be equally binding.

It is pretended that the public will can never properly or constitutionally be expressed by a majority of numbers of the people, or of the House of Representatives. This may be a pleasing doctrine enough to great States; but it is certainly incorrect. Our constitution has given the expression of the public will, in a variety of instances, other than that of the choice of President, into very different hands from either House of Representatives or the people at large. The President and Senate, and in many cases the President alone, can express the public will, in appointments of high trust and responsibility, and it cannot be forgotten that the President sometimes expresses the public will by removals. Treaties, highly important expressions of the public will, are made by the President and Senate; and they are the supreme law of the land. In the several States, many great offices are filled, and even the Chief Magistracy, by various modes of election. The public will is sometimes expressed by pluralities instead of majorities, sometimes by both branches of the Legislatures, and sometimes by one, and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good or even pardonable motive, then, can it be urged that the present mode of electing our President has a tendency to counteract the public will? Do gentlemen intend to destroy every federal feature in this constitution? And is this resolution a precursor to a complete consolidation of the Union, and to the establishment of a simple republic?—Or will it suffice to break down every federative feature which secures to one portion of the Union, to the small States, their rights?

Mr. TAYLOR.—The opposition to this discriminating amendment to the constitution is condensed into a single stratagem, namely: an effort to excite the passion of jealousy in various forms. Endeavors have been made to excite geographical jealousies—a jealousy of the smaller against the larger States—a jealousy in the people against the idea of amending the constitution; and even a jealousy against individual members of this House. Sir, is this passion a good medium through which to discern truth, or is it a mirror calculated to reflect error? Will it enlighten or deceive? Is it planted in good or in evil—in moral or in vicious principles? Wherefore, then, do gentlemen endeavor to blow it up? Is it because they distrust the strength of their arguments, that they resort to this furious and erring passion? Is it because they know that

——“Trifles light as air,
Are, to the jealous, confirmations strong
As proofs of holy writ!”

So far as these efforts have been directed towards a geographical demarcation of the interests of the Union into North and South, in order to excite a jealousy of one division against another; and, so far as they have been used to create suspicions of individuals, they have been either so feeble, inapplicable, or frivolous, as to bear but lightly upon the question, and to merit but little attention. But the attempts to array States against States because they differ in size, and to prejudice the people against the idea of amending their constitution, bear a more formidable aspect, and ought to be repelled, because they are founded on principles the most mischievous and inimical to the constitution, and, could they be successful, are replete with great mischiefs.

Towards exciting this jealousy of smaller States against larger States, the gentleman from Connecticut (Mr. TRACY) had labored to prove that the federal principle of the constitution of the United States was founded in the idea of minority invested with operative power. That, in pursuance of this principle, it was contemplated and intended that the election of a President should frequently come into the House of Representatives, and to divert it from thence by this amendment would trench upon the federal principle of our constitution, and diminish the rights of the smaller States, bestowed by this principle upon them. This was the scope of his argument to excite their jealousy, and is the amount also of several other arguments delivered by gentlemen on the same side of the question. He did not question the words, but the ideas of gentlemen. Words, selected from their comrades, are easily asserted to misrepresent opinions, as he had himself experienced during the discussion on the subject.

This idea of federalism ought to be well discussed by the smaller States, before they will suffer it to produce the intended effect—that of exciting their jealousy against the larger. To him it appeared to be evidently incorrect. Two principles sustain our constitution: one a majority of the people, the other a majority of the States; the first was necessary to preserve the liberty or sovereignty of the people; the last, to preserve the liberty or sovereignty of the States. But both are founded in the principle of majority;

and the effort of the constitution is to preserve this principle in relation both to the people and the States, so that neither species of sovereignty or independence should be able to destroy the other. Many illustrations might be adduced. That of amending the constitution will suffice. Three-fourths of the States must concur in this object, because a less number or a majority of States might not contain a majority of people; therefore, the constitution is not amendable by a majority of States, lest a species of State sovereignty might, under color of amending the constitution, infringe the right of the people. On the other hand, a majority of the people residing in the large States cannot amend the constitution, lest they should diminish or destroy the sovereignty of the small States, the federal Union, or federalism itself. Hence a concurrence of the States to amend the constitution became necessary, not because federalism was founded in the idea of minority, but for a reason the very reverse of that idea—that is, to cover the will both of a majority of the people and a majority of States, so as to preserve the great element of self-government, as it regarded State sovereignty, and also as it regarded the sovereignty of the people.

For this great purpose certain political functions are assigned to be performed, under the auspices of the State or federal principle, and certain others under the popular principle. It was the intention of the constitution that these functions should be performed in conformity to its principle. If that principle is in fact a government of a minority, then these functions ought to be performed by a minority. When the federal principle is performing a function, according to this idea, a majority of the States ought to decide. And, by the same mode of reasoning, when the popular principle is performing a function, then a minority of the people ought to decide. This brings us precisely to the question of the amendment. It is the intention of the constitution that the popular principle shall operate in the election of a President and Vice President. It is also the intention of the constitution that the popular principle, in discharging the functions committed to it by the constitution, should operate by a majority and not by a minority. That the majority of the people should be driven, by an unforeseen state of parties, to the necessity of relinquishing their will in the election of one or the other of these officers, or that the principle of majority, in a function confided to the popular will, should be deprived of half its rights, and be laid under a necessity of violating its duty to preserve the other half, is not the intention of the constitution.

But the gentleman from Connecticut has leaped over all this ground, and gotten into the House of Representatives, without considering the principles of the constitution, as applicable to the election of President and Vice President by Electors, and distinguishing them from an election by the House of Representatives. And by mingling and interweaving the two modes of electing together, a considerable degree of complexity has been produced. If, however, it is admitted that in an election of a President and Vice President by Electors, the will of the electing majority ought fairly to operate, and that an election by the will of a minority would be an abuse or corruption of the principles of the constitution, then it follows that an amendment, to avoid this abuse, accords with, and is necessary to save these principles. In like manner, had an abuse crept into the same election, whenever it was to be made under the federal principle by the House of Representatives, enabling a minority of States to carry the election, it would not have violated the intention of the constitution to have corrected this abuse, also, by an amendment. For, sir, I must suppose it to have been the intention of the constitution that both the federal principle and the popular principle should operate in those functions respectively assigned to them, perfectly and not imperfectly—that is, the former by a majority of States, and the latter by a majority of the people.

Under this view of the subject, the amendment ought to be considered. Then the question will be, whether it is calculated or not to cause the popular principle, applied by the constitution in the first instance, to operate perfectly, and to prevent the abuse of an election by a minority? If it is, it corresponds with the intention, diminishes nothing of the rights of the smaller States, and, of course, affords them no cause of jealousy.

Sir, it could never have been the intention of the constitution to produce a state of things by which a majority of the popular principle should be under the necessity of voting against its judgment to secure a President, and by which a minor faction should acquire a power capable of defeating the majority in the election of President, or of electing a Vice President contrary to the will of the electing principle. To permit this abuse would be a fraudulent mode of defeating the operation of the popular principle in this election, in order to transfer it to the federal principle—to disinherit the people for the sake of endowing the House of Representatives; whereas it was an accidental and not an artificial disappointment in the election of a

President, against which the constitution intended to provide. A fair and not an unfair attempt to elect was previously to be made by the popular principle, before the election was to go into the House of Representatives. And if the people of all the States, both large and small, should, by an abuse of the real design of the constitution, be bubbled out of the election of executive power, by leaving to them the nominal right of an abortive effort, and transferring to the House of Representatives the substantial right of a real election, nothing will remain but to corrupt the election in that House by some of those abuses of which elections by diets are susceptible, to bestow upon executive power an aspect both formidable and inconsistent with the principles by which the constitution intended to mould it.

The great check imposed upon executive power was a popular mode of election; and the true object of jealousy, which ought to attract the attention of the people of every State, is any circumstance tending to diminish or destroy that check. It was also a primary intention of the constitution to keep executive power independent of legislative; and although a provision was made for its election by the House of Representatives in a possible case, that possible case never was intended to be converted into the active rule, so as to destroy in a degree the line of separation and independency between the executive and legislative power. The controversy is not therefore between larger and smaller States, but between the people of every State and the House of Representatives. Is it better that the people—a fair majority of the popular principle—should elect executive power; or, that a minor faction should be enabled to embarrass and defeat the judgment and will of this majority, and throw the election into the House of Representatives? This is the question. If this amendment should enable the popular principle to elect executive power, and thus keep it separate and distinct from legislation, the intention of the constitution, the interest of the people, and the principles of our policy, will be preserved; and if so, it is as I have often endeavored to prove in this debate, the interest of the smaller States themselves, that the amendment should prevail. For, sir, is an exposure of their Representatives to bribery and corruption (a thing which may possibly happen at some future day, when men lose that public virtue which now governs them) an acquisition more desirable than all those great objects best (if not exclusively) attainable by the election of executive power by the popular principle of the Federal Government, as the constitution itself meditates and prefers?

So far, then, the amendment strictly coincides with the constitution and with the interests of the people of every State in the Union. But suppose by some rare accident the election should still be sent into the House of Representatives, does not the amendment then afford cause of jealousy to the smaller States? Sir, each State has but one vote, whether it is large or small; and the President and Vice President are still to be chosen out of five persons. Such is the constitution in both respects now. To have enlarged the number of nominees, would have increased the occurrence of an election by the House of Representatives; and if, as I have endeavored to prove, it is for the interest of every State, that the election should be made by the popular principle of Government and not by that House, then it follows, that whatever would have a tendency to draw the election into that House, is against the interest of every State in the Union; and that every State in the Union is interested to avoid an enlargement of the nominees, if it would have such a tendency.

To illustrate this argument, I will repeat a position which I lately advanced, namely, that the substance of a constitution may be effectually destroyed, and yet its form may remain unaltered. England illustrates it. The Government of that country took its present form in the thirteenth century; but its aspect in substance has been extremely different at different periods, under the same form. Without taking time to mark the changes in substance which have taken place under the form of Kings, Lords, and Commons, it will suffice to cast our eyes upon the present state of that Government. What are now its chief and substantial energies? Armies, debt, executive patronage, penal laws, and corporations. These are the modern energies or substance of the English monarchy; to the ancient English monarchy they were unknown. Of the ancient, they were substantial abuses; for, whether these modern energies are good or bad, they overturned the ancient monarchy substantially, without altering its form. Under every change of Administration these abuses proceeded. The *outs* were clamorous for preserving the constitution, as they called it; for, though divorced from its administration, the hope of getting in again caused them to maintain abuses, by which their avarice or ambition might be gratified upon the next turn of the wheel; just as in Prussia, where divorces are common, nothing is more usual than for late husbands to affect a violent passion for a former wife, if she carried off from him a good estate! And the *ins*, fearing the national jealousy, and the prepossession against amending the form of Government,

and meeting new abuses by new remedies, brought no relief to the nation. So that under every change of men abuses proceeded.

The solution of this effect exists in the species of political craft similar to priestcraft. Mankind were anciently deprived of their religious liberty by a dissemination of a fanatical zeal for some idol; in times of ignorance, this idol was of physical structure; and when that fraud was detected, a metaphysical idol in the shape of a tenet or dogma was substituted for it, infinitely more pernicious in its effects, because infinitely more difficult of detection. The same system has been pursued by political craft. It has ever labored to excite the same species of idolatry and superstition for the same reason, namely, to conceal its own frauds and vices. Sometimes it sets up a physical, at others a metaphysical idol, as the object of vulgar superstition. Of one, the former “Grand Monarch of France;” of the other, the present “Church and State” tenet of England is an evidence. And if our constitution is to be made like the “Church and State” tenet of England, a metaphysical political idol, which it will be sacrilege to amend, even for the sake of saving both that and the national liberty; and if, like that tenet, it is to be exposed to all the means which centuries may suggest to vicious men for its substantial destruction, it is not hard to imagine that it also may become a monument of the inefficacy of unalterable forms of political law to correct avarice and ambition in the new and multifarious shapes they are for ever assuming.

It has been urged, sir, by the gentlemen in opposition, in a mode, as if they supposed we wished to conceal or deny it, that one object of this amendment is to bestow upon the majority a power to elect a Vice President. Sir, I avow it to be so. This is one object of the amendment; and the other, as to which I have heretofore expressed my sentiments, is to enable the Electors, by perfecting the election of a President, to keep it out of the House of Representatives. Are not both objects correct, if, as I have endeavored to prove, the constitution, in all cases where it refers elections to the popular principle, intended that principle to act by majorities? Did the constitution intend that any minor faction should elect a Vice President? If not, then an amendment to prevent it accords with, and is representative of, the constitution. Permit me here again to illustrate by an historical case. England, in the time of Charles the Second, was divided into two parties—Protestants and Papists—and the heir to the throne was a Papist. The

Protestants, constituting the majority of the nation, passed an exclusion bill, but it was defeated, and the minor Papist faction, in the person of the Duke of York, got possession of executive power. The consequences were, domestic oppressions and rebellions, foreign wars occasionally for almost a century, and the foundation of a national debt, under which the nation has been ever since groaning, and under which the Government will finally expire.

Had the majority carried and executed the proposed exclusion of James II. from executive power, the English would have escaped all these calamities. Such precisely may be our case. I beg again that it may be understood that, in this application, I speak prospectively and not retrospectively.

But it is far from being improbable, that in place of these religious parties, political parties may arise of equal zeal and animosity. We may at some future day see our country divided into a republican party and a monarchical party. Is it wise, or according to the intention of the constitution, that a minor monarchical faction should, by any means, acquire the power of electing a Vice President, the possible successor to executive power? Ought a republican majority to stake the national liberty upon the frail life of one man? Will not a monarchical Executive overturn the system of a republican Executive? And ought the United States to shut their eyes upon this possible danger until the case shall happen, when it may be too late to open them?

Sir, let us contemplate the dreadful evils which the English nation have suffered from the cause of investing executive power in a man hostile to the national opinion, and avoid them. They suffered, because their exclusion bill was abortive. Election is our exclusion bill. Its efficacy depends upon its being exercised by a majority. It is only a minority which can render election insufficient to exclude monarchical principles from executive power. It is against minority that election is intended to operate, because minority is the author of monarchy and aristocracy.

Shall we, sir, be so injudicious as to make election destroy the principle of election by adhering to a mode of exercising it, now seen to be capable of bestowing upon a minority the choice of a Vice President? Shall we make election, invented to exclude monarchy, a handmaid for its

introduction? Or shall we, if we do not see monarchy at this day assailing our republican system, conclude that it never will; although we know that this system has but two foes, of whom monarchy is one? No, sir, let us rather draw instruction from the prophetic observations of a member of the English House of Commons, whilst the bill for excluding James II. was depending, who said:

“I hear a lion in the lobby roar,
Say, Mr. Speaker, shall we shut the door,
And keep him there! Or shall we let him in,
To try if we can get him out again!”

Instead of shutting the door, the English left it open; tyranny got in; and the evils produced by its expulsion, to that nation, may possibly have been equal to those which submission would have produced.

The question was called for loudly at half-past nine, and put—the yeas and nays being taken, were:

YEAS.—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright—22.

NAYS.—Messrs. Adams, Butler, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White—10.

Upon the PRESIDENT declaring the question carried by two-thirds—

Mr. TRACY said he denied that the question was fairly decided. He took it to be the intention of the constitution, that there should be two-thirds of the whole number of Senators elected, which would make the number necessary to its passage 23.

It was moved to adjourn to Monday.

Mr. TAYLOR said that since it was proposed to adjourn to Monday, when he should be disqualified to sit in that House, he hoped the Senate would not rise without deciding the question definitively on the gentleman's objections.

Mr. TRACY said he certainly would avail himself of the principle to oppose its passage through the State Legislatures.

The PRESIDENT declared the question had passed the Senate by the majority required, and conformable to the constitution and former usage.

The amendment, as adopted, is as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That, in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the Legislatures of the several States, shall be valid, to all intents and purposes, as part of the said Constitution, to wit:

The Electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for the President, shall be the President, if such number be a majority of the whole number of electors appointed: and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members, from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March

next following, then the Vice President shall act as President, as in the case of death or any other constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

Ordered, That the Secretary request the concurrence of the House of Representatives in this resolution.

MONDAY, December 5.

Impressment of Seamen.

The following messages were received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with the desire of the Senate, expressed in their resolution of the 22d of November, on the impressment of seamen in the service of the United States, by the agents of foreign nations; I now lay before the Senate a letter from the Secretary of State, with a specification of the cases of which information has been received.

TH. JEFFERSON.

DEC. 5, 1803.

Tripolitan Aggression.

To the Senate and House of Representatives of the United States:

I have the satisfaction to inform you, that the act of hostility mentioned, in my message of the 4th of November, to have been committed by a cruiser of the Emperor of Morocco, on a vessel of the United States, has been disavowed by the Emperor. All differences in consequence thereof have been amicably adjusted, and the Treaty of 1796, between this country and that, has been recognized and confirmed by the Emperor, each party restoring to the other what had been detained or taken. I enclose the Emperor's orders given on this occasion.

The conduct of our officers generally, who have had a part in these transactions, has merited entire approbation.

The temperate and correct course pursued by our Consul, Mr. Simpson, the promptitude and energy of Commodore Preble, the efficacious co-operation of Captains Rodgers and Campbell, of the returning squadron, the proper decision of Captain Bainbridge, that a vessel which had committed an open hostility, was of right to be detained for inquiry and consideration, and the general zeal of the other officers and men, are honorable facts, which I make known with pleasure. And to these I add, what was indeed transacted in another quarter, the gallant enterprise of Captain Rodgers, in destroying, on the coast of Tripoli, a corvette of that power, of 22 guns.

I recommend to the consideration of Congress, a just indemnification for the interest acquired by the captors of the Mishouda and Mirboha, yielded by them for the public accommodation.

TH. JEFFERSON.

DEC. 5, 1803.

The Messages and papers therein respectively referred to, were read.

Ordered, That they severally lie for consideration.

WEDNESDAY, December 7.

AARON BURR, Vice President of the United States and President of the Senate, attended.

JOHN ARMSTRONG, appointed a Senator by the Executive of the State of New York, in the room of De Witt Clinton, resigned, attended.

THURSDAY, December 8.

The credentials of Mr. ARMSTRONG were read, and the oath was administered to him by the Vice President as the law provides.

MONDAY, December 12.

Amendment of the Constitution.

The Senate resumed the consideration of the last resolution reported by the committee appointed on the 22d of October last, to consider the motion for an amendment to the constitution in the mode of electing the President and Vice President of the United States; which is as follows:

“Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment be proposed to the Legislatures of the several States as an amendment to the constitution of the United States, which, when ratified by three-fourths of the said Legislature, shall be valid, to all intents and purposes, as part of the said Constitution, to wit;

“That no person who has been twice successively elected President of the United States shall be eligible as President until four years shall have elapsed: but any citizen who has been President of the United States may, after such intervention, be eligible to the office of President for four years and no longer.”

On the question to agree to this resolution, it passed in the negative—yeas 4, nays 25, as follows:

YEAS.—Messrs. Anderson, Butler, Dayton, and Jackson.

NAYS.—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, Israel Smith, John Smith, Samuel Smith, Tracy, White, Worthington, and Wright.

TUESDAY, December 13.

ABRAHAM B. VENABLE, appointed a Senator by the Legislature of the State of Virginia on the 7th instant, produced his credentials, was qualified, and took his seat in the Senate.

Repeal of Bankrupt Act.

The bill, entitled, “An act to repeal an act, entitled ‘An act to establish a uniform system of bankruptcy throughout the United States,’” was read the third time; and, on motion, that the further consideration of this bill be postponed to the second Monday in December next, it passed in the negative—yeas 13, nays, 17, as follows:

YEAS.—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Brown, Condit, Jackson, Israel Smith, Samuel Smith, Tracy, White, and Wright.

NAYS.—Messrs. Anderson, Breckenridge, Butler, Cocke, Dayton, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, John Smith, Venable, and Worthington.

On the question, “Shall this bill pass?” it was determined in the affirmative—yeas 17, nays 12, as follows:

YEAS.—Messrs. Anderson, Breckenridge, Butler, Cocke, Dayton, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, John Smith, Venable, and Worthington.

NAYS.—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Brown, Condit, Israel Smith, Samuel Smith, Tracy, White, and Wright.

So it was *Resolved*, That this bill do pass.^[5]

THURSDAY, December 15.

Classification of Senators.

On motion, the Senate proceeded to ascertain the classes in which the Senators of the State of Ohio should be inserted, as the constitution and rule

heretofore adopted prescribe; and it was ordered, that two lots, No. 2 and a blank, be by the Secretary rolled up and put in the ballot box; and it was understood that the Senator who should draw the lot No. 2 should be inserted in the class of Senators whose terms of service respectively expire in four years from and after the third day of March, 1803, in order to equalize the classes.

Accordingly, Mr. WORTHINGTON drew lot No. 2, and Mr. JOHN SMITH drew the blank.

It was then agreed that two lots, Nos. 1 and 3, should be by the Secretary rolled up and put into the ballot-box, and one of these be drawn by Mr. JOHN SMITH, the Senator from the State of Ohio, not classed; and it was understood that, if he should draw lot No. 1, he should be inserted in the class of Senators whose terms of service will respectively expire in two years from and after the third day of March, 1803; but, if he should draw lot No. 3, it was understood that he should be inserted in the class of Senators whose terms respectively expire in six years from and after the third day of March, 1803. Mr. JOHN SMITH drew lot No. 3, and is classed accordingly.

FRIDAY, December 16.

Importation of Slaves.

The Senate took into consideration the motion made yesterday, that a committee be appointed to inquire whether any, and, if any, what amendments ought to be made in the act, entitled “An act to prevent the importation of certain persons into certain States, by the laws whereof their admission is prohibited,” and that the committee have leave to report by bill or otherwise; and the motion was adopted; and

Ordered, That Messrs. FRANKLIN, VENABLE, and I. SMITH, be this committee.

MONDAY, December 19.

Admissions on the Floor.

The Senate took into consideration the motion made on the 16th instant, that no person be admitted on the floor of the Senate Chamber except members of the House of Representatives, foreign ministers, and the Heads of Departments, unless introduced by a member of the Senate.

On motion, it was agreed to strike out the words “unless introduced by a member of the Senate;” and on motion, it was agreed to subjoin, after the word “Departments,” “and Judges of the Supreme and District Courts of the United States.”

On motion to insert after the word “States,” “and the ladies,” it passed in the negative—yeas 12, nays 16, as follows:

YEAS.—Messrs. Anderson, Breckenridge, Brown, Dayton, Jackson, Maclay, Potter, I. Smith, S. Smith, Tracy, White, and Wright.

NAYS.—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Cocke, Condit, Ellery, Franklin, Hillhouse, Olcott, Pickering, Plumer, J. Smith, Venable, and Worthington.

On motion to insert after the word “States,” “the Governors and Councillors of the respective States, and the Representatives of the State Legislatures,” it passed in the negative—yeas 13, nays 15, as follows:

YEAS.—Messrs. Adams, Anderson, Bailey, Breckenridge, Dayton, Maclay, Potter, I. Smith, S. Smith, Tracy, Venable, Worthington, and Wright.

NAYS.—Messrs. Armstrong, Baldwin, Bradley, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Jackson, Olcott, Pickering, Plumer, J. Smith, and White.

On motion to agree to the resolution amended as follows:

Resolved, That no person be admitted on the floor of the Senate Chamber, except members of the House of Representatives, foreign ministers, and Heads of Departments, and Judges of the Supreme and District Courts of the United States:

It was determined in the negative—yeas 7, nays 21, as follows:

YEAS.—Messrs. Adams, Bailey, Condit, Dayton, Franklin, Jackson, and Wright.

NAYS.—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Hillhouse, Maclay, Olcott, Pickering, Plumer, Potter, I. Smith, S. Smith, Tracy, Venable, White, and Worthington.

FRIDAY, December 30.

Erection of Louisiana into two Territories.

Mr. BRECKENRIDGE, from the committee appointed, on the 5th instant, for that purpose, reported a bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and the bill was read, and ordered to the second reading.

TUESDAY, January 3, 1804.

Erection of Contingent Fund.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before the Congress the annual account of the fund established for defraying the contingent charges of Government. No occasion having arisen for making use of any part of it in the present year, the balance of eighteen thousand five hundred and sixty dollars, unexpended at the end of the last year, remains now in the Treasury.

TH. JEFFERSON.

DEC. 31, 1803.

The Message and account therein referred to were read, and ordered to lie on file.

MONDAY, January 16.

The VICE PRESIDENT communicated a letter of this date from the Hon. THEODORUS BAILEY, resigning his seat in the Senate; which was read, and

Ordered, That the VICE PRESIDENT be requested to notify the Executive of the State of New York accordingly.

Transfer of Louisiana.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In execution of the act of the present session of Congress, for taking possession of Louisiana, as ceded to us by France, and for the temporary government thereof, Governor Claiborne, of the Mississippi Territory, and General Wilkinson, were appointed Commissioners to receive possession. They proceeded with such regular troops as had been assembled at Fort Adams, from the nearest posts, and with some militia of the Mississippi Territory, to New Orleans. To be prepared for any thing unexpected which might arise out of the transaction, a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky, and Tennessee, and a part of those of Tennessee was moved on to the Natchez. No occasion, however, arose for their services. Our Commissioners, on their arrival at New Orleans, found the province already delivered by the Commissioners of Spain to that of France, who delivered it over to them on the 20th day of December, as appears by their declaratory act accompanying this. Governor Claiborne being duly invested with the powers heretofore exercised by the Governor and Intendant of Louisiana, assumed the government on the same day, and, for the maintenance of law and order, immediately issued the proclamation and address now communicated.

On this important acquisition, so favorable to the immediate interests of our western citizens, so auspicious to the peace and security of the nation in general, which adds to our country territories so extensive and fertile, and to our citizens new brethren to partake of the blessings of freedom and self-government, I offer to Congress and our country my sincere congratulations.

TH. JEFFERSON.

JANUARY 16, 1804.

The Message and papers therein referred to were read.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof.

On motion to amend the fourth section of the bill, by inserting the following words at the end thereof:

“The Legislative Council, a majority of the whole number concurring therein, shall have power to elect, by ballot, a delegate to Congress, who shall have a seat in the House of Representatives, and shall have the right of debating, but not of voting:”

It passed in the negative—yeas 12, nays 18, as follows:

YEAS.—Messrs. Anderson, Breckenridge, Cocke, Ellery, Logan, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Venable, and Worthington.

NAYS.—Messrs. Adams, Armstrong, Baldwin, Bradley, Brown, Condit, Dayton, Franklin, Hillhouse, Jackson, Maclay, Olcott, Pickering, Plumer, Stone, Tracy, Wells, and White.

On motion to strike out the fourth section of the bill, as follows:

“SEC. 4. The legislative powers shall be vested in the Governor, and in twenty-four of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be selected annually by the Governor from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory, or the United States. The Governor, by and with the advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal, the laws which may be in force at the commencement of this act. Their legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution of the United States, with the laws of Congress, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, declarations, or worship; in all which he shall be free to maintain his own, and not be burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall, from time to time, report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene, prorogue, and dissolve the Legislative Council whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions, of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States.”

It passed in the negative—yeas 12, nays 18, as follows:

YEAS.—Messrs. Adams, Anderson, Cocke, Hillhouse, Olcott, Plumer, Stone, Tracy, Venable, Wells, White, and Worthington.

NAYS.—Messrs. Armstrong, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, and Samuel Smith.

TUESDAY, January 17.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and on the question to amend the following clause of the fifth section:

“In all criminal prosecutions which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage,” by striking out the words “which are capital.”

It passed in the negative—yeas 11, nays 16, as follows:

YEAS.—Messrs. Adams, Anderson, Cocke, Logan, Maclay, Plumer, Stone, Tracy, Wells, White, and Worthington.

NAYS.—Messrs. Baldwin, Bradley, Breckenridge, Condit, Dayton, Ellery, Franklin, Jackson, Nicholas, Olcott, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, and Venable.

And after progress, on motion,

Ordered, That the consideration of this bill be further postponed.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

MONDAY, January 23.

The VICE PRESIDENT being absent on account of the ill state of his health, the Senate proceeded to the election of a President *pro tempore*, as the constitution provides; and the ballots having been collected and counted, a majority thereof was for the Honorable JOHN BROWN, who was accordingly elected President of the Senate *pro tempore*.

Mr. LOGAN presented the memorial of the American Convention for promoting the abolition of slavery, and improving the condition of the African race, signed Matthew Franklin, president, praying that such laws may be enacted as shall prohibit the introduction of slaves into the Territory of Louisiana, lately ceded to the United States; and the petition was read.

TUESDAY, January 24.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and on motion to strike out of the fourth section, from the word “annually,” line fourth, to the words “United States,” line seventh, the words, “by the Governor, from among those holding real estate therein, and who shall have resided one year, at least, in the said Territory, and hold no office of profit under the Territory or the United States,” for the purpose of inserting the words following:

“The Governor shall lay off and divide the territory aforesaid into twenty-four convenient districts, from each of which districts there shall be chosen, annually, by the housekeepers resident therein, two of the most fit and discreet persons, who shall also be residents therein and landholders, and holding no office of profit under the territorial government, or that of the United States, and make a return of their names to the Governor, out of which number the Governor shall select twenty-four, to wit, one from each district. But if any of the districts should refuse or neglect to make such appointment for one month after the time appointed by the Governor for making the said elections, he shall then have the power of selecting from each district, so refusing or neglecting, one fit person for the purposes aforesaid.”

On this, a division on the question was called for, and that it be taken on striking out.

Whereupon, the yeas and nays being required by one-fifth of the Senators present, on striking out, it passed in the negative—yeas 15, nays 14, as follows:

YEAS.—Messrs. Adams, Anderson, Breckenridge, Cocke, Condit, Hillhouse, Logan, Maclay, Plumer, John Smith, Stone, Tracy, Venable, and Worthington.

NAYS.—Messrs. Armstrong, Baldwin, Bradley, Brown, Dayton, Ellery, Franklin, Jackson, Nicholas, Olcott, Pickering, Potter, Israel Smith, and Samuel Smith.

THURSDAY, January 26.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to amend the bill, by inserting the following as section eighth:

“That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves; and every person so offending, and being thereof convicted, before any court within the said Territory, having competent jurisdiction, shall forfeit and pay, for each and every slave so imported or brought, the sum of —— dollars, one moiety for the use of the United States, and the other moiety for the use of the person who shall sue for the same; and every slave so imported or brought shall thereupon become entitled to, and receive his or her freedom.”

Whereupon, a motion was made to amend the amendment by striking out, after the words “port or place,” the words “without the limits of the United States,” and insert in lieu thereof, “for sale.”

A division of the question was called for, and that it be taken on striking out; and, on the question, Shall the words be struck out? it passed in the negative,—yeas 6, nays 22, as follows:

YEAS.—Messrs. Baldwin, Bradley, Ellery, Jackson, Israel Smith, and Samuel Smith.

NAYS.—Messrs. Adams, Anderson, Armstrong, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, John Smith, Stone, Venable, Wells, White, and Worthington.

On motion to agree to the original amendment, it passed in the affirmative—yeas 21, nays 6, as follows:

YEAS.—Messrs. Anderson, Armstrong, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, John Smith, Stone, Venable, Wells, White, and Worthington.

NAYS.—Messrs. Adams, Baldwin, Bradley, Ellery, Jackson, and Israel Smith.

MONDAY, January 30.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to amend the bill, by adding the following to the new section, adopted as section eighth:

“And be it further enacted, That no male person brought into said Territory of Louisiana, from any parts of the United States or Territories thereof, or from any province or colony of America belonging to any foreign Prince or State, after the —— day of —— next, ought or can be holden by law to serve for more than the term of one year, any person as a servant, slave, or apprentice, after he attains the age of twenty-one years; nor female in like manner, after she attains the age of eighteen years, unless they are bound by their own voluntary act, after they arrive to such age, or bound by law for the payment of debts, damages, fines, or costs: *Provided,* That no person held to service or labor in either of the States or Territories aforesaid, under the laws thereof, escaping into said Territory of Louisiana,

shall, by any thing contained herein, be discharged from such service or labor, but shall be delivered up in the manner prescribed by law.”

It passed in the negative—yeas 11, nays 17, as follows:

YEAS.—Messrs. Bradley, Brown, Ellery, Hillhouse, Logan, Olcott, Plumer, Potter, Israel Smith, Wells, and Worthington.

NAYS.—Messrs. Adams, Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Condit, Dayton, Franklin, Jackson, Maclay, Nicholas, Pickering, John Smith, Samuel Smith, Venable, and White.

A motion was made to amend the bill, by adding to the end of section eighth, last adopted, the following:

“That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or cause to, or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves, which shall have been imported since the —— day of —— into any port or place within the limits of the United States, from any port or place without the limits of the United States; and every person so offending and being thereof convicted, before any court within the said Territory having competent jurisdiction, shall forfeit and pay, for each and every such slave so imported or brought, the sum of —— dollars; one moiety for the use of the person or persons who shall sue for the same. And no slave or slaves shall directly or indirectly be introduced into said Territory, except by a person or persons removing into said territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to and receive his or her freedom.”

And a division was called for, and that the question be taken on the first proposition, ending with the words, “sue for the same:” and, on the question to agree to this first division of the amendment, it passed in the affirmative—yeas 21, nays 7, as follows:

YEAS.—Messrs. Anderson, Armstrong, Bradley, Breckenridge, Brown, Cocke, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, I. Smith, John Smith, Venable, Wells, White, and Worthington.

NAYS.—Messrs. Adams, Baldwin, Condit, Dayton, Ellery, Jackson, and Samuel Smith.

A motion was made to strike out all that follows the word “and,” in the second division of the amendment, for the purpose of a further amendment; and after debate, the consideration of the subject was postponed.

TUESDAY, January 31.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to strike out the last division of the amendment proposed yesterday, to wit:

“And no slave or slaves shall, directly or indirectly, be introduced into said Territory except by a person or persons removing into said Territory for actual settlement, and being, at the time of such removal, *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall, thereupon, be entitled to, and receive, his or her freedom;” and to insert the following:

“No slave shall be admitted into the said Territory from the United States or their Territories, who shall not be the property of some person *bona fide* removing from the United States into the said Territory, and making an actual settlement therein, or who shall not have passed by descent or devise to the person or persons claiming the same, and residing within the said Territory, from some person or persons deceased in some one of the United States or their Territories; and every slave who shall be brought into said Territory, otherwise than is hereby permitted, shall be forfeited, and may be recovered by any person who shall sue for the same; and the person or

persons offending herein shall moreover forfeit and pay —— dollars for every slave so brought in, to be recovered by action of debt in any court having jurisdiction thereof; one moiety to the use of the United States, and the other moiety to the use of the person who shall sue for the same. And in any action instituted for the recovery of the penalty aforesaid, the person or persons sued may be held to special bail.”

And a division on the question was called for, and that it be taken on striking out; and, on the question, Shall the words be stricken out? it passed in the negative—yeas 13, nays 15, as follows:

YEAS.—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Condit, Jackson, Nicholas, John Smith, Samuel Smith, Stone, Venable, and Wells.

NAYS.—Messrs. Adams, Bradley, Brown, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, Israel Smith, Worthington, and Wright.

WEDNESDAY, February 1.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and on motion, to agree to the last division of the amendment proposed on the 30th ultimo, amended as follows:

“And no slave or slaves shall, directly or indirectly, be introduced into the said Territory except by a citizen of the United States, removing into said Territory for actual settlement, and being, at the time of such removal, *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive, his or her freedom.”

It passed in the affirmative—yeas 18, nays 11, as follows:

YEAS.—Messrs. Armstrong, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Olcott, Plumer, Potter, S. Smith, Wells, White, Worthington, and Wright.

NAYS.—Messrs. Adams, Anderson, Baldwin, Dayton, Ellery, Jackson, Nicholas, Pickering, J. Smith, Stone, and Venable.

THURSDAY, February 2.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on motion to strike out the eighth section of the original bill, amended as follows:

“SEC. 8. The residue of the province of Louisiana, ceded to the United States, shall remain under the same name and form of government as heretofore, save only that the executive and judicial powers exercised by the former government of the province shall now be transferred to a Governor, to be appointed by the President of the United States: and that the powers exercised by the commandant of a post or district shall be hereafter vested in a civil officer, to be appointed by the President in the recess of the Senate, but to be nominated at the next meeting thereof for their advice and consent; under the orders of which commandant the officers, troops, and militia of his station shall be; who, in cases where the military have been used, under the laws heretofore existing, shall act by written orders and not in person; and the salary of the said officers, respectively, shall not exceed the rate of —— dollars per annum. The President of the United States, however, may unite the districts of two or more commandants of posts into one, where their proximity or ease of intercourse will permit without injury to the inhabitants thereof. The Governor shall receive an annual salary of —— dollars, payable quarter-yearly at the Treasury of the United States:”

It passed in the affirmative—yeas 16, nays 9, as follows:

YEAS.—Messrs. Adams, Anderson, Armstrong, Breckenridge, Cocke, Condit, Franklin, Hillhouse, Maclay, Olcott, Pickering, Plumer, J. Smith, Stone, Venable, and Worthington.

NAYS.—Messrs. Baldwin, Brown, Dayton, Ellery, Jackson, Nicholas, Potter, S. Smith, and Wright.

TUESDAY, February 7.

Erection of Louisiana into two Territories.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof, and agreed to sundry amendments; and on motion to agree to a further amendment, as follows:

“SEC. 7. All free male white persons, who are housekeepers, and who shall have resided one year at least in the said Territory, shall be qualified to serve as grand or petit jurors in the courts of the said Territory; and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the judges of the said courts, respectively, shall prescribe, so as to be most conducive to an impartial trial, and to be least burdensome to the inhabitants of the said Territory:”

A motion was made to strike out from the beginning, to the words “and they,” inclusive, for the purpose of inserting, “persons to serve as grand and petit jurors in the courts of the said Territory.”

A division of the question was called for, and that it first be taken on striking out; and on the question, Shall these words be struck out? it was passed in the negative—yeas 10, nays 18, as follows:

YEAS.—Messrs. Adams, Bradley, Brown, Hillhouse, Logan, Olcott, Pickering, Plumer, John Smith, and Stone.

NAYS.—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Condit, Ellery, Franklin, Jackson, Maclay, Nicholas, Potter, Samuel Smith,

Sumter, Venable, Wells, Worthington, and Wright.

On the question to agree to the original motion, it passed in the affirmative—yeas 21, nays 7, as follows:

YEAS.—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Samuel Smith, Stone, Sumter, Venable, Wells, Worthington, and Wright.

NAYS.—Messrs. Adams, Bradley, Hillhouse, Olcott, Pickering, Plumer, and John Smith.

FRIDAY, February 17.

Erection of Louisiana into two Territories.

The Senate resumed the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on motion to amend the bill, by striking out of section 10th, the words:

“And no slave or slaves shall, directly or indirectly, be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves:”

It passed in the negative—yeas 9, nays 19, as follows:

YEAS.—Messrs. Anderson, Baldwin, Cocke, Dayton, Nicholas, John Smith, Stone, Venable, and Wright.

NAYS.—Messrs. Armstrong, Bradley, Breckenridge, Brown, Condit, Ellery, Franklin, Hillhouse, Jackson, Logan, Maclay, Olcott, Plumer, Potter, Israel Smith, Samuel Smith, Sumter, Wells, and White.

On motion to expunge from the same section, after the word “slaves,” the words “and every slave imported or brought into said Territory, contrary to the provisions of this act, shall thereupon be entitled to and receive his or her freedom:”

It passed in the negative—yeas 11, nays 17, as follows:

YEAS.—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Dayton, Jackson, Nicholas, Stone, Sumter, and Venable.

NAYS.—Messrs. Bradley, Brown, Condit, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Plumer, Potter, Israel Smith, John Smith, Samuel Smith, Wells, White, and Wright.

On motion to insert, in the same section, line 3d, after the word “States,” the words “or from any State authorizing the importation of slaves from any foreign port or place:”

It passed in the negative—yeas 8, nays 13, as follows:

YEAS.—Messrs. Brown, Hillhouse, Logan, Olcott, Plumer, John Smith, White, and Wright.

NAYS.—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Maclay, Nicholas, Potter, Israel Smith, Samuel Smith, Sumter, and Venable.

And having further amended the bill, and filled the blanks, it was agreed that the question on its final passage be postponed until to-morrow.

SATURDAY, February 18.

Erection of Louisiana into two Territories.

The Senate resumed the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on the question to agree to the final passage of this bill, it was determined in the affirmative—yeas 20, nays 5, as follows:

YEAS.—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, John Smith, Samuel Smith, Sumter, Venable, and Wright.

NAYS.—Messrs. Adams, Hillhouse, Olcott, Plumer, and Stone.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be “An act erecting Louisiana into two Territories, and making provision for the temporary government thereof.”^[6]

THURSDAY, February 23.

JOHN SMITH, appointed a Senator by the Legislature of the State of New York, in the room of De Witt Clinton, took his seat in the Senate, and his credentials were read, and the oath prescribed by law was administered to him by the President.

FRIDAY, February 24.

Agreeably to the resolution of yesterday, the Senate proceeded to elect a doorkeeper, or assistant to James Mathers, Sergeant-at-Arms; and Henry Timms was appointed.

SATURDAY, February 25.

JOHN ARMSTRONG, appointed a Senator by the Legislature of the State of New York, in the room of Theodorus Bailey, took his seat in the Senate, and his credentials were read, and the oath prescribed by law was administered to him by the President.

SATURDAY, March 10.

Election of President of the Senate, pro tem.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the constitution prescribes, and the ballots

having been collected and counted, a majority thereof was for the Honorable JESSE FRANKLIN, who was accordingly elected President of the Senate *pro tempore*.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the VICE PRESIDENT, elected the honorable JESSE FRANKLIN President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

TUESDAY, March 13.

Impeachment of Judge Chase.

A message from the House of Representatives, by Messrs. J. RANDOLPH and EARLY, two of their members, was received, as follows:

“*Mr. President*: We are ordered, in the name of the House of Representatives and of all the People of the United States, to impeach Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

“We are also ordered to demand that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.”

Turnpike Road to the Ohio.

The Senate took into consideration the amendment reported by the committee to the bill, entitled “An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads;” and on the question to agree to the said amendment, as follows:

Strike out, in the first section, after the word “proceed,” in the fourth line, to the word “and,” in the seventh line, and insert, “to explore and designate

the most eligible route for a turnpike road, to lead from Fort Cumberland, on the Potomac, to Wheeling, on the Ohio.”

It passed in the negative—yeas 13, nays 15, as follows:

YEAS.—Messrs. Anderson, Breckenridge, Cocke, Dayton, Franklin, Pickering, Israel Smith, John Smith of Ohio, Samuel Smith, Stone, Sumter, Worthington, and Wright.

NAYS.—Messrs. Adams, Armstrong, Baldwin, Bradley, Ellery, Hillhouse, Jackson, Logan, Maclay, Nicholas, Olcott, Plumer, John Smith of New York, Venable, and White.

Ordered, That the bill be recommitted, and that Messrs. NICHOLAS, WORTHINGTON, and DAYTON be the committee further to consider and report thereon to the Senate.

WEDNESDAY, March 14.

Impeachment of Judge Chase.

Mr. BALDWIN, from the committee to whom yesterday was referred the message from the House of Representatives relative to the impeachment of Samuel Chase, made report; which was read and adopted, as follows:

“Whereas, the House of Representatives, on the 13th day of the present month, by two of their members, Messrs. John Randolph and Early, at the bar of the Senate, impeached Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors, and acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same;

“And likewise demanded that the Senate take order for the appearance of the said Samuel Chase to answer to the said impeachment. Therefore,

“*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.”

Resolved, That the Secretary of the Senate notify the House of this resolution.

MONDAY, March 19.

Post Roads in States.

The Senate resumed the third reading of the bill, entitled “An act to alter and establish certain post roads.”

On motion, to add the following after section third:

“And be it further enacted, That two post roads shall be laid out, under the inspection of commissioners to be appointed by the President of the United States, one to lead from Tellico block-house, in the State of Tennessee, and the other from Jackson court-house, in the State of Georgia, by routes the most eligible, and as nearly direct as the nature of the ground will admit, to New Orleans.”

It passed in the affirmative—yeas 17, nays 10, as follows:

YEAS.—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Dayton, Franklin, Jackson, Maclay, Nicholas, John Smith of Ohio, John Smith of New York, Samuel Smith, Stone, Sumter, Venable, and Worthington.

NAYS.—Messrs. Adams, Bradley, Hillhouse, Logan, Olcott, Pickering, Plumer, Israel Smith, Tracy, and White.

And, sundry other amendments having been agreed to,

Resolved, That this bill do pass as amended.

Seat of Government.

The bill for the temporary removal of the seat of Government of the United States to the city of Baltimore was taken up for its second reading.

[The debate which took place on this occasion, had progressed to some length before the reporter entered the House. Mr. WRIGHT was then on the floor, and had made a motion to postpone the further consideration of the bill until the first Monday in May.]

Mr. W. assigned as reasons for this motion, that it was not his intention in presenting the bill, that it should pass; but that it had been offered with the view of acting as a spur to the inhabitants of Washington to effect a more complete accommodation of Congress. He trusted and believed it would have that effect; and the operation of the postponement would, by hanging the bill over their heads, most powerfully tend to produce the desirable result of a concentration of the city, and an augmentation of accommodation.

Mr. JACKSON followed, and, in terms of appropriate energy, condemned the proposition of removal. He said he should not have believed, but for the express declaration of the gentleman from Maryland, that he would have brought forward a bill the sole object of which was to frighten the women and children of Washington. So far from the measure having the desired effect avowed by the gentleman, if it had any effect whatever, it would be to shake all confidence in the Government, to repress the very accommodation desired.

Mr. J. denied the moral right of Congress to remove the seat of Government; it had been fixed under the constitution, and without its violation could not be changed.

Such a measure would indicate a prostration of plighted faith; would destroy all confidence in the Government, from one end of the continent to the other.

Gentlemen, in favor of this measure, should know its cost. Already had the present seat of Government, in its origination and consequences, cost the nation the assumption of the State debts to the amount of twenty-one millions, and between one and two millions for public accommodation. Would gentlemen be willing not only to lose all that had been expended, but likewise to indemnify the proprietors in the city, whose assessed property

amounted to two and a half millions of dollars, and the proprietors of property in the whole District, the amount of which he was unable to state?

Mr. J. concluded by saying, he should vote against the postponement, under the expectation that the Senate would take up the bill and reject it by a majority so great, that no similar proposition should ever again be brought before them.

Mr. ANDERSON declared himself hostile to the postponement, as he was in favor of the passage of the bill, under certain modifications. He considered Congress possessed the constitutional power of altering the seat of Government; and he believed, from an experience of the inconveniences attending the existing seat, it was their duty to change it. He allowed that, in such an event, an obligation would arise to indemnify the proprietors for the losses they would thereby sustain. This, however, he considered the lesser evil; as the sum required to make an indemnity would be less than that required for the improvements contemplated, and which are necessary to accommodate the Government.

Mr. COCKE declared himself decidedly inimical to the bill. The permanent seat of Government was fixed under the constitution, and the power did not belong to Congress to alter it.

Mr. ADAMS strenuously contended against the right of Congress to remove the seat of Government. To do so, would be to prostrate the national faith, and to shake the confidence of the nation in the Government. He considered the proposed measure as inexpedient as it was unconstitutional; as it tended directly to defeat the object of the mover.

Mr. S. SMITH said, he should vote in favor of the postponement, because he believed, if the bill were not postponed, it would consume more time than could, at this late period of the session, be spared, without a serious neglect of important business before Congress. He expressed his regret at its introduction.

The question was then taken on the motion of postponement, and decided in the negative—yeas 3, nays 24, as follows:

YEAS.—Messrs. I. Smith, S. Smith, and Wright.

NAYS.—Messrs. Adams, Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Cocke, Dayton, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, John Smith of Ohio, John Smith of New York, Stone, Sumter, Tracy, Venable, White, and Worthington.

The bill was then read a second time.

Mr. DAYTON said, he had been instructed by the Legislature of New Jersey, in case any prospect presented itself of a removal of the seat of Government, to offer, in their name, the public buildings in Trenton for their accommodation. He, therefore, gave notice that, in case the bill went to a third reading, he should produce his instructions, and move the substitution of Trenton in the room of Baltimore. At the same time, he was free to declare his opinion of the impolicy of the proposed measure. The provision of the constitution had arisen from an experience of the necessity of establishing a permanent seat for the Government. To avert the evils arising from a perpetual state of mutation, and from the agitation of the public mind whenever it is discussed, the constitution had wisely provided for the establishment of a permanent seat, vesting in Congress exclusive legislation over it. While he declared this as his creed, he begged it to be understood that there were, in his opinion, some rightful grounds of removal. There were four such, two of which were the following: if the place should be found a grave-yard for those who resided in it, or if the inconveniences of conducting the machine of government should be so great as to prevent the due transaction of the public business. For the existence of these, no fault could be attached to the District. If, therefore, a removal took place on their account, Congress were bound to indemnify the proprietors. There were two other grounds of removal, which would justify a removal without indemnity, as they would be the effect of the misconduct of the inhabitants of the District. These were, the evidence of a turbulent spirit, endangering the safety of Congress, and of a determined resolution, arising from a dissatisfaction which the Government or Congress expressed in favor of a recession.

When he stated these grounds for removal, Mr. D. said, it was not from any apprehension of their occurrence. On the contrary, he believed the Government in perfect safety, and he was convinced, if any hostile arm

should be raised against it, the inhabitants of Columbia would be ready to shed their blood in its defence.

Nothing could exceed his surprise at the motives expressed by the gentleman from Maryland for bringing forward this measure. He should have expected, if the gentleman wished to promote the interests of the city, he would have imitated the example of the Athenians, who, in order to make a particular fund devoted to theatrical exhibitions sacred, had passed a law punishing with death any man who should move to divert it from its allotted purpose; and that the honorable gentleman, instead of bringing forward this bill, would have introduced one punishing with death the man who should move a change of the seat of Government; so that he who made the attempt might know that he did it with a halter around his neck.

Mr. MACLAY moved to strike out the words “Baltimore,” and “Maryland,” in the first section.

Motion agreed to—ayes 14, noes 10.

Mr. M. then observed, that he would concisely state the ideas which influenced him on this subject. For the existing inconveniences of this place, and the want of accommodation to which Congress was exposed, he did not consider the inhabitants of Washington in the least to blame. The causes from which these flowed, it was not in their power to control. They arose, in a great measure, from the city being surrounded by seats of trade, which naturally repressed its rise here. Those inconveniences were, he believed, of a nature not to be cured by time, and, if there was no constitutional obstacle, it would be the best policy to remove immediately. He contended that no constitutional obstacle did exist. On the contrary, he was of opinion that it was the duty of the Legislature, in case the public good required it, to remove the seat of Government. He believed that this place would not long remain the seat. The members of the Government will become tired of remaining here, when they are convinced that the inconveniences which they experience will not promote the advantage even of their posterity. The single question then is, whether less inconvenience will be produced by an immediate or a protracted removal. He was clearly of opinion that the inconvenience of removing, at this time, would be less than at a future day. He concluded by saying, that he should not, himself, have brought forward this measure at the present time. He would have

waited for more conclusive proofs of the insuperable inconveniences attending a residence at this place, when opinions, at present variant, would be more united.

Mr. JACKSON said, the gentleman from Pennsylvania (Mr. MACLAY) had picked a hole in the bill, and what effect it would produce, he could not pretend to say. If the word "Baltimore" had been suffered to remain, it would have been rejected by a large majority.

Mr. J. then went at some length into a view of the unconstitutionality of a removal, and the happy situation of Washington for the seat of the Government. He said that he was far from being friendly, in the first instance, to this measure, which might be called the hobby-horse of, perhaps, the most illustrious man that ever lived. But, once adopted, it became sacred in his eyes; and nothing short of an act of God, in the shape of an earthquake, a plague, or some other fatal scourge, would justify a removal; and, he trusted, that unless some such act occurred, this would be the last time the measure was proposed.

The time would come, though he hoped to God neither his children nor his children's children would live to see it, when the population on this side of the Mississippi would pass that river, and when the seat of Government would be translated to its banks. Centuries would, however, elapse before that period arrived.

Mr. ANDERSON said, there was no such word in the constitution as "permanent," applied to the seat of Government; nor did the constitution prohibit the removal of it when the public interest should require it. Believing that such would be the experience of the inconveniences of the place, that Congress would certainly remove within five years, he was for taking that step now. The ill accommodation of the place was manifest to every man; nor did he believe that time would cure the evil. Such losses, however, as should be sustained by the proprietors, he was ready to remunerate. This was the least expensive course which could be pursued, as to make the necessary improvements in this place will require at least the annual sum of fifty thousand dollars for twenty years to come, and at least thirty thousand dollars a year to keep the public buildings in a state of repair. In addition to this immense expense was to be added, the great loss of time which arose from the inconvenient arrangements of the place, and

the consequent expenditure of public money. For these reasons, Mr. A. said, he should give a decided vote in favor of the bill.

Mr. JACKSON remarked, that the gentleman from Tennessee ought, in forming his opinion of the constitutionality of removing the seat of Government, to attend as well to the laws passed by Congress on the subject, as to the provisions of the constitution itself. [Mr. J. here read the article of the constitution on the subject.] He said that, according to the rigid construction of this provision, it excluded altogether a *temporary* seat, after this part of the constitution was carried into effect. Under this constitutional provision, Congress passed an act on the 6th of July, 1790, not more than a year and a half after the first meeting of the Legislature, and when many of the members of that body had been members of the convention, and might, therefore, be presumed to be the best acquainted with the true meaning of the constitution. This act fixed a temporary and a permanent seat of Government. [Mr. J. read it.] He then asked, can any thing be more clear and explicit? Does it not show, in terms of unequivocal meaning, that it was the opinion of the men best qualified to decide, that the seat of Government, once fixed under the provision of the constitution, must be permanent? It was not then imagined that the Government ought to be travelling about from post to pillar, according to the prevalence of this or that party or faction. All the ideas of that day were hostile to this wheelbarrow kind of Government.

Mr. WRIGHT contended that, while the constitution had sacredly and irrevocably fixed the permanent seat of Government in this place, Congress might make some other place the temporary seat.

Mr. ANDERSON said, that all that the law passed by Congress proved was, that Congress, and not the constitution, had declared this place the permanent seat. This law, like other laws, was subject to repeal.

Mr. ADAMS wished, on this subject, to be explicit. He asked what was the meaning of the article of the constitution on this point, and all the laws of Congress passed under it? From the formation of the constitution until the removal of the Government to this place, but one sentiment had existed, which was, that the seat of the Government once fixed under the constitution, became the permanent seat. As to the idea of the gentleman from Maryland, who says this is the permanent seat while Congress are

going from one place to another, he could not understand it. The constitution says, the place fixed on by Congress, on the cession of jurisdiction by the States, shall be the seat of Government. The idea of a temporary seat implies, necessarily, two seats of Government. But the expression in the constitution is "seat," and that implies only one seat. The reason of this provision of the constitution is obvious. As the gentleman from Georgia has very justly observed, the Government had been driven from post to pillar. The question, what place should be the seat of Government, had never presented itself without enkindling violent feelings; and it was supposed that the question would continue to distract our public councils, until some permanent seat of Government was fixed. To carry this into effect, the constitution interposed, and said, ten miles square shall be given to Congress, where their power shall be sovereign, and that shall be the seat of Government. Why give this exclusive legislation, if their residence is not to be permanent? Would it not be the acme of the ridiculous, for Congress to go to Philadelphia, and still continue to exercise exclusive legislation here? Let us now turn to the acts of Congress, and the proceedings had under them. [Mr. A. here read the act of Congress fixing the seat of Government.] It will appear that it was the intention of Congress that this should be the permanent seat of the Government, from the public buildings erected. Thus much as to the understanding of the Government. Now, as to the meaning of Maryland and Virginia, who gave up the territory, and also gave considerable sums of money for its improvement. Could this have possibly been done under the contemplation that Congress would come here, and, after staying three or four years, run off to different quarters of the Union?

Now then, after this uniform opinion, entertained by Congress, by the States of Maryland and Virginia, and by every man who has expressed an opinion on the subject, until within a few years past, are we to be told that it is possible to give a different construction to the constitution? If any thing can fix a meaning to words, every thing which has occurred to this day, unites to decide this the permanent seat of the Government. These, said Mr. A., are my ideas. On the ground of expediency, if it were admitted as applicable to the present question, I would not undertake to say whether this is the most proper place for the residence of the Government. Nor will I say that Congress could not, consistently, remove in consequence of an act of God; that implies force, to which all human institutions must give way. But,

say gentlemen, if we remove, we must indemnify the proprietors. But why indemnify if the constitution does not make this the permanent seat of Government, as it has been understood to be by every body until this day? Where is the propriety of indemnifying the holders of property here, if this is not the permanent seat, more than proprietors in Philadelphia or New York, where Congress formerly met? This very argument, urged by the advocates of the bill, shows that the constitution has made this the permanent seat. As to the idea of some gentlemen, of granting millions for an indemnity, the thing is impossible; it cannot be done; the people will not suffer it.

Mr. DAYTON replied to some of the remarks made in the course of the debate, principally for the purpose of explaining his previous observations.

When the question was taken, on ordering the bill to a third reading, and passed in the negative—yeas 9, nays 19, as follows:

YEAS.—Messrs. Anderson, Armstrong, Breckenridge, Bradley, Maclay, Plumer, Stone, Tracy, and Worthington.

NAYS.—Messrs. Adams, Baldwin, Cocke, Dayton, Franklin, Hillhouse, Jackson, Logan, Nicholas, Olcott, Pickering, I. Smith, S. Smith, J. Smith of Ohio, J. Smith of New York, Sumter, Venable, White, and Wright.

So the bill was lost.

TUESDAY, March 20.

Wreck and Capture of the Frigate Philadelphia.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate to Congress a letter from Captain Bainbridge, commander of the Philadelphia frigate, informing us of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the

hands of the Tripolitans. This accident renders it expedient to increase our force and enlarge our expenses in the Mediterranean beyond what the last appropriation contemplated. I recommend, therefore, to the consideration of Congress, such an addition to that appropriation as they may think the exigency requires.

TH. JEFFERSON.

MARCH 20, 1804.

The Message and papers therein referred to were read, and ordered to lie for consideration.

TUESDAY, March 27.

Adjournment.

A message from the House of Representatives informed the Senate that the House, having finished the business before them, are about to adjourn to the first Monday in November next.

The PRESIDENT then adjourned the Senate to the first Monday in November next.

EIGHTH CONGRESS.—FIRST SESSION.
PROCEEDINGS AND DEBATES IN
THE HOUSE OF REPRESENTATIVES.

LIST OF REPRESENTATIVES.

New Hampshire.—Silas Betton, Clifton Claggett, David Hough, Samuel Hunt, Samuel Tenney.

Vermont.—William Chamberlain, M. Chittenden, James Elliot, Gideon Olin.

Massachusetts.—Phanuel Bishop, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Thomas Dwight, William Eustis, Seth Hastings, Simeon Larned, Silas Lee, Nahum Mitchell, Eben. Seaver, Tompson J. Skinner, William Stedman, Samuel Taggart, Samuel Thatcher, Joseph B. Varnum, P. Wadsworth, Lemuel Williams.

Rhode Island.—Nehemiah Knight, Joseph Stanton.

Connecticut.—Simeon Baldwin, Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, John C. Smith, Benjamin Tallmadge.

New York.—George Clinton, George Griswold, Josiah Hasbrouck, H. W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, John Patterson, Oliver Phelps, Samuel Riker, Erastus Root, Peter Saily, Thomas Sammons, Joshua Sands, David Thomas, George Tibbits, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck.

New Jersey.—Adam Boyd, Ebenezer Elmer, William Helms, James Mott, James Sloan, Henry Southard.

Pennsylvania.—Isaac Anderson, David Bard, Robt. Brown, Thomas Bonde, Joseph Clay, Frederick Conrad, Wm. Findlay, Andrew Gregg, John A. Hanna, Joseph Heister, John Hoge, Michael Leib, John B. Lucas, Jno. Rea, Jacob Richards, John Smilie, John Stewart, Isaac Van Horne, John Whitehill.

Delaware.—Cæsar A. Rodney.

Maryland.—John Archer, Walter Bowie, John Campbell, John Dennis, William McCreery, Nicholas E. Moore, Joseph H. Nicholson, Thomas Plater.

Virginia.—Thomas Claiborne, Matthew Clay, John Clopton, John Dawson, John W. Eppes, Edwin Gray, Thomas Griffin, David Holmes, John Geo. Jackson, Walter Jones, Joseph Lewis, Andrew Moore, Anthony New, Thomas Newton, John Randolph, Thomas M. Randolph, John Smith, James Stephenson, Philip R. Thompson, Abram Trigg, Alexander Wilson.

North Carolina.—N. Alexander, Willis Alston, jr., Wm. S. Blackledge, James Gillespie, James Holland, William Kennedy, Nathaniel Macon, Samuel D. Purviance, Richard Stanford, Marmaduke Williams, Joseph Winston, Thomas Wynns.

South Carolina.—William Butler, Levi Casey, John B. Earle, Wade Hampton, Benjamin Huger, Thomas Lowndes, Thomas Moore, Richard Wynn.

Georgia.—Joseph Bryan, Peter Early, Samuel Hammond, Daniel Meriwether.

Mississippi.—William Lattimore.

Tennessee.—G. W. Campbell, Wm. Dickson, John Rhea.

Kentucky.—Geo. M. Bedinger, John Boyle, John Fowler, Matthew Lyon, Thomas Sanford, Matthew Walton.

Ohio.—Jeremiah Morrow.

MONDAY, October 17, 1803.

This being the day appointed by a Proclamation of the President of the United States, of the sixteenth of July last, for the meeting of Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats, to wit:

From New Hampshire—Silas Betton, Clifton Claggett, David Hough, Samuel Hunt, and Samuel Tenney.

From Massachusetts—Phanuel Bishop, Manasseh Cutler, Jacob Crowninshield, Richard Cutts, Thomas Dwight, William Eustis, Seth Hastings, Nahum Mitchell, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

From Rhode Island—Nehemiah Knight, and Joseph Stanton.

From Connecticut—Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, and John C. Smith.

From Vermont—William Chamberlin, Martin Chittenden, James Elliot, and Gideon Olin.

From New York—Gaylord Griswold, Josiah Hasbrouck, Henry W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, Thomas Sammons, Joshua Sands, David Thomas, Philip Van Cortlandt, and Daniel C. Verplanck.

From Pennsylvania—Isaac Anderson, David Bard, Robert Brown, Joseph Clay, Frederick Conrad, William Findlay, Andrew Gregg, John A. Hanna, Joseph Heister, William Hoge, Michael Leib, John Rea, Jacob Richards, John Smilie, John Stewart, Isaac Van Horne, and John Whitehill.

From Delaware—Cæsar A. Rodney.

From Maryland—John Campbell, Wm. McCreery, Nicholas R. Moore, Joseph H. Nicholson, and Thomas Plater.

From Virginia—Thomas Claiborne, Matthew Clay, John Dawson, John W. Eppes, Peterson Goodwyn, Edwin Gray, Thomas Griffin, David Holmes, John G. Jackson, Walter Jones, Joseph Lewis, jun., Thomas Lewis, Anthony New, Thomas Newton, jun., John Randolph, jun., Thomas M. Randolph, John Smith, James Stephenson, and Philip R. Thompson.

From Kentucky—George Michael Bedinger, John Boyle, John Fowler, Matthew Lyon, Thomas Sanford, and Matthew Walton.

From North Carolina—Nathaniel Alexander, Willis Alston, jun., William Blackledge, James Holland, William Kennedy, Nathaniel Macon, Richard Stanford, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

From Tennessee—George Washington Campbell, William Dickson, and John Rhea.

From South Carolina—William Butler, Levi Casey, John Earle, Wade Hampton, Benjamin Huger, Thomas Moore, and Richard Winn.

From Ohio—Jeremiah Morrow.

And a quorum, consisting of a majority of the whole number, being present, the House proceeded, by ballot, to the choice of a Speaker; and upon examining the ballots, a majority of the votes of the whole House was found to be in favor of NATHANIEL MACON, one of the Representatives from the State of North Carolina: Whereupon, Mr. MACON was conducted to the chair, from whence he made his acknowledgments to the House, as follows:

“Gentlemen: Accept my unfeigned thanks for the honor which you have conferred on me. The task which you have assigned me will be undertaken with great diffidence, but my utmost endeavors shall be exerted to discharge the duties of the Chair with fidelity. In executing the rules and orders of the House, I shall rely with confidence on the liberal and candid support of the House.”

The House proceeded, in the same manner, to the appointment of a Clerk; and upon examining the ballots, a majority of the votes of the whole House was found in favor of JOHN BECKLEY.

The oath to support the Constitution of the United States, as prescribed by the act entitled “An act to regulate the time and manner of administering certain oaths,” was administered by Mr. NICHOLSON, one of the Representatives from the State of Maryland, to the SPEAKER; and then the same oath or affirmation was administered by Mr. SPEAKER to all the members present.

WILLIAM LATTIMORE having also appeared, as the Delegate from the Mississippi Territory, the said oath was administered to him by the SPEAKER.

The same oath, together with the oath of office prescribed by the said recited act, was also administered by Mr. SPEAKER to the Clerk.

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and have elected NATHANIEL MACON, one of the Representatives for North Carolina, their Speaker; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business; and that, in the absence of the VICE PRESIDENT of the United States, the Senate have elected the Honorable JOHN BROWN their President, *pro tempore*.

Resolved, That Mr. J. RANDOLPH, jun., Mr. R. GRISWOLD, and Mr. NICHOLSON, be appointed a committee on the part of this House, jointly, with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of the

two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

Resolved, That unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

Mr. JOHN RANDOLPH, Jr., from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communication he may be pleased to make to them, reported that the committee had performed that service, and that the President had signified to them that he would make a communication to this House, to-day, in writing.

A communication was received from the PRESIDENT OF THE UNITED STATES to the two Houses of Congress. The said communication was read, and referred to the committee of the whole House on the state of the Union. [See Senate proceedings of this date, for the Message, *ante* [page 4](#).]

TUESDAY, October 18.

Several other members, to wit: from Pennsylvania, JOHN B. C. LUCAS; from Maryland, DANIEL HEISTER; from Virginia, JOHN CLOPTON, and JOHN TRIGG; from North Carolina, SAMUEL D. PURVIANCE; and from Georgia, DAVID MERIWETHER, appeared, produced their credentials, were qualified, and took their seats in the House;

President's Message.

The House resolved itself into a Committee of the Whole on the state of the Union; and, after some time spent therein, the Committee rose and reported the following resolutions:

1. *Resolved*, That so much of the President's Message as relates to the regulations proper to be observed by foreign armed vessels within the jurisdiction of the United States; to the restraining of our citizens from entering into the service of the belligerent powers of Europe; and to the exacting from all nations the observance, towards our vessels and citizens, of those principles and practices which all civilized people acknowledge; be referred to a select committee.

2. *Resolved*, That so much of the President's Message as relates to the adopting of measures for preventing the flag of the United States from being used by vessels not really American, be referred to the Committee of Commerce and Manufactures.

3. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States as relates to our finances, ought to be referred to the Committee of Ways and Means.

The House proceeded to consider the said resolutions, and the same being again read, were agreed to by the House.

Ordered, That Mr. JOHN RANDOLPH, jr., Mr. NICHOLAS R. MOORE, Mr. GAYLORD GRISWOLD, Mr. CROWNINSHIELD, Mr. BLACKLEDGE, Mr. RODNEY, and Mr. JOHN RHEA, of Tennessee, be appointed a committee pursuant to the first resolution.

WEDNESDAY, October 19.

Another member, to wit, PETER EARLY, from Georgia, appeared, produced his credentials, was qualified, and took his seat in the House.

Mourning for Samuel Adams.

Mr. J. RANDOLPH observed that it had lately been announced to the public that one of the earliest patriots of the Revolution had paid his last debt to nature. He had hoped that some other gentleman, better qualified for the task, would have undertaken to call the attention of the House to this interesting event. It could not, indeed, be a matter of deep regret that one of the first statesmen of our country has descended to the grave full of years

and full of honors; that his character and fame were put beyond the reach of that time and chance to which every thing mortal is exposed; but it became the House to cherish a sentiment of veneration for such men—since such men are rare—and to keep alive the spirit to which they owed the constitution under which they were then deliberating. This great man, the associate of Hancock, shared with him the honor of being proscribed by a flagitious ministry, whose object was to triumph over the liberties of their country, by trampling on those of her colonies. With his great compatriot he made an early and decided stand against British encroachment, whilst souls more timid were trembling and irresolute. It is the glorious privilege of minds of this stamp to give an impulse to a people and fix the destiny of nations.

Mr. R. said, that he felt himself every way unequal to the attempt of doing justice to the merits of their departed countryman. Called upon by the occasion to say something, he could not have said less. He would not, by any poor eulogium of his, enfeeble the sentiment which pervaded the House, but content himself with moving the following resolution:

Resolved, unanimously, That this House is penetrated with a full sense of the eminent services rendered to his country in the most arduous times by the late Samuel Adams, deceased; and that the members thereof wear crape on the left arm for one month, in testimony of the national gratitude and reverence towards the memory of that undaunted and illustrious patriot.

Mr. ELLIOTT spoke as follows:

Mr. Speaker: If any apology could be necessary for a new member, unversed in Parliamentary proceedings, to offer for rising so early in the session, it would be, that the topic which arrests his attention is connected with the illustrious and ever memorable name of Samuel Adams. The eloquence of the gentleman from Virginia I shall not attempt to rival; his remarks were peculiarly impressive, and the more so from his remarking that he was unable to do justice to the subject. I have been extremely affected by his calling the attention of the House to the circumstance that the name of that patriot was united with that of John Hancock, in an exemption from the general pardon which the British Government offered to those American revolutionists, whom they dared to style rebels. The

longer I should address the House upon this subject, the more feeble would be my language, as the greater would be my sensibility. I shall, therefore, only further observe, that I shall most cordially support the motion of the gentleman from Virginia.

The question was then taken up on Mr. RANDOLPH's motion: which was agreed to unanimously.

Mr. NICHOLSON observed that, on occasions like the present, it had been usual for the House to adjourn. He, therefore, moved an adjournment; which was carried.

THURSDAY, October 20.

Several other members, to wit: from Massachusetts, SAMUEL THATCHER; from New York, JOHN SMITH; and from Maryland, JOHN ARCHER, appeared, produced their credentials, were qualified, and took their seats in the House.

The House then proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. WILLIAM PARKINSON.

FRIDAY, October 21.

Two other members, to wit: from New York, JOHN PATTERSON and ERASTUS ROOT, appeared, produced their credentials, and took their seats in the House.

Resolved, That the resolution of the tenth of December, one thousand eight hundred and one, authorizing Thomas Claxton to employ an additional assistant, two servants, and two horses, be, and the same is hereby, continued in force during this and the next session: and that the said Thomas Claxton be allowed a further sum of one dollar and twenty-five cents, to be paid in like manner, to enable him to increase the number of his attendants.

A message from the Senate informed the House that the Senate have appointed the Rev. Dr. GANTT, a Chaplain to Congress, on their part.

SATURDAY, October 22.

Appropriation for the Louisiana Treaty.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In my communication to you of the 17th instant, I informed you that conventions had been entered into with the Government of France for the cession of Louisiana to the United States. These, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France, in due form, they are communicated to you for consideration in your legislative capacity. You will observe that some important conditions cannot be carried into execution, but with the aid of the Legislature; and that time presses a decision on them without delay.

The ulterior provisions, also suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days. But, as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not, forthwith, make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require.

TH. JEFFERSON.

OCT. 21, 1803.

Mr. HUGER hoped the reading of the treaty and conventions would be dispensed with, and that they would be printed for the use of the members.

Mr. RANDOLPH hoped they would be read.

The reading of course was proceeded with, which being finished,

Mr. RANDOLPH moved a reference of the Message, and of the documents accompanying it, to the whole House on Monday; which motion was agreed to without a division.

Mr. RANDOLPH begged leave to submit a resolution, arising out of the Message, which he hoped would be considered at that time, for the purpose of referring it to the same committee to whom had been just referred the Message:

Resolved, That provision ought to be made for carrying into effect the treaty and convention concluded at Paris on the 30th April, 1803, between the United States of America and the French Republic.

Referred to the same committee, without a division.

MONDAY, October 24.

The Louisiana Treaty.

Mr. GRISWOLD moved the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the first of October, one thousand eight hundred, together with a copy of the deed of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France, (if any such deed exists;) also copies of such correspondence between the Government of the United States and the Government or Minister of Spain, (if any such correspondence has taken place,) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States; together with copies of such other documents as may be in the Department of State, or any other Department of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France of the thirtieth of April, one thousand eight hundred and three.

Mr. GRISWOLD said that, by adverting to the Message of the President respecting the treaty and conventions lately concluded between the United States and the French Government, he found that the President, speaking on the subject, observes: "As permanent arrangements for this object require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require." He recommends to the immediate attention of Congress the passage of some temporary laws. This being the case, and the subject being about to be brought before the House, it became important that they should know distinctly what they had obtained by the treaty; and whether there were any territory belonging to the United States to take possession of, or any new subjects to govern. Inasmuch as if no new territory or subjects were acquired, it was perfectly idle to pass even temporary laws for the occupation of the one, or the government of the other.

In the treaty lately concluded with France, the treaty between France and Spain is referred to; only a part of it is copied. The treaty referred to must be a public treaty. In the nature of things it must be the title-deed for the province of Louisiana. The Government must have a copy of it. As there is but a part recited, it is evidently imperfect. It becomes therefore necessary to be furnished with the whole, in order to ascertain the conditions relative to the Duke of Parma; it also becomes necessary to get the deed of cession; for the promise to cede is no cession. This deed of cession, Mr. G. also presumed, was in the possession of Government. It was also important to know under what circumstances Louisiana is to be taken possession of, and whether with the consent of Spain, as she is still possessed of it. If it is to be taken possession of with her consent, the possession will be peaceable and one kind of provision will be necessary; but if it is to be taken possession of in opposition to Spain, a different provision may be necessary. From these considerations he thought it proper in the House to call upon the Executive for information on this point. Other important documents may, perhaps, likewise be in the hands of the President.

Mr. RANDOLPH hoped the resolution would not be agreed to. He was well apprized of the aspect which it was in the power of ingenuity to give to a refusal, on the part of that House, to require any information which gentlemen might think fit to demand of the Executive, however remotely

connected with subjects before them. But the dread of imputations which he knew to be groundless should never induce him to swerve from that line of conduct which his most sober judgment approved. Did he indeed conceive that the nation, or the House, entertained a doubt of our having acquired new territory and people to govern; could he for a moment believe that even a minority, respectable as to numbers, required any other evidence of this fact than the extract from the treaty which had just been read, he would readily concur with the gentleman from Connecticut in asking of the Executive, whether indeed we had a new accession of territory and of citizens, or, as that gentleman had been pleased to express himself, subjects to govern. He hoped the gentleman would excuse a small variation from his own phraseology, since, notwithstanding the predilection which some Governments and some gentlemen manifested for this form, Mr. R. asked for himself the use of such as were more familiar to American ears and American constitutions.

The Executive has laid before this House an instrument, which he tells us has been duly ratified, conveying to the United States the country known under the appellation of Louisiana. The first article affirms the right of France, to the sovereignty of this territory, to be derived under the Treaty of St. Ildefonso, which it quotes. The third article makes provision for the future government, by the United States, of its inhabitants; and the fourth provides the manner in which this territory and these inhabitants are to be transferred by France to us. There has been negotiated a convention, between us and the French Republic, stating, in the most unequivocal terms, that there does exist on her part a right to the country in question, which is supported by the strongest possible evidence, and pledging herself to put us in possession of that right, so soon as we shall have performed those stipulations, on our part, in consideration of which France has conveyed to us her sovereignty over this country and people. From the nature of our Government, these stipulations can only be fulfilled by laws to the passing of which the Legislature alone is competent. And when these laws are about to be passed, endeavors are made to impede, or frustrate, the measure, by setting on foot inquiries which mean nothing, or are unconnected with the subject, and this is done by those who have always contended that there was no discretion vested in this House by the constitution, as to carrying treaties into effect. If, sir, gentlemen believe that we must eventually do that which rests with us, towards effecting this object, to what purpose is this inquiry?

Mr. R. begged the House not to impute to him any disposition to countenance this monstrous doctrine, whose advocates now found it so difficult to practise. On the contrary, he held in the highest veneration the principle established in the case of the British Treaty, and the men by whom it was established, that, in all matters requiring legislative aid, it was the right and duty of this House to deliberate, and upon such deliberation, to afford, or refuse, that aid, as in their judgments the public good might require. And he held it to be equally the right of the House to demand such information from the Executive, as to them appeared necessary to enable them to form a sound conclusion on subjects submitted, by that department, to their consideration. But those who then contended that this House possessed no discretion on the subject, that they were bound implicitly to conform to the stipulations, however odious and extravagant, into which the treaty-making power might have plunged the nation—those who then said that we cannot deliberate, are now instituting inquiries to serve as the basis of deliberation—(for if we are not to deliberate upon the result, why institute any inquiry at all?)—inquiries, which are in their very nature deliberation itself. But whilst he arraigned the consistency of other gentlemen, Mr. R. said that it behoved him to assert his own. Information on subjects of the nature of that which they were then discussing, might be required for two objects: to enable the House to determine whether it were expedient to approve a measure which on the face of it carried proof of its impolicy; or to punish ministers who may have departed from their instructions—who may have betrayed the interest confided by the nation to their care.

To illustrate this remark, let us advert to the case of the Treaty of London, generally known as Mr. Jay's treaty. That instrument had excited the public abhorrence. The objections to carrying it into effect were believed insuperable. This sentiment pervaded the House of Representatives, and when they demanded information from the Executive, they virtually held this language: "Sir, we detest your treaty—we feel an almost invincible repugnance to giving it our sanction—but if, by the exhibition of any information in possession of the Executive, we can be convinced that the interests of the United States have been supported to the utmost extent;—that, wretched as this instrument is, the terms are as good as were attainable; and that, bad as those terms are, it is politic under existing circumstances to accept them, we will, however reluctantly, pass the laws

for carrying it into effect. The present case, if he understood any thing of the general sentiment, was, happily, of a different nature. The treaty which they were then called upon to sanction, had been hailed by the acclamations of the nation. It was not difficult to foresee, from the opinions manifested in every quarter, that it would receive the cordial approbation of a triumphant majority of that House. If such be the general opinion—if we are not barely satisfied with the terms of this treaty, but lost in astonishment at the all-important benefits which we have so cheaply acquired, to what purpose do we ask information respecting the detail of the negotiation? Has any one ventured to hint disapprobation of the conduct of the ministers who have effected this negotiation? Has any one insinuated that our interests have been betrayed? If, then, we are satisfied as to the terms of this treaty, and with the conduct of our ministers abroad, let us pass the laws necessary for carrying it into effect. To refuse—to delay, upon the plea now offered, is to jeopardize the best interests of the Union. Shall we take exception to our own title? Shall we refuse the offered possession? Shall this refusal proceed from those who so lately affirmed that we ought to pursue this very object at every national hazard? I should rather suppose the eagerness of gentlemen would be ready to outstrip the forms of law in making themselves masters of this country, than that, now, when it is offered to our grasp, they should display an unwillingness, or at least an indifference, for that which so lately was all-important to them. After the message which the President has sent us, to demand, if indeed we have acquired any new subjects, as the gentleman expresses it, which renders the exercise of our legislative functions necessary, would be nothing less than a mockery of him, of this solemn business, and of ourselves. Cautionary provisions may be introduced into the laws for securing us against every hazard, although, from the nature of our stipulations, we are exposed to none. We retain in our own hands the consideration money, even after we have possession.”

Mr. R. expressed himself averse to demand the Spanish correspondence. The reasons must be obvious to all. The possession of Louisiana by us, will necessarily give rise to negotiations between the United States and Spain, relative to its boundaries. These have probably commenced, and are now pending. He hoped, therefore, the House would go into committee on the Message of the President, and after resolving to pass the requisite laws, if further information shall be wanting in relation to the mode of taking

possession, or any other object of detail, the Executive might be called upon to furnish it.

Mr. GODDARD did not intend to enter upon a long discussion of the resolution; but it seemed to him that the reasons of the gentleman from Virginia for opposing it were very erroneous. On what ground was the opposition made? Altogether on the ground that Spain had actually made the cession to France. Mr. G. apprehended no such impression had been made on the House by the information before them. In the first article of the treaty they learned what the title of France was. The treaty says,

“Whereas, by the article the 3d of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9, (1st October, 1800,) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows:

“His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations therein relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States.

“And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory; the First Consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.”

Mr. GODDARD asked whether the conclusion followed that France had an incontestable title to Louisiana? There was no such evidence. If in virtue of this treaty we purchase a promise on the part of His Catholic Majesty to cede, and not an incontestable title, he would ask if the promise constituted a title? France only says, we cede all our title. This, and this only, is the

language of the instrument. If this is the case, is it not proper to inquire whether there are other acts by which Spain has ceded Louisiana to France? Such acts may exist. Certain stipulations were made by France to Spain, on which the cession depended. Do we not then wish to know whether these stipulations have been fulfilled and whether they are binding, or whether Spain has waived them? Are there in existence any documents to that effect? It has been hinted that such documents exist in the newspapers; but are we, in an affair of this magnitude, to be referred to the dictum of a newspaper? He apprehended that this was a novel mode of legislation.

Mr. RANDOLPH said, if the gentleman from Connecticut would confine his motion to the Treaty of St. Ildefonso, he should be ready to acquiesce in it, though he did not believe that instrument would throw any new light on the subject.

Mr. GREGG said his wish was that the resolution should be divided, and that the Treaty of St. Ildefonso only should be requested. It had been conceded that it might be of some use in ascertaining the limits of the cession. To the other members of the resolution he was opposed. He therefore moved a division of the question.

Mr. GRISWOLD remarked that it would be more orderly to move the striking out of the last paragraph.

Mr. THATCHER said, gentlemen objecting to this resolution had taken different grounds. Some oppose it as inconsistent with the sentiments that prevailed in the case of the British Treaty; others, because it is premature, and others, because it is unnecessary. He did not expect the first objection from any member on that floor; much less did he expect it from the quarter in which it originated. The advocates of the motion were charged with inconsistency. He was not a member of the House at the time of the British Treaty, but, on referring to the Journal, it would be perceived that the object of gentlemen who then called for papers was to go into the merits of the British Treaty. It would not be denied that the ground then taken by gentlemen on the other side was, that the House had a right to examine the merits of the treaty, and to the assertion of that right it was that the President answered. We now say that it is not necessary for us to act in our legislative capacity, intending, if it shall appear to be necessary, not to withhold acting. Mr. T. therefore conceived that they exhibited no

inconsistency, as they did not purpose at this time to go into the merits of the treaty, and as they acknowledged the treaty, if constitutionally made, to be binding. But they wanted information on subjects of legislation.

Mr. NICHOLSON was extremely glad to find that gentlemen on the other side of the House had at length abandoned the ground which they had taken some years ago. He was rejoiced that they were now willing to acknowledge, what they had heretofore most strenuously denied, that the House of Representatives had a constitutional right, not only to call for papers, but to use their discretion in carrying any treaty into effect. That it must now be their impression was evident, or their conduct was surely unaccountable. Why else do they call for papers, why inquire into our title to the province of Louisiana? If the doctrine of a former day was still to be adhered to, why urge this inquiry? If gentlemen are consistent with themselves, if they have not forgot the lessons which they inculcated upon the ratification of the British Treaty, this House has no right to call for papers, no right to make inquiry, no right to deliberate, but must carry this treaty into effect, be it good or bad; must vote for all the necessary measures, whether they are calculated to promote the interests of the United States or not. The doctrines of old times, however, are now given up, the ground formerly taken is abandoned. We shall no longer hear that the Executive is omnipotent, and that the representatives of the people are bound to vote, blindfolded, for carrying into effect all treaties which the President and the Senate may think proper to make and ratify. He thanked the gentlemen for the admission, and hoped that the country would profit by it hereafter.

He was happy to say that this was not now, nor ever was, the doctrine of himself and his friends. They meant to deliberate, they meant to use their discretion in voting away the treasure of the nation. He agreed with gentlemen, that if a majority of the House entertained any doubt as to the validity of the title we have acquired, they ought to call for papers; and he had no doubt, if there was any dissatisfaction, they would call. He himself should have no objection to vote for the resolution if it was confined to proper objects, not indeed to satisfy himself, for he was already fully satisfied, but to satisfy other gentlemen; to satisfy the American people, that the insinuations thrown out about the title, are totally without foundation. The resolution in its present shape, however, was highly improper; it looked

to extrinsic circumstances, and contemplated an inquiry into subjects totally unconnected with the treaty with France. What, said Mr. N., has Spain to do in this business? Gentlemen ask if she has acquiesced in our purchase, and call for her correspondence with our Government. What is the acquiescence of Spain to us? If the House is satisfied, from the information laid on the table, that Spain had ceded Louisiana to France, and that France had since ceded it to the United States, what more do they require? Are we not an independent nation? Have we not a right to make treaties for ourselves without asking leave of Spain? What is it to us whether she acquiesces or not? She is no party to the treaty of cession, she has no claim to the ceded territory. Are we to pause till Spain thinks proper to consent, or are we to inquire, whether, like a cross child, she has thrown away her rattle, and cries for it afterwards?

With regard to the Treaty of St. Ildefonso, Mr. N. said, he should have no objection to its being laid before the House, if it was in the possession of the Executive. In all probability, however, this was not the case, as it was known to be a secret treaty on other subjects of great importance between France and Spain. As to the deed of cession spoken of, he really did not understand what was meant, for he imagined it was not expected a formal deed of bargain and sale had been executed between two civilized nations, who negotiated by means of ambassadors. If there were any other papers which could give gentlemen more information, he had no objection, either, that these should be laid before them. Not indeed for his own satisfaction, but for that of those who were not already satisfied, if there were any of that description. One very important paper, he knew from high authority, was certainly in existence, and possibly might be in the power of the Executive. This was a formal order, under the royal signature of Spain, commanding the Spanish officers at Orleans to deliver the province to the French Prefect, which he considered equal, perhaps superior to any deed of cession; for it was equal to an express recognition on the part of Spain, that France had performed all the conditions referred to in the Treaty of St. Ildefonso. It was an acknowledgment that Spain had no further claims upon Louisiana, and would show that any interference on her part ought to have no influence on the American Government.

Mr. MITCHELL said he rose to express his sentiments against the whole body of the resolution under debate. But his disinclination to adopt it did

not arise from any doubt of the right which the House possessed to call upon the Executive for information. He had no hesitation to ask the President for papers whenever it was necessary to obtain them. And it was equally clear to him that whenever that dignified officer was properly applied to, he would comply cheerfully with the request of Congress, or of either branch of it. He owned that in some cases it would be the duty of the House to pursue this mode of inquiry, and equally would it be the duty of the head of the Executive Department to give his aid and countenance.

In the present stage of the proceedings respecting the treaty and conventions with France concerning Louisiana, he deemed it improper to embarrass the business by an unseasonable call upon the Executive for papers. The President had already communicated various information on this subject, in his Message on the first day of the session. Additional information was given in his Message of the 21st, wherein he told the House that the ratification and exchanges had been made. This was accompanied with instruments of cession and covenant concluded at Paris between our ministers and the agents of the French Republic. All this information we had already on our tables. This the President had put the House in possession of from his own sense of duty. This obligation was imposed on him by the constitution, which declares that he shall, from time to time, give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. Mr. M. said he had a firm belief that the President had complied with this constitutional injunction. He had communicated such intelligence as he had received; and if he was possessed of any thing else needful for the deliberation of the House, he was willing to think the Chief Magistrate of the Union would have spontaneously imparted it.

The question was taken on agreeing to the first member of the resolution, as follows:

Resolved, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the 1st of October, 1800.

The House divided—ayes 59, noes 59. The SPEAKER declaring himself in the affirmative, the motion was carried.

Mr. RODNEY suggested an alteration in the second member of the resolution, so as to read “instrument,” instead of “deed.”

Mr. GRISWOLD had no objection to the modification.

The second member, so modified, was read as follows:

“Together with a copy of the instrument of cession from Spain, executed in pursuance of the same treaty conveying Louisiana to France, (if any such instrument exists.)”

Mr. HUGER confessed his impressions to be favorable to the treaty, though the arguments urged that day, certainly possessed great weight. He was rather of opinion that no such instrument as that referred to in the resolution existed. But if it did exist, its publication would certainly be satisfactory to the people and the House. He declared himself ready to vote for carrying the treaty into effect.

Mr. NICHOLSON did not know whether his remarks had been correctly understood. He did not know whether the document he alluded to could strictly be called the instrument of cession. He had drawn an amendment to this part of the resolution, which he would propose, if in order, to wit:

“Or other instrument showing that the Spanish Government had ordered the province of Louisiana to be delivered to France.”

The SPEAKER said, the House having agreed to insert the word “instrument,” it was not in order to receive a substitute.

Mr. HUGER moved to reconsider the vote of the House in favor of the insertion of the word “instrument.”

Motion lost—ayes 24.

The question was then taken on the second member, as above stated, and lost—ayes 34.

The question was then taken on the third member, viz:

“Also, copies of such correspondence between the Government of the United States and the Government or Minister of Spain, (if any such correspondence has taken place,) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States:”

And lost—ayes 34.

The question was then taken on the last member of the motion, and lost, without a division, viz:

“Together with copies of such other documents as may be in the Department of State, or any other department of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France of the 30th of April, 1803.”

The question recurring on the whole of the resolution, as amended,

Mr. NICHOLSON moved to amend the second member by adding to the end thereof;

“Together with a copy of any instrument in possession of the Executive, showing that the Spanish Government has ordered the province of Louisiana to be delivered to the Commissary or other agent of the French Government.”

Agreed to—ayes 64.

The question was then taken by yeas and nays on the whole of the original motion, amended as follows:

“*Resolved*, That the President of the United States be requested to cause to be laid before the House a copy of the treaty between the French Republic and Spain, of the 1st October, 1800, together with a copy of any instrument in possession of the Executive, showing that the Spanish Government has ordered the province of Louisiana to be delivered to the Commissary or other agent of the French Government:”

And lost—yeas 57, nays 59.

Amendment to the Constitution.

The House resolved itself into a Committee of the Whole on the report of a select committee on propositions of amendment to the constitution.

The report was read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the different States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as a part of the said constitution, viz:

“In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person having a majority of all the Electors for President shall be the President; and if there shall be no such majority, the President shall be chosen from the highest numbers, not exceeding three, on the list for President, by the House of Representatives, in the manner directed by the constitution. The person having the greatest number of votes as Vice President shall be the Vice President, and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the constitution.”

Mr. DAWSON observed, that at the time of the adoption of the constitution, that part of it which related to the election of a President and Vice President had been objected to; and evils likely to occur had been foreseen by some gentlemen at that day. Experience had shown that they were not mistaken. Every gentleman in that House knew the situation in which the country had been placed by the controverted election of a Chief Magistrate; it was one which he trusted never would return. It had been a

subject much reflected on by the people, and by the State Legislatures, several of which had declared their approbation of the principle contained in the resolution reported by the committee. The House had two years since ratified a similar amendment by a constitutional majority of two-thirds. At that time no objections were made to the principle of the amendment. All the objection then made was on account of the lateness of the day and thinness of the House. Mr. D. considered it unnecessary to make any further remarks at that time, as he could not anticipate any objections that might be urged. He moved that the Committee should rise and report the resolution without amendment.

Mr. J. CLAY, though in favor of the principle of the amendment, was of opinion that, as to some of its parts, it required alteration. He therefore moved:

“But if no person have such majority, then the House of Representatives shall immediately proceed to choose by ballot from the two persons having the greatest number of votes, one of them for President; or if there be three or more persons having an equal number of votes, then the House of Representatives shall in like manner, from the persons having such equality of votes, choose the President; or if there be one person having a greater number of votes—not being a majority of the whole number of Electors appointed—than any other person, and two or more persons who have an equal number of votes one with the other, then the House of Representatives shall in like manner, from among such persons having the greater number of votes and such other persons having an equality of votes, choose the President.”

Mr. VAN CORTLANDT thought the amendment liable to objection.

Mr. G. W. CAMPBELL was in favor of the principle contained in the amendment. He considered it to be the duty of this House, in introducing an amendment to the constitution on this point, to secure to the people the benefits of choosing the President, so as to prevent a contravention of their will as expressed by Electors chosen by them; resorting to legislative interposition only in extraordinary cases: and when this should be rendered necessary, so guarding the exercise of legislative power, that those only should be capable of legislative election who possessed a strong evidence of

enjoying the confidence of the people. This was the true spirit and principle of the constitution, whose object was, through the several organs of the Government, faithfully to express the public opinion. For this reason he was in favor of the proposed amendment. By it we shall make a less innovation on the spirit of the constitution than by rejecting it, and adopting the report of the select committee. There were obvious reasons why the persons from whom a choice may be made should be fewer in case of a designation of the office than heretofore. At present the whole number of electoral votes is one hundred and seventy-six. As the constitution now stands, four candidates might have an equal number of votes, or three might have a majority, viz: one hundred and seventeen each. According to the proposed amendment, but one can have a majority, and if two persons should be equal and highest, it is not probable that the third candidate will have many votes.

Mr. GRISWOLD said it was very difficult to ascertain the precise import of the amendment offered by the gentleman from Pennsylvania by barely hearing it read from the Chair. In the meaning therefore which he gave it, he might perhaps be mistaken. If not mistaken, it involved a principle and implied a change, which he had never before heard suggested on that floor, or in the part of the country from which he came. It is well known to every member, that under the constitution as it at present stands, the votes given for a President in this House are by States, and not according to the majority of the members of the whole body. The amendment, as reported by the select committee, preserves this original feature of the constitution by prescribing that the election shall be proceeded with as pointed out by the constitution. But the present amendment varies this mode, according to which it is to be made without respect to States. Of course a majority of the members are to decide. He submitted it to gentlemen whether they were willing in this way to sacrifice the interests and rights of the smaller States. If this be the intention of gentlemen, we ought to have time to deliberate on the subject before it is pressed to a decision. The gentleman from Pennsylvania will explain whether this is his intention.

Mr. J. CLAY begged leave explicitly to state, for the satisfaction of the gentleman from Connecticut, that it was not his intention to change that part of the constitution which prescribed that the votes should be by States; and if it would induce the gentleman to vote for the resolution he had moved, he would add the words of the constitution, viz:

“But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.”

These words were accordingly added.

Mr. DAWSON observed that this proposition had been submitted to the select committee, who had considered it more objectionable than that reported. Their object was to innovate as little as possible on the constitution. A great part of it referred to cases so extremely remote as were not likely to happen. The only material change it made was to reduce the number of persons from whom a choice should be made from three to two. At present the election for a President and Vice President was made from the five highest on the list. As, according to the proposed amendment, a designation of the persons voted for as President and Vice President was to be made, it was considered that by giving the three highest to the House of Representatives, from which to choose a President, and the two highest to the Senate, from which to choose a Vice President, the spirit of the constitution would not be changed. He hoped therefore the report of the committee would be agreed to. He believed it comprehended all cases which were probable; and he further believed that if they spent a month they would not devise an amendment that would provide for all possible cases that may happen.

Mr. CLOPTON said he rose to express his approbation of the amendment offered by the gentleman from Pennsylvania (Mr. CLAY.) He said that indeed the amendment could not but be acceptable to him, inasmuch as it corresponded with the ideas he had the honor to express to the committee on this subject the other day. He begged leave now to make a few remarks in addition to those which he had then stated. He said, if any thing is to be lamented as a defect in the fundamental principles of our Government, that defect perhaps consists in a departure from the plain and simple modes of immediate election by the people as to some of the branches of the Government. He did not mean however now to discuss, nor did he know that he ever should discuss, this point. The Constitution of the United States having established a different principle in respect to the election of the several departments of the Government, except that branch of the

Legislature which this House composes; and the object of the proposed amendment to the constitution not being the transmutation of a fundamental principle, but merely an alteration in the mode heretofore directed of electing one branch of the Government according to the principle already established, his business and his object was to state to this committee those ideas which occurred to him on this occasion as suited to the subject as it now stands before the committee.

Mr. C. said that most seriously considering the principles of the Government in such a point of view as he had the honor to state to the committee, he was irresistibly impressed with the opinion that a legislative election of President or Vice President, whenever resorted to, should be restrained to the smallest number above a unit, or to those persons who have equal electoral votes. He considered it as a position clearly and unquestionably true, that if the field of election, when not decided by the voice of the people themselves, should be left too wide, more chances will there always be for the introduction of abuses in determining on a choice, if those whose province it shall be to decide, should be actuated by a spirit adverse to the public sentiment. Results ungrateful to the public feeling might indeed become sources of discontent truly to be lamented. The demon of discord might be called forth, and stalking over our land, might unfortunately produce a state of things very different from that peaceful, tranquil state, which would follow a decision more conformable to the will of the people. Such a decision he believed would be ensured were the election to be confined to those two persons only who had received the most ample testimony of the public confidence, or to those who had been stamped with equal testimonials of that confidence.

Mr. SMILIE would wish one principle altered in the report of the select committee, viz: that which confined the election of the President to the three highest persons voted for. It was impossible for human wisdom to provide for all cases that might occur. Their time was not well spent in providing for cases extremely remote. He had but one object in view, the designation of office; and the more simple the proposition, the more likely they were to obtain this object. It should be recollected that the constitution was the act of the people, and ought not to be altered till inconveniences actually arise under it. He believed, though particular parts might be defective in theory, they ought not to be changed till practical

inconveniences had been experienced. No such inconvenience had yet been felt from choosing the President from the five highest on the list. Is it, then, prudent to embarrass the great principle, in which they generally concurred, with incidental propositions, when there was no necessity for them? This amendment was to obtain the assent of thirteen legislative bodies before it would be binding. The simpler, then, the proposition, the more likely it was to succeed. His idea, therefore, was to leave the constitution as it now stood, so far as it related to a choice being made from the five highest, and only so far to change it as related to a designation of the office.

Mr. SANFORD said the great object of the amendment ought to be to prevent persons voted for as Vice President from becoming President. If the amendment effected this, it was sufficient. All other innovation upon the constitution was improper; and no danger could arise from extending the right of the House of Representatives to making a choice from the five highest.

Mr. RODNEY said that in the select committee he had been in favor of the number stated in the constitution. He was not for innovating on the constitution one tittle more than was absolutely necessary. As to the mere designation of office, the people looked for and expected it; and if that were obtained, they would be satisfied. He well knew that if amendments to this simple proposition were multiplied, objections to the whole would also be increased. Having been originally in favor of five, and thinking the inconveniences apprehended by some gentlemen not likely to occur, he should vote in favor of the amendment of the gentleman from Maryland, principally for the reason assigned by the gentleman from Connecticut, that it would allow to the smaller States a larger scope of choice.

Mr. ELLIOT hoped the amendment of the gentleman from Maryland would not prevail; and coming, as he did himself, from a small State, he trusted the House would pardon him for assigning his reasons for that hope. He felt as much confidence in the House of Representatives as the gentleman from Connecticut; but he was of opinion that their discretion ought to be limited. The amendment will give the House of Representatives the unqualified power of electing from the whole number on the list of persons voted for as President, and on that ground he opposed it. It was said to be a question of larger and smaller States, and those who represent the smaller States were called upon to check the usurpation of the larger States.

Our system was undoubtedly federative, and there might be danger of a usurpation of the large States if the small ones were not protected by the constitution. His wish was that they might be so guarded.

Mr. G. W. CAMPBELL said he, too, represented a small State, and was anxious to preserve the rights of the small States. But in a great constitutional question, while these rights were not lost sight of, principle ought also to be regarded. This he conceived to be his duty, whatever effect it might have upon the State he represented. For this reason he considered it proper to express his opinions on the present occasion. It was a vital principle to preserve the constitution as pure as possible. This rendered it necessary to show that the proposition of the gentleman from Pennsylvania (Mr. CLAY) came nearer to the principle of the constitution than that offered by the gentleman from Maryland. He had already observed that, there being at present no designation, four was the smallest possible number from which a choice could be made: to this number but one was added, making, altogether, five. In future elections there will be one hundred and seventy-six Electors, and if there be a designation of office, but one person can have a majority. To confine the choice to two persons will, therefore, in principle, approach as near as possible to the original principle of the constitution.

Mr. C. was in favor of preserving that part of the constitution which directed the election to be made by States, wishing as little innovation as possible on the principles of the constitution. He did not, however, conceive a mere change of words dangerous, but the establishment of a principle that deprived the people of the power of electing those who possessed the largest share of their confidence. He was decidedly in favor of whatever had this effect, as according with the true spirit of the constitution; and he was, therefore, opposed to the amendment of the gentleman from Maryland. His own opinion, too, was that it was best to express in one article whatever related to the election of President and Vice President, than refer to the constitution; by which the provisions on that subject would be rendered much clearer.

The question was then taken on Mr. NICHOLSON's amendment, and lost—ayes, 29, noes 77.

Mr. RANDOLPH said he came to the House under the impression that another subject would have occupied their attention on account of its

primary importance, not meaning, however, to disparage the importance of an amendment to the constitution. But on a subject which must be discussed in a few days, if at all, it was improper that time should be lost. The proposed amendment to the constitution was not, he believed, so extremely pressing as to require immediate attention. The subject to which Mr. R. had expected the attention of the House would have been first directed, was the Treaty with France. Hoping that the committee would have decided on the amendment at an early hour, he had refrained from any motion. But perceiving that a decision was not likely soon to be made, he would move that the committee should rise, for the purpose of taking up the treaty respecting Louisiana.

Mr. DAWSON opposed the rising of the committee.

The question was taken on Mr. RANDOLPH's motion, and carried—yeas 60, nays 55. When the committee rose.

And on motion, the House adjourned.

TUESDAY, October 25.

Louisiana Treaty.

The House resolved itself into a Committee of the Whole on the Message from the President of the United States, of the twenty-first instant, enclosing a treaty and conventions entered into and ratified by the United States and the French Republic; to which Committee of the whole House was also referred a motion for carrying the same into effect.

Mr. G. GRISWOLD said he had hoped that some gentleman, in favor of the resolution under consideration, would have risen to assign his reasons in favor of it. But no gentleman friendly to its adoption having risen, and feeling himself embarrassed, he would take the liberty of suggesting his doubts as to the propriety of the resolution. He hoped the committee would have the candor to believe that, in stating those doubts which hung upon his mind, his object was not to delay the progress of the measures contemplated, but to gain information.

In reflecting, for the short time during which the subject had been before him, he had not been able to pursue it in all its bearings, nor to solve all the difficulties it presented. He had first asked himself where was to be found the constitutional power of the Government to incorporate the territory, with the inhabitants thereof, in the Union of the United States, with the privileges of citizens of the United States—is there any such power? And if there is, where is it lodged? In giving his opinion on the constitutional right of making treaties, he would say that it was vested in the President and Senate, and that a treaty made by them on a subject constitutionally in their treaty-making power, was valid without the assent of this House. This House had, to be sure, the physical power of refusing the necessary means to carry treaties into effect; but this power was essentially different from that conferred by the constitution. But if the treaty-making power should be exceeded, if it should be undertaken to make it operate upon subjects not constitutionally vested, he had a right to say that it was his duty not to carry it into effect. Even should its provisions be highly beneficial, it was no less their constitutional duty to resist it. He would not undertake to say that his mind was perfectly fixed, but he entertained doubts—serious doubts; and he hoped gentlemen would candidly give them answers.

Mr. RANDOLPH rose for the purpose of satisfying, so far as was in his power, the doubts expressed by the gentleman from New York (Mr. G. GRISWOLD). He had listened with great pleasure to the candid exposition which the gentleman had given of his objections, and from the temper which he had manifested, Mr. R. relied on being able to satisfy some of his scruples on this subject. The objections which have been urged to the motion before the committee, resolved themselves into arguments against the constitutionality, and arguments against the expediency of the treaty proposed to be carried into effect. As it would be needless to repel objections of this last kind, unless those of the first description could be satisfactorily answered, he should first reply to the observations which had been made on the constitutional doctrine.

He understood the gentleman from New York as denying that there existed in the United States, as such, a capacity to acquire territory; that, by the constitution, they were restricted to the limits which existed at the time of its adoption. If this position be correct, it undeniably follows that those limits must have been accurately defined and generally known at the time

when the Government took effect. Either they have been particularly described in the constitutional compact, or are referred to as settled beyond dispute, and universally acknowledged. But this was not the fact, in either case. The constitution not only did not describe any particular boundary, beyond which the United States could not extend, but our boundary was unsettled on our north-eastern, southern, and north-western frontier, at the time of its adoption. But perhaps we shall be told, that, although our limits were in dispute with our English and Spanish neighbors, still there were certain boundaries specified in the Treaty of Paris, of 1783, which were the actual boundaries of the United States. It was, however, a well attested fact—one of which we possessed official information from the Executive—that the limits assigned us by that treaty were incapable of being established. A line running west, from the Lake of the Woods, not touching the Mississippi at all—it followed that the United States were without limits beyond the source of the Mississippi. It will not be denied, that, among the powers which the Government possesses under the constitution, there exists that of settling disputes concerning our limits with the neighboring nations. This power was not only necessary in relation to the disputed boundaries on the side of Canada and Florida, but was indispensable to a government over a country of indefinite extent. The existence of this power will not be denied: it has been exercised in ascertaining our north-eastern and southern frontier, and it involves in it the power of extending the limits of the Confederacy. Let us suppose that the Commissioners, under the Treaty of London, had determined the river St. John or St. Lawrence to be the *true* St. Croix—would not that part of the province of New Brunswick or Quebec which lies on this side of those rivers at this time have been a part of the United States? Suppose the northern boundary of Florida had been fixed, under the Treaty of San Lorenzo, to extend from the Atlantic Ocean to the Gulf; would not all the country north of this line and east of the Mississippi—part of the very country conveyed by the treaty lately negotiated, and which gentlemen conceived we could not constitutionally hold—would not that country, at this time, compose a part of the United States? That the constitution should tie us down to particular limits, without expressing those limits; that we should be restrained to the then boundaries of the United States, when it is in proof to the committee that no such bounds existed, or do now exist, was altogether incomprehensible and inadmissible. For, if the constitution meant the practical limits of the United States, the

extent of country which we then *possessed*—our recent acquisitions, on the side of Canada and the Natchez, could not be defended. But, sir, said Mr. R., my position is not only maintainable by the reason of the constitution, but by the practice under it. Congress have expressed, in their own acts, a solemn recognition of the principle, that the United States, in their federative capacity, may acquire, and have acquired, territory. It will be recollected, that adverse claims once existed between the United States and the State of Georgia, in relation to a certain tract of country between the northern boundary of the Spanish possessions and what we contended was the southern limit of Georgia—the United States asserting that the country in question was the property of the United States, in their confederate capacity, and the State of Georgia claiming it as hers. Although I have always advocated the claim of that State, it never was on the principle of an incapacity in the United States to acquire territory, or any other which affects the question now before us. It is true, sir, we appointed commissioners to settle the matter in dispute, amicably, with Georgia; but in the mean time we assumed the jurisdiction, erected a government over the country, and thereby established the principle that the United States, as such, could acquire territory; the country in question, as we contended, never having been included within the limits of any particular States, and being ceded to the Confederacy by the Treaty of 1783. But perhaps it may be answered, that this acquisition, being made anterior to the date of the present constitution, cannot affect any limitation or restriction, which it may have provided in relation to this subject; and that to prove that the old confederation could acquire territory, is not to prove the same capacity in the present system of Government. To this I reply, that the constitution contains no such expressed limitation, nor can any be fairly inferred from it: and that if the old confederation—a mere government of States—a loosely connected league—all of whose powers, with many more, are possessed by the present Federal Government—if this mere alliance of States could rightfully acquire territory in their allied capacity, much more is the existing Government competent to make such an acquisition. To me the inference is irresistible.

But the gentleman does not rest himself on this ground alone. He does not embark his whole treasure in a single bottom. Granting that the United States are not destitute of capacity to acquire territory, he denies that this acquisition has been made in a regular way—Congress, says he, alone is

competent to such an act. In this transaction he scents at a distance Executive encroachment, and we are called upon to assert our rights, and to repel it. If any usurpation of the privileges of Congress, or of this House, be made to appear, I pledge myself to that gentleman to join him in resisting it. But let us inquire into the fact. No gentleman will deny the right of the President to initiate business here, by message, recommending particular subjects to our attention. If the Government of the United States possess the constitutional power to acquire territory from foreign States, the Executive, as the organ by which we communicate with such States, must be the prime agent in negotiating such an acquisition. Conceding, then, that the power of confirming this act, and annexing to the United States the territory thus acquired, ultimately rests with Congress, where has been the invasion of the privileges of that body? Does not the President of the United States submit this subject to Congress for their sanction? Does he not recognize the principle, which I trust we will never give up, that no treaty is binding until we pass the laws for executing it—that the powers conferred by the constitution on Congress cannot be modified, or abridged, by any treaty whatever—that the subjects of which they have cognizance cannot be taken, in any way, out of their jurisdiction? In this procedure nothing is to be seen but a respect, on the part of the Executive, for our rights; a recognition of a discretion on our part to accord or refuse our sanction. Where, then, is the violation of our rights? As to the initiative, in a matter like this, it necessarily devolved on the Executive.

Mr. R. said, that he would not dilate upon the importance of the navigation of the Mississippi, which had been the theme of every tongue, which we now possessed unfettered by the equal claim of the nation holding the west bank, a fruitful source of quarrel; but he would call the attention of the committee to a report which had been made at the last session and to which publicity had lately been given.

I am not surprised, Mr. Chairman, that in a performance so replete with information, a single error should be discovered, especially as it does not affect the soundness of its conclusion. As long ago as the year 1673, the inhabitants of the French province of Canada explored the country on the Mississippi. A few years afterwards (1685) La Salle, with emigrants from old France, made a settlement on the Bay of St. Bernard, and at the close of the 17th century, previous to the existence of Pensacola, another French

settlement was made by the Governor, D'Ibberville, at Mobile, and on the Isle Dauphin, or Massacre, at the mouth of that bay. In 1712, a short time previous to the peace of Utrecht, Louis XIV. described the extent of the colony of Louisiana (by the settlements) in his grant of its exclusive commerce to Crozat. Three years subsequent to this, the Spanish establishment at Pensacola was formed, as well as the settlement of the Adais on the river Mexicana. After various conflicting efforts, on both sides, the bay and river Perdido was established, (from the peace of 1719,) as the boundary between the French province of Louisiana on the one side and the Spanish province of Florida on the other: this river being nearly equi-distant between Mobile and Pensacola. Near the close of the war between England and France, rendered memorable for the unexampled success with which it was conducted by that unrivalled statesman, the great Lord Chatham, Spain became a party on the side of France. The loss of the Havana, and other important dependencies, was the immediate consequence. In 1762, France, by a secret treaty of cotemporaneous date with the preliminary Treaty of Peace, relinquished Louisiana to Spain, as an indemnity for her losses, sustained by advocating the cause of France. By the definitive Treaty of 1763, France ceded to England all that part of Louisiana which lies east of the Mississippi, except the island of New Orleans—the rest of the province to Spain. It is to be observed that although France ostensibly ceded this country to England, virtually the cession was on the part of Spain; because France was no longer interested in the business, but as the friend of Spain, (having previously relinquished the whole to her,) and because in 1783 restitution was made by England, not to France, but to Spain, England having acquired this portion of Louisiana, together with the Spanish province of Florida, annexed to the former that part of Florida which lies west of the Apalachicola and east of the Perdido; thereby forming the province of West Florida.

It is only in English geography, and during this period, from 1763 to 1783, that such a country as West Florida is known. For Spain, having acquired both the Floridas in 1783, re-annexed to Louisiana the country west of the Perdido subject to the government of New Orleans, and established the ancient boundaries of Florida; the country between the Perdido and Apalachicola being subject to the Governor of St. Augustine. By the Treaty of St. Ildefonso, Spain cedes to France “the province of Louisiana with the same extent that it now has in the hands of Spain:” viz:

to the Perdido, “and that it had when France possessed it to the Perdido—and such as it should be after treaties subsequently entered into between Spain and other powers;” that is, saving to the United States the country given up by the Treaty of San Lorenzo. We have succeeded to all the right of France. If the navigation of the Mississippi alone were of sufficient importance to justify war, surely the possession of every drop of water which runs into it—the exclusion of European nations from its banks, who would have with us the same causes of quarrel, did we possess New Orleans only, which we have had with the former possessors of that key of the river; the entire command of the Mobile and its widely extended branches, scarcely inferior in consequence to the Mississippi itself—watering the finest country and affording the best navigation in the United States—surely these would be acknowledged to be inestimably valuable.

Mr. PURVIANCE.—I am clearly and decidedly in favor of the resolution on your table, premising the appropriations for carrying the treaty between France and this country into effect; and I sincerely regret, that in doing so, I shall act adversely to the general sentiment of the gentlemen with whom it is my pleasure and my pride to confess I have hitherto politically officiated.

It is true I am, and always have been, opposed to the general tenor of the present Administration. It has not appeared to me to possess that bold commanding aspect—that erect and resolute front—which ought to be assumed by the Executive of a free people, when claiming satisfaction for a wrong sustained. It has not shown that strong, muscular, athletic shape, which is calculated to intimidate aggression, or which is enabled to resist it; nor do I think that it has manifested that firm, dignified, manly tone of virtue and of spirit, which, resting on the love of a free people, and conscious of their strength, can ask for the prompt, direct, and unequivocal satisfaction to which it is entitled, and, being denied, can take it. It has not appeared like the veteran chief, ready to gird his loins in defence of his country’s rights; but, if I may be allowed to use the *magna componere parvis*, it has, to my mind, somewhat resembled a militia subaltern, who, in time of war, directed his men not to fire on the enemy, lest the enemy might fire again.

Under such an Administration, I have thought that it would be better to have the ceded territory on any terms than not to have it at all. If we have not the spirit or the means of doing ourselves justice, would it not be better

that we bribe those who might be in a situation to molest us, and thus put it out of their power to do us any injury, which we cannot or which we will not avenge? There are but two ways of maintaining our national independence—men and money. Since we did not use the first, we must have recourse to the last. One of these two we should be compelled to resort to if France gained possession of Louisiana, and we had better resort to it now. I deny that they have as yet gained possession: they have not received a delivery of the four redoubts which garrison and command the country, nor have they a single armed soldier there, except those which are particularly attached to the equipage of the Colonial Prefect. If, sir, we were obliged to resort to the necessity of purchasing their friendship, after they had procured an establishment, it would not be confined to one instance of humiliation and acknowledgment on our part, or one instance of insult only on theirs. If we purchase this friendship once, we should be compelled to make annual contributions to their avarice, and be annually subjected to their insolence. Repeated concessions would only produce a repetition of injury, and, at last, when we had completely compromitted our national dignity, and offered up our last cent as an oblation to Gallic rapacity, we would then be further from conciliation than ever. The spirit of universal domination, instead of being allayed by those measures which had been intended for its abatement, would rage with redoubled fury. Elated by those sacrifices which had been intended to appease it, it would still grow more fierce; it would soon stride across the Mississippi, and every encroachment which conquest or cunning could effect might be expected. The tomahawk of the savage and the knife of the negro would confederate in the league, and there would be no interval of peace, until we should either be able to drive them from their location altogether, or else offer up our sovereignty as a homage of our respect, and permit the name of our country to be blotted out of the list of nations for ever.

I confess there are many gentlemen of that nation for whom I entertain the sincerest esteem; but although I love some of them as friends, they will pardon me when I say that I do not like all of them as neighbors. Blood, havoc, and devastation, have for some years past encircled their proximity, and circumstances equally disastrous and equally improbable have already taken place. Do we want any evidences of this? We can find them in Switzerland, in Italy, in Egypt, in Hanover, in France itself. We have seen the ancient throne of the Capets tumbled from its base; we have seen the

tide of succession which had flowed on uninterruptedly for ages dammed up for ever; we have seen the sources of the life blood royal drained dry. And by whom? By the pert younglings of the day.

“An eagle towering in his pride of flight
Was, by a mousing owl, hawked at and killed.”

We have afterwards seen these puny upstarts, when their hands had been reddened in the slaughter pens of Paris, kicked from their seats, and a Corsican soldier embellished with the majesty of the Bourbons. We have seen one half of the Old World subjected to his dominion, and the other half alarmed at his power. And is it thought, sir, that America alone, with an army scarcely sufficient to defend our garrisons, with a navy scarcely sufficient to punish a Bashaw, with a treasury incommensurate to our engagements, and an Executive unwilling to strain our energies—is it, I say sir, for America alone, under these circumstances, singly to withstand that gigantic nation, fighting on her own ground, fed from her own granaries, and furnished from her own arsenals? The time once was, indeed, when we could have redressed our own wrongs, and had an opportunity of doing so; but that necessity and that opportunity, I take it sir, have now both passed away.

Yes, thank God! We have now a treaty, signed by themselves, in which they have voluntarily passed away the only means of annoyance which they possessed. But I do not thank the honorable gentleman who is at the head of our Executive. At the time this negotiation was commenced there could not be the smallest hope of its being carried into effect. The French Consul had obtained it perhaps for the express purpose of carrying into effect his favorite scheme of universal domination; it might give him the chance of injuring the British, controlling the Spaniards, and dismembering America. Compared with these objects a handful of bank stock was of no more consequence to him than a handful of sand. His fleet and army were ready to sail, and his colonial prefect had already arrived. But, mark! The King of Great Britain, who at this crisis I take to have been by far the most able negotiator we had, declares war. The scene is now changed. That which France had refused to our intercessions, she was now compelled to grant from mere necessity. A state of warfare took place about the last of March, and the treaty was signed soon afterwards. As long as I retain the small

stock of understanding which it has pleased God to give me, I shall never be induced to believe, that it was owing in the smallest degree to the efficacy of diplomatic representation. The mind of that great man (Buonaparte) is not made of such soft materials as to receive an impress from the collision of every gentle hand. Stern, collected, and inflexible, he laughs to scorn the toying arts of persuasion; his soul is a stupendous rock, which the rushing of mighty waters cannot shake from its place. No, sir; had it not been for this happy coincidence of circumstances, the personal solicitations of our ministers would have been regarded with as listless an ear as if they had been whispered across the ocean.

Mr. ELLIOT.—Mr. Chairman, although in the short time since I have had the honor of a seat on this floor, I have several times risen in debate, that circumstance scarcely diminishes my diffidence at the present moment. Uneducated in the schools, and unpractised in the arts, of parliamentary eloquence, it is with no inconsiderable degree of diffidence that I rise upon the present occasion. There are occasions, however, where even the eye of timidity should sparkle with confidence; and there are questions in the discussion of which the finger should be removed from the lip of silence herself. And such is every occasion and every question involving the existence, the infraction, or even the correct and just construction of that constitution which is the palladium of our privileges, and the temple of our glory. If I might be permitted to borrow a metaphorical expression from one of the most celebrated commanders of antiquity, who declared that he intended to spread all his sails on the ocean of war, I would say that it is with fear and trembling I presume to launch my little feeble bark on the vast ocean of eloquence and literature (*pointing to the federal members*) by which I am surrounded. If, however, the remark be just, that it is even sweet and glorious to die for one's country, surely the humbler sacrifice of native diffidence may with propriety be expected and exacted from a juvenile American Representative.

Whatever minuter shades or minor differences of opinion may exist among the American people, there is one point in which we shall all meet with cordial unanimity. We all unite in an ardent devotion to the constitution. He who is not devoted to it is unworthy of the honorable name of an American. I lament that it is necessary to speak particularly of myself; but duty, not only to myself, but to my constituents, a numerous and

respectable section of the American people, demands it. It may be objected to me, and with truth, that there was a time when I professed sentiments hostile to some of the most important provisions in the constitution. It was not, however, at the time when the constitution was submitted to the people. I was then in infancy and obscurity, deprived of the means, and even of the hopes of education. I had yet read much and reflected more. My ardent and excursive eye had wandered rapidly over the wide field of ancient history; I thought I beheld my country, like the Roman Republic in the age of Cato, the sport of every wind and of every wave. As far as I understood the constitution, I admired it and wished for its adoption. But when an elegant anonymous writer predicted, as the consequence of its adoption, that "liberty would be but a name, to adorn the short historic page of the halcyon days of America," I trembled and shuddered for the possible consequences. If in the plenitude of juvenile self-sufficiency (and who has not been young?) I have since fancied that I could form a more perfect constitution, that dream of the imagination has long been past. I have long been sincerely and ardently attached to the constitution.

The treaty before us is of an immense consequence, and my attention was early turned to the subject. From the moment of my election, I have devoted many studious and laborious hours to the subjects connected with it, and I have anticipated all the objections against it; none of those presented this day by the gentleman from New York, who opened the debate, or by the gentlemen who followed him on the same side, have struck my mind as novel. The question of the constitutionality of the treaty first presents itself. It is said to be unconstitutional, because it enlarges the territory of the United States. To reduce the arguments of gentlemen on this head to syllogistic form, they would not strike the mind with great force. The constitution is silent on the subject of the acquisition of territory. By the treaty we acquire territory; therefore the treaty is unconstitutional. It has been well remarked by an eminent civilian, that those are not the most correct and conclusive reasoners who are very expert at their *quicquids*, their *atquis*, and their *ergos*; but those, who, from correct premises, by just reasoning, deduce correct conclusions. This question is not to be determined from a mere view of the constitution itself, although it may be considered as admitted that it does not prohibit, in express terms, the acquisition of territory. It is a rule of law, that in order to ascertain the import of a contract, the evident intention of the parties, at the time of forming it, is

principally to be regarded. This rule will apply, as it respects the present question, to our constitution, of which it may be said, as the great Dr. Johnson said of the science of the law, that it is the last result of human wisdom acting upon human experience. The constitution is a compact between the American people for certain great objects expressed in the preamble, [Mr. E. here read the preamble,] in language to which eloquence and learning can add no force or weight. Previous to the formation of this constitution there existed certain principles of the law of nature and nations, consecrated by time and experience, in conformity to which the constitution was formed. The question before us, I have always believed, must be decided upon the laws of nations alone; and under this impression I have examined the works of the most celebrated authors on that subject.

I recollect a time, sir, when a foreign minister in this country, at a moment when genius, fancy, and ardent patriotism, were lords of the ascendant over learning, wisdom, and experience, spoke of the law of nations and its principles as mere worm eaten authorities, and aphorisms of Vattel and others. I also recollect that the illustrious man who is now President of the United States was then Secretary of State, and that he delivered the unanimous sentiments of the American people when, in his reply to that minister, he observed that something more than mere sarcasms of that kind was necessary to disprove those authorities and principles; and that, until they were disproved, the American nation would hold itself bound by them. This is the man, sir, who has been so injuriously calumniated within these walls this morning, and upon whom such a torrent of bitter eloquence has been poured by the gentleman from North Carolina (Mr. PURVIANCE;) a gentleman who is himself a model of eloquence, uniting all the excellencies of Cicero and Demosthenes, and all other orators, ancient and modern.

The American people, in forming their constitution, had an eye to that law of nations, which is deducible by natural reason and established by common consent, to regulate the intercourse and concerns of nations. With a view to this law the treaty-making power was constituted, and by virtue of this law, the Government and the people of the United States, in common with all other nations, possess the power and right of making acquisitions of territory by conquest, cession, or purchase. Indeed the gentlemen who deny

us the right of acquiring by purchase, would probably allow us to keep the territory, were it obtained by conquest.

Colonies, or provinces, are a part of the eminent domain of the nation possessing them, and of course are national property; colonial territory may be transferred from one nation to another by purchase; this purchase can be effected by treaty alone, as nations do not, like individuals, execute deeds, and cause them to be recorded in public offices; that department of the Government of the nation purchasing, which possesses the treaty-making power generally, is competent to make treaties for that purpose. These positions are established by the laws of nations, and are applicable to the case before us. [Here Mr. E. read a variety of extracts from Vattel to establish these positions, and observed that they were corroborated by Grotius, Puffendorf, and other eminent writers on the law of nature and nations, whose works he had consulted.]

A mere recapitulation, and that not a tedious one, of these principles and authorities, will now answer the present purpose. Colonies have always been considered as national property, although the law or practice of nations, in this instance, may not conform to the law of nature. Greece treated her colonies with peculiar indulgence: Rome considered any privileges which hers were suffered to possess, as mere matters of grace, not of right. The one was a natural and tender parent, the other a cruel stepmother. Yet I have no recollection that the Grecian colonies in Asia Minor, Italy, or even at Ionia, were represented in the Amphyctionic Council, the General Assembly of the States of Greece. The claim of the British Colonies, which now constitute the United States, to be represented in that body by which they were taxed, though just in itself, was novel and unwarranted by the practice of nations. Thank God the claim was successful, and in consequence of it, we are now here as the representatives of the American people, deliberating upon their most important interests. It is unnecessary to reiterate the other positions; they are undeniable in themselves, and their applicability to the present case will hardly be disputed. If the treaty be extremely pernicious, or has not been made by sufficient authority, or has been made for unjust purposes, it is void by the laws of nations.

The expediency of the treaty is another question, and an important one. I once hoped that the interests of our country would never require an

extension of its limits, and I regret even that that necessity now exists. Evils and dangers may be apprehended from this source, and great evils and dangers may possibly result. But the regions of possibility are illimitable; those of probability are marked by certain well-defined boundaries, obvious to all men of reason and reflection, and, in the language of the poet,

“As broad and obvious to the passing clown,
As to the letter’d sage’s curious eye.”

If we cannot find, in the peculiar principles of our form of government, and in the virtue and intelligence of our citizens, a sufficient security against the dangers from a widely extended territory, in vain shall we seek it elsewhere. There is no magical quality in a degree of latitude or longitude, a river or a mountain. And it has been well remarked, that every danger from this quarter might have been apprehended before the acquisition of this territory. The Roman Empire, or that of Alexander in the zenith of its glory, was scarcely capable of containing a greater population than the territory of the United States; and men conversant with history do not wonder at the transient existence and rapid ruin of those empires. I repeat it, Mr. Chairman, we must look for our security in principles and circumstances inapplicable to the ancient nations. With the present question of expediency, I confess, sir, are naturally intermingled many considerations, infinitely interesting to the future peace, prosperity, felicity, and glory of our beloved country. The physical strength of a nation depends upon an aggregation of circumstances, amongst which, compactness of population, as well as territory, may be reckoned; our population may become too scattered; but this too is only a possible event. These possible evils ought not to be put in competition with the certain advantage which we derive from the acquisition.

But a gentleman tells us that the Administration hold out to us an Eden of the western world, a land flowing with milk and honey, while they have obtained nothing but a dreary and barren wilderness. Perhaps, if the gentleman be correct, the acquisition is scarcely the less important. To demonstrate the advantages of this purchase, it is not necessary to describe Louisiana as an Elysian region—to describe it as Homer does the Fortunate Islands, a region, on whose auspicious climate even winter smiles, where no bleak wind blows from its mountains, and no gale is felt but the zephyr,

diffusing health and pleasure. But from geographical information, defective as it is, and from reasonable analogies, we may conclude that, with the exception of some considerable tracts, it is a country fertile and salubrious. Geography points us to China, Persia, India, Arabia Felix, and Japan, countries situated in corresponding latitudes, which, though always overshadowed by the horrid gloom of despotism, are always productive, and teach us by analogy that Louisiana, in natural fertility, is probably equal to those beautiful oriental regions.

The gentleman from North Carolina (Mr. PURVIANCE) says, he shall vote for carrying the treaty into effect, because the possession of the territory is important, and the Administration not having, as it ought to have done, made use of men to obtain it, he will consent to make use of money. He has applied many curious epithets to the Administration. He wishes for an Administration *athletic* and *muscular*, meaning, I suppose, like the wrestlers in the Grecian circus, or the gladiators in that of Rome. When I came within these walls, sir, I ardently hoped that the voice of party would be silent during the discussion of this subject, and I did not expect to hear the Administration attacked in the language of vulgarity, malignity, and factious fury. When it is thus assailed, shall its defenders be silent? During the last session of Congress, an extraordinary degree of agitation was produced in the public mind by an egregious violation of our rights by an officer of the Spanish Government. Neither the people nor the Government were deficient in that spirit which the gentleman extols, but they were not governed by false ideas of national honor, and they were acquainted with the law of nations; they knew that we had no right to make the *denunciatio belli* precede the *repetitio rerum*—a declaration of war precede a demand for justice.

Mr. SANFORD did not rise to make a display of his talents. Those who had confided to him the representation of their interests could have no such expectations, as they had unfortunately selected a plain Western farmer. He was sorry to see so much time wasted. He begged the House would recollect the time within which it was necessary to pass laws for carrying the treaty into effect. Much has been said of a breach of the constitution; but has any man shown it? The constitution does not prohibit the powers exercised on this occasion; and not having prohibited them, they must be considered as possessed by Government. In his opinion, it was necessary to

carry the treaty into immediate effect. This done, other measures would require attention which would afford an ample harvest for the talents and eloquence of gentlemen with which, on any other occasion, he would be highly pleased.

Mr. THATCHER was sorry to be obliged, at this late hour, to state his reasons for voting against the resolution; but he should not discharge his duty to his constituents, were he to refrain from expressing his ideas. These reasons he should state as briefly as possible. This resolution is general, and contemplates two objects; it calls for the occupation and government of Louisiana, and for an appropriation of fifteen millions of dollars. He had hoped that, on a question of such national importance, they would have been allowed the papers necessary for its elucidation. But gentlemen have denied us this privilege. As the question, whether the treaty should be carried into effect, is a great constitutional question, I shall, in my remarks, confine myself to the constitutional objections against the treaty. Two objections have been made arising from the 3d and 7th articles of the treaty.

The third provides that “the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free, enjoyment of their liberty, property, and the religion which they profess.”

I conceive, said Mr. T., that the only sound doctrine is, not that which has been stated by the gentleman from Kentucky, (Mr. SANFORD,) that whatever power is not prohibited by the constitution is agreeable to it, but that such powers as are not given are still held by the States or the people. No arguments have been addressed to prove that the constitution delegates such a power. The gentleman from Vermont, (Mr. ELLIOT,) who has gratified us with so long and flowery a speech, and who has ransacked Vattel, and various other eminent authors on the laws of nations, has proved that where the United States have a right to make a treaty, a treaty may be made. But these authorities do not apply unless he prove that the constitution gives the powers exercised in the present instance. The confederation under which we now live is a partnership of States, and it is not competent to it to admit a new partner but with the consent of all the partners. If such power exist, it

does not reside in the President and Senate. The constitution says new States may be admitted by Congress. If this article of the constitution authorizes the exercise of power under the treaty, it must reside with the Legislature, and not with the President and Senate.

The gentleman from Virginia says, the principle contained in the third article of the treaty has been already recognized by Congress, and has instanced our treaties with Spain and Great Britain respecting the adjustment of our limits. By adverting to these treaties, it will be seen that there was then no pretence that we had acquired new territory. They only establish our lines agreeably to the Treaty of Peace. Certainly then the facts are not similar, and there exists no analogy of reasoning between the two cases. The gentleman from Virginia asks whether we could not purchase the right of deposit at New Orleans? But the argument meant to be conveyed in this question does not apply. We had the right before this treaty was formed; nor did we, in consequence of that right, undertake to admit the people of New Orleans into the Union.

Mr. CROWNINSHIELD.—Mr. Chairman: I rise, sir, to correct the gentleman from North Carolina in one particular; he has stated that the First Consul of France signed the treaty ceding Louisiana to the United States after the declaration of war by Great Britain against France. I believe he is mistaken, sir, for the Louisiana treaties were signed the 30th April, and Great Britain issued a declaration of war against France on the 17th of May. If I am right, the gentleman might have spared himself the trouble of detracting from the merits of the Executive on this great occasion.

Now I am up, I beg leave to state to the committee some of the reasons why I shall give my vote in favor of the treaties.

A resolution is on the table which recommends that provision ought to be made to carry into effect the late treaties with France, which cede Louisiana to the United States. Feeling as I do that we have acquired this country at a cheap price, that it is a necessary barrier in the Southern and Western quarters of the Union, that it offers immense advantages to us as an agricultural and commercial nation, I am highly in favor of the acquisition, and I shall most cordially give my vote in approbation of the resolution.

What, sir, shall we let slip this golden opportunity of acquiring New Orleans and the whole of Louisiana for the trifling sum of fifteen millions

of dollars, when one-quarter part of the purchase money will be paid to our own citizens, the remainder in public stock, which we are not obliged to redeem under fifteen years? I trust, sir, we shall not omit to seize the only means now left to us for getting a peaceable possession of the finest country in the world. The bargain is a good one, and considering it merely in that light, we ought not to relinquish it. I have no doubt that the country acquired is richly worth fifty millions of dollars, and it is my opinion that we ought not to hesitate a moment in passing the resolution on the table.

We have now an opening for a free trade to New Orleans and Louisiana, which we never had before, and I hope we shall embrace it. Let us ratify the treaties, with all their provisions, and we shall see that in less than three years we have gained the greatest advantages in our commerce. I wish we may immediately proceed to adopt the resolution before the committee.

Mr. MITCHILL rose and said, he entreated the indulgence of the committee for rising at so late a stage of the debate, when seven hours have already been employed in the sitting of the day. And the reason of his request was, that such extraordinary doctrines have been advanced against carrying into effect the treaty with France which cedes Louisiana to our nation, and such repeated allusions have been made to the sentiments which he submitted to the House during the debate of yesterday, that he felt himself called upon to attempt a reply, and therein to show that the grounds taken by the gentlemen of the opposition are neither strong nor tenable. Although the subject is ample and copious, he should endeavor to condense his remarks, to so moderate a compass, as not to trespass long upon the patience of the committee.

My colleague, said Mr. M., who opened the debate this morning, (Mr. G. GRISWOLD,) displayed in his speech the objections raised against the resolution on the table, so fully, that he almost exhausted the subject. For, in listening attentively to the reasoning of the gentleman from Virginia, who followed him, (Mr. J. LEWIS,) and of the other gentleman from Virginia, who spoke next, (Mr. GRIFFIN,) he could not discern that any new or additional matter of much consequence had been urged. Nor did he discover much more than a repetition in substance of his colleague's reasoning, in what had been urged by the gentleman from Mass., (Mr. THATCHER,) and the gentleman from Connecticut (Mr. GRISWOLD;) though the statement of

their objections had received a form and coloring diversified according to the skill and ingenuity of each.

The gentlemen, Mr. Chairman, who resist the provisions necessary to the completion of this treaty, do so because they say it has been ratified by the President and Senate in open violation of the constitution of the United States, and is, therefore, no treaty, but a nullity, an instrument void *ab initio*, not a part of the supreme law of the land, and consequently not binding upon Congress or the nation. They draw this bold and extraordinary conclusion from the style and meaning of the 3d and 7th articles of the treaty. The former of these, they say, is unconstitutional, because it proposes to annex a new territory, with its inhabitants, to our present dominion; the latter, because it abolishes for a term of years the discriminating duties of tonnage and impost within the ceded territory, giving a preference there to France and Spain, and leaving those duties unaltered in all the ports of the Union.

By the third article, it is agreed that the inhabitants of the ceded territory shall be incorporated into the Union of the United States as soon as possible, according to the principles of the federal constitution, and be admitted to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

On expounding this article, my colleague has declared that the President and Senate have no power to acquire new territory by treaty, and he argues that our people are to be for ever confined to their present limits. This is an assertion directly contrary to the powers inherent in independent nations, and contradictory to the frequent and allowed exercise of that power in our own nation. We are constantly in the practice of receiving territory by cession from the red men of the West, the aborigines of our country. The very treaty mentioned in the President's Message, with the Kaskaskias Indians, whereby we have acquired a large extent of land, would, according to this doctrine, be unconstitutional; and so would all the treaties which add to the size of our statute book, with the numerous tribes of the natives on our frontiers. According to this construction, all our negotiations so happily concluded with those people, whom we ever have uniformly acknowledged as the sovereigns of the soil, are nugatory, and to be holden for naught. He

said, he was perfectly aware of the answer which would be made, that we held all our national domain, under Great Britain, by virtue of the treaty concluded at Paris in 1783. What, after all, was the amount of that cession by England? Certainly not a conveyance of a country which never was theirs, but rightfully belonged to the Indian natives; for it was, in its true construction, merely a *quit claim* of the pretensions or title of the land which the English had obtained by conquest and treaty from the French. By that negotiation, the United States obtained a bare relinquishment of the claims and possessions of those two powerful nations. But the paramount title of the original inhabitants was not affected by this. However contemptuously the rights of these rude and feeble tribes had been regarded by the Europeans, their descendants in these States had considered them with recognition and respect. Until the Indians sold their lands for an equivalent, the humane and just principles of the American Government acknowledged them to be the only legitimate owners. And the sovereignty acquired by treaty or purchase to our Government was derived from the title which the natives transferred to them as grantees in a fair bargain and sale. Such, Mr. M. argued, were the rules of true construction, and these rules admitted and acted upon by the Federal Government; and yet, according to the novel doctrine of this day, every treaty with the natives for parcels of their country, although hitherto deemed lawful, would be an unconstitutional act. According to this notion, every treaty for lands, held with the aborigines since the organization of the Government, was a violation of the constitution. And thus this invaluable instrument, this bulwark of our liberties, had been violated perhaps twenty times or more, since we began to buy the surplusage of their hunting grounds. The Indian tribes are as much aliens as any other foreign nations. Their lands are as much foreign dominion as the soil of France or Spain. Yet we have gone on to annex the territories which they sold us, to our present territory, from the time we acquired independence, and no mortal, until this debate arose, Mr. Chairman, has so much as thought that thereby a breach of the constitution was made. My colleague is surely entitled to great credit for his perspicuity in finding out that all our great and wise predecessors in administering this Government have been plunderers and constitution-breakers. But, sir, the just judgment on this subject is, that the Presidents and Senate of the United States have heretofore acted constitutionally in acquiring by purchase foreign dominions from the alien Indians. And by a parity of reasoning,

they have acted not only constitutionally, but eminently for the interest of the country, in buying Louisiana from the white men, its present sovereigns.

But, independent of correct principles and steady precedent in favor of the acquirement of new territory, it may be worth while to mention a few of the strange consequences which flow from the doctrine which the gentlemen of the other side of the House contend for. According to their reasoning, if by any force of the currents of the ocean, or any conflicts of the winds and the waves, a new surface of earth should emerge from the neighborhood of Cape Hatteras, it would be unconstitutional to take possession of it. Yet it appears to me, sir, very like an absurdity to say the United States would break their bond of union by erecting a light-house on it. Suppose that, by volcanic action, islands should be suddenly elevated from the bottom of the neighboring Atlantic, as they have repeatedly risen from the depths of the Mediterranean, would it be unconstitutional to take possession of them? So far from it, there would on the other hand be a duty in the Government to assume the dominion of all adjacent islands. Again; suppose for a moment that our present limits were full of people, would it be unconstitutional to purchase additional territory for them to settle upon? Must the hive always contain its present numbers, and no swarm ever go forth? At this rate we should, before a great lapse of time, arrive at a *plenum* of inhabitants, and if no new settlement could be obtained for them, the Chinese custom of infanticide must be tolerated to get rid of those tender little beings for whom food enough could not be procured, to rear them to manhood. And thus, when this *maximum* of population shall have arrived, there would be no constitutional power to purchase and possess any of the waste lands on this or the other side of the Mississippi, for them to spread and thrive upon. A doctrine against which, he confessed, his understanding revolted.

Our Government having in this manner the right of acquiring additional territory, had very often exercised that right by actual purchases and by possessions and settlements afterwards. The whole of the recent State of Ohio and of the Indiana Territory was obtained and peopled in this manner. And in the settlement of limits both on the side of Florida and Nova Scotia, the principle had again and again been acted upon; and, strange to tell, nobody, until this eventful time, had possessed acuteness enough to find out the error.

But the gentleman from Connecticut, Mr. Chairman, (Mr. GRISWOLD,) contends that even if we had a right to purchase soil, we have no business with the inhabitants. His words, however, are very select; for he said, and often repeated it, that the treaty-making power did not extend to the admission of foreign nations into this confederacy. To this it may be replied that the President and Senate have not attempted to admit foreign nations into our confederacy. They have bought a tract of land, out of their regard to the good of our people and their welfare. And this land, Congress are called upon to pay for. Unfortunately for the bargain, this region contains civilized and Christian inhabitants; and their existence there, it is alleged, nullifies the treaty. The gentleman construed the Constitution of the United States very differently from the manner in which Mr. M. himself did. By the third section of the third article of that instrument, it is declared, that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing therein contained shall be construed so as to prejudice any claim of the United States, or of any particular State.

In the case of Louisiana no injury is done either to the nation or to any State belonging to that great body politic. There was nothing compulsory upon the inhabitants of Louisiana to make them stay and submit to our Government. But if they chose to remain, it had been most kindly and wisely provided, that until they should be admitted to the rights, advantages, and immunities of citizens of the United States, they shall be maintained and protected in the enjoyment of their liberty, property, and the religion which they profess. What would the gentleman propose that we shall do with them? Send them away to the Spanish provinces, or turn them loose in the wilderness? No, sir, it is our purpose to pursue a much more dignified system of measures. It is intended, first, to extend to this newly acquired people the blessings of law and social order. To protect them from rapacity, violence, and anarchy. To make them secure in their lives, limbs, and property, reputation, and civil privileges. To make them safe in the rights of conscience. In this way they are to be trained up in a knowledge of our own laws and institutions. They are thus to serve an apprenticeship to liberty; they are to be taught the lessons of freedom; and by degrees they are to be raised to the enjoyment and practice of independence. All this is to be done as soon as possible; that is, as soon as the nature of the case will permit; and according to the principles of the federal constitution. Strange!

that proceedings declared on the face of them to be constitutional, should be inveighed against as violations of the constitution! Secondly, after they shall have been a sufficient length of time in this probationary condition, they shall, as soon as the principles of the constitution permit, and conformably thereto, be declared citizens of the United States. Congress will judge of the time, manner, and expediency of this. The act we are now about to perform will not confer on them this elevated character. They will thereby gain no admission into this House, nor into the other House of Congress. There will be no alien influence thereby introduced into our councils. By degrees, however, they will pass on from the childhood of republicanism, through the improving period of youth, and arrive at the mature experience of manhood. And then, they may be admitted to the full privileges which their merit and station will entitle them to.

Mr. J. RANDOLPH said that a sense of duty alone could have induced him to rise at that late hour. He wished to call the attention of the committee to a stipulation in the Treaty of London. [Here Mr. R. read an extract from the third article of that treaty, whereby the United States are pledged not to impose on imports in British vessels from their territories in America, adjacent to the United States, any higher duties than would be paid upon such imports, if brought into our Atlantic ports in American bottoms.] In this case, he said, gentlemen could not avail themselves of the distinction taken by his friend from Maryland (Mr. NICHOLSON) between a Territory and a State, even if they were so disposed—since the ports in question were ports of a State. The ports of New York, on the Lakes, were as much ports of that State, as the city of New York itself; they had their custom-house officers, were governed by the same regulations as other ports,—duties were exacted at them; and yet, under the article of the British Treaty which had been just read, British bottoms could and did enter them subject to no higher duties than were paid by American bottoms in the Atlantic ports. Mr. R. said that he did not mean to affirm that this exemption made by the Treaty of London was constitutional, so long as a distinction prevailed between American and British bottoms in other ports. He had never given a vote to carry that treaty into effect—but he hoped the gentlemen from Connecticut—both of whom he believed had done so; one of whom, at least, he knew had been a conspicuous advocate of that treaty—he hoped that gentleman (Mr. GRISWOLD) would inform the committee how he got over the constitutional objection to this article of the Treaty of London,

which he had endeavored to urge against that under discussion. How could the gentleman, with the opinion which he now holds, agree to admit British bottoms into certain ports, on the same terms on which American bottoms were admitted into American ports, generally? thereby making that very difference,—giving that very preference to those particular ports of certain States, which he tells us cannot constitutionally be given to the port of New Orleans—although that port is not within any State, and, if his (Mr. GRISWOLD's) doctrine be correct, not even within the United States!

The gentleman from Connecticut professed a wish that this important discussion should be conducted with moderation and candor. In this sentiment he concurred. He was therefore altogether unprepared, after this preamble, to hear the gentleman from Connecticut represent the treaty in question as conceding the most valuable commercial privileges to France and Spain, and thereby sapping the very foundation of our own carrying trade. In the spirit of candor the stipulations in question would be viewed, not as conceding advantages in trade to those nations, but as securing them to ourselves. The article in question did indeed profess to grant, for a limited time, to French and Spanish vessels, laden with the products of their respective countries, admission into the ports of the ceded territory, on equal terms with our own ships. But, although nominally an advantage has been conceded to these nations, substantially their situation was changed for the worse, and the benefit in fact conferred on us. For what were our rights in these ports, and what were theirs, setting aside the treaty? The treaty then had rendered our situation more eligible and theirs less so. How then could gentlemen declare that it was calculated to injure our carrying trade? when by it our trade was put on the footing of absolute security, while that of France and Spain was admitted under considerable restrictions, enjoying in but one particular, and for twelve years only, an equality with ours. Their trade, before on so superior a footing, had descended from its pre-eminence in privilege, and given way to ours; and yet gentlemen warn us of the destruction of our carrying trade, and commercial prosperity, from the very source which has enlarged and secured both. The enemies of the treaty, therefore, are the advocates of the trade of France and Spain, and the enemies so far of our own; since, by retaining things in their present posture, they would continue to those nations the superior advantages which they now enjoy in the ports of Louisiana, they would continue the restrictions which heretofore have fettered our commerce to that country,

and they would refuse to put our trade on a footing superior to that of France and Spain.

On the subject of expediency, the gentleman had undervalued the country west of the Mississippi, and had declared that he considered the barren province of Florida as more important to us. Mr. R. asked if the country west of the Mississippi were not valuable, according to the gentleman's own statement, since it afforded the means of acquiring Florida, which he prized so highly, from Spain? He had no doubt of the readiness of that power to relinquish Florida, in itself a dead expense to her—only valuable as an out-work to her other possessions, and now insulated by those of the United States—for a very small portion of the country which we claimed in virtue of the treaty under discussion.

He denied the correctness of the doctrine advanced by the same gentleman, that the stipulation entered into by France, in time of war, to raise the Duke of Parma to the throne of Etruria, bound her to obtain a recognition of that King from every power of Europe. All which concerned us in that treaty had been recited in ours with France. By the Treaty of St. Ildefonso His Catholic Majesty stipulates “to redeliver (*retroceder*) to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana.” What these stipulations were is certainly known only to the parties themselves, for they never were officially made public, although we are at no loss to conjecture them. Nor are we at all concerned whether France has or has not complied with them. Because in a treaty executed at Madrid, six months after, in March, 1801, they show that they consider the former treaty as having passed the title to the country to France. The fifth article is as follows:

“This treaty being in pursuance of that already concluded between the First Consul and His Catholic Majesty, by which the King delivers to France possession of Louisiana, the contracting parties agree to carry into effect the said treaty,” &c.

Spain, therefore, being satisfied as to the stipulations entered into by France in the Treaty of San Ildefonso, declares herself in the second treaty ready to redeliver the country to her whenever she was ready to receive it,

and Mr. R. said, he had it from high authority that the royal mandate to that effect was in the hands of the Minister of the French Republic near the United States, and would be forwarded to the existing Government of Louisiana so soon as the treaty should be confirmed on our part.

Having departed considerably from the particular point on which he wished to be satisfied by the gentleman from Connecticut, who had spoken first, (Mr. GRISWOLD,) he would again recall the attention of that gentleman to the third article of the Treaty of London, and request that he would reconcile its provisions to the doctrine which he had advanced on the seventh article of the treaty then before the committee.

The committee now rose. Mr. SPEAKER resumed the Chair, and Mr. DAWSON reported that the committee had, according to order, had the said message, treaty, conventions, and motion, under consideration, and come to several resolutions thereupon; which he delivered in at the Clerk's table, where the same were read, as follows:

1. *Resolved*, That provision ought to be made for carrying into effect the treaty and conventions concluded at Paris on the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic.

2. *Resolved*, That so much of the Message of the President, of the twenty-first instant, as relates to the establishment of a Provisional Government over the territory acquired by the United States, in virtue of the treaty and conventions lately negotiated with the French Republic, be referred to a select committee; and that they report by bill, or otherwise.

3. *Resolved*, that so much of the aforesaid conventions as relates to the payment, by the United States, of sixty millions of francs to the French Republic, and to the payment, by the United States, of debts due by France to citizens of the United States, be referred to the Committee of Ways and Means.

The House proceeded to consider the said resolutions at the Clerk's table: Whereupon the first resolution being again read, was, on the question put thereupon, agreed to by the House—yeas 90, nays 25, as follows:

YEAS.—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanael Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, Levi Casey, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, David Holmes, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Joseph A. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS.—William Chamberlin, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Nahum Mitchill, Thomas Plater, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Peleg Wadsworth, and Lemuel Williams.

The second resolution being again read, and amended at the Clerk's table, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That so much of the Message of the President, of the twenty-first instant, as relates to the occupation and establishment of a Provisional Government over the Territory acquired by the United States, in virtue of

the treaty and conventions lately negotiated with the French Republic, be referred to a select committee; and that they report by bill, or otherwise.

Ordered, That Mr. JOHN RANDOLPH, jr., Mr. JOHN RHEA, of Tennessee, Mr. HOGE, Mr. GAYLORD GRISWOLD, and Mr. BEDINGER, be appointed a committee, pursuant to the said resolution.

The third resolution reported from the Committee of the whole House, being again read, was agreed to by the House.

THURSDAY, October 27.

Another member, to-wit, ABRAM TRIGG, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

Louisiana Treaty.

The House resolved itself into a Committee of the Whole on the bill from the Senate, entitled, “An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for other purposes.”

The bill having been read, by paragraphs, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy the territories ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army and navy of the United States, and of the force authorized by an act passed the third day of March last, entitled, “An act directing a detachment from the militia of the United States, and for erecting certain arsenals,” which he may deem necessary; and so much of the sum appropriated by the said acts as may be necessary, is hereby appropriated for the purpose of carrying this act into

effect; to be applied under the direction of the President of the United States.

SEC. 2. *And be it further enacted*, That, until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct.

Mr. J. RANDOLPH said he was apprised that the bill was of such a nature as seemed to delegate to the President of the United States a power, the exercise of which was intended to have but a short duration; he was also aware, that some such power was necessary to be vested in the Executive, to enable him to take possession of the country ceded by France. But he could conceive no cause for giving a latitude, as to time, so extensive as that allowed by the second section, which says, that “until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United States shall direct.” If we give this power out of our hands, it may be irrevocable until Congress shall have made legislative provision; that is, a single branch of the Government, the Executive branch, with a small minority of either House, may prevent its resumption. He did not believe that, under any circumstances, it was proper to delegate to the Executive a power so extensive; but if proper under certain circumstances, he was sure it was improper under present circumstances. As he conceived it proper to deal out power to the Executive with as sparing a hand as was consistent with the public good, he should move an amendment to substitute in the place of the words “Congress shall have made provision for the temporary government of the said territories”—these words, “the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress.” So that if Congress shall make provision for the government of the territory at any time during the session, the power of the President will cease, and at any rate at the expiration of the session. In other words, this amendment will compel Congress to take early

measures for reducing this enormous power, delegated to the Executive, by the establishment of a government for the people of Louisiana.

Mr. R. GRISWOLD moved to strike out the whole of the second section, which would supersede the motion of the gentleman from Virginia. He made this motion to obtain an explanation respecting the nature and extent of the delegated power. That section provides "that until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such manner, as the President of the United States shall direct." I wish to know, said Mr. Griswold, whether any gentleman can inform me what the military, civil, and judicial powers, exercised by the officers of the existing province are; for we are about to confirm them, and direct their execution by the authorities of the United States.

It is probable that some of them may be inconsistent with the Constitution of the United States. We have certain restrictions on powers exercised under it. For instance, that the *habeas corpus* shall not be suspended in cases of invasion or rebellion, and a variety of other restraints. It is for this reason that I think we ought to have some knowledge of the powers exercised in Louisiana, before we confirm them in the lump; and in order to obtain this information, I move to strike out the section.

Mr. ELLIOT rose to second the motion of the gentleman from Connecticut, and to express his coincidence in the sentiments of that gentleman on this subject. He would never consent to delegate, for a single moment, such extensive powers to the President, even over a Territory. Such a delegation of power was unconstitutional. If such a provision as that contemplated by the section were necessary, it became Congress itself to enter upon the task of legislation.

Mr. J. RANDOLPH had hoped that some other member would have given the gentleman from Connecticut the satisfaction he asked in relation to the provisions of the section proposed to be stricken out. No one having risen, he would do it himself as well as he was able. That gentleman asks whether we know the civil, military, and judicial powers that subsist in Louisiana; and contends that it is necessary we should know them before they are transferred to the Executive of the United States. If the section were to

stand as it now does, Mr. R. said he would be as unwilling as the gentleman from Connecticut to agree to it. But, with the proposed limitation, he saw no substantial objection to it. He was one of those who did not know with precision what the subsisting civil, military, and judicial powers exercised in Louisiana were; and yet he saw not the difficulty which the gentleman had stated, as to the temporary transfer of the powers to the Executive with the limitation proposed—and wherefore? Because, in the nature of things, it was almost impossible to take possession of the country without the exercise of such powers at some point of time, and if they should be exercised but for a single moment, such exercise would be as hostile to the principles of the gentleman as the exercise of them for a whole year.

I ask, said Mr. R., whether if the country should be taken possession of on the principles advocated by the gentleman on a former day, these powers would not all have attached to the Executive? Suppose, instead of assuming the civil government of the territory, it had been taken possession of by storm, by an army of 40 or 50,000 soldiers—will the gentleman contend, that under such circumstances, the privilege of the *habeas corpus* or trial by jury would have been invaded? Undoubtedly not. If the gentleman will advert with precision to the first section, he will perceive that it is contemplated to take possession in such a manner as will give the United States security in that possession. For though we might not doubt the disposition of the Government of France to give us a secure possession, or apprehend difficulty from any other quarter, yet it would be recollected that there were citizens or subjects in the territory requiring some government. It was not impossible that on taking possession there may be some turbulent spirits, who, having at heart the advancement of personal schemes, may be disposed to resist. It would be unwise then in Congress to delay making the requisite provision, until necessity claimed it, and until, perhaps, after Congress had adjourned.

Gentlemen will see the absolute necessity of the path chalked out by the Senate. They will see the necessity of the United States taking possession of the country in the capacity of sovereigns, in the same extent as that of the existing government of the province. After having taken possession, and being in the secure enjoyment of the country, it will be extremely proper to guard against any apprehended Executive invasion of right. This step will then be politic, and it will be observed that the section as amended enjoins

this duty upon Congress. If, however, the gentleman from Connecticut will show us any way in which the country may be taken possession of, with security, and by which the people may enjoy all the rights and franchises of citizens of the United States immediately, I shall be happy to give it the sanction of my vote. But to my mind this appears impossible.

Mr. GRISWOLD thought it extraordinary that the gentleman from Virginia should call upon him to propose a plan for avoiding the difficulties that would apparently result from the system proposed by the bill, when it had only that day been laid upon their tables, and had been yesterday refused to be referred to a select committee; and of consequence, no time for reflection had been allowed. Under these circumstances, it was indeed extraordinary that he should be expected to propose a plan. He confessed he was unable to offer any. To do it would doubtless require time and deliberation. It was sufficient for him that the bill infringed the constitution. By the second section it is proposed to transfer to the President of the United States all the powers, civil, military, and judicial, exercised at present in that province. What are those powers? No gentleman is able to inform me. It may be presumed that they are legislative; the President, therefore, is to be made the legislator of that country; that they are judicial, the President, therefore, is to be made judge; that they are executive, and so far they constitutionally devolve on the President. Hence, we are about making the President the legislator, the judge, and the executive of this territory. I do not, said Mr. G., understand that, according to the constitution, we have a right to make him legislator, judge, and executive, in any territory belonging to the United States. Though, therefore, on this occasion, I feel no jealousy of the abuse of the powers conferred on the President, yet I cannot agree to them, because I consider them repugnant to the constitution.

The argument that the powers are necessary, though unconstitutional, is no argument with me. If gentlemen can so explain the section, as to show to the satisfaction of the committee that it is competent to this House to transfer to the President all these powers, I shall have no objection to the section; but until this is done, it is my duty to vote for striking it out. And though it is impossible for me, at this moment, to devise a plan for overcoming these difficulties, yet I trust, if time be allowed, there will be found wisdom enough in the committee to devise one. To the first section,

authorizing the taking possession of the country, so far as I can understand it, I can see no objection.

Mr. NICHOLSON was opposed to striking out the second section, as he did not perceive the evils contemplated by the gentleman from Connecticut. The question is, whether we shall take immediate possession of this country, or wait till this body shall have time to form such a government as shall be hereafter likely to render the people happy, under laws according to the provisions of the constitution? I think, said Mr. N., it will be injudicious to delay taking the possession, until such a government shall be formed. The only question then that can be started is, whether the second section of this bill violates the constitution. On this point I differ entirely from the gentleman from Connecticut. I do not see in it any violation of the constitution. The gentleman supposes that by adopting the provisions of the second section we shall vest all the civil, military, and judicial powers of the existing Government of Louisiana in the President. But it clearly is not so. We vest in him the appointment of the persons who shall exercise these powers, but we do not delegate to him the exercise of the powers themselves. Is there any difference between this, and the provisions of the ordinance of 1787, which relates to territorial governments? By that ordinance, and I have never heard its constitutionality questioned, all the civil, military, and judicial powers are vested in such persons as the President may appoint.

Mr. MITCHILL expressed his wish that the section of the bill might stand. To strike it out would be to make void all the proceedings respecting the province of Louisiana, on which Congress had been engaged with so much care and diligence. We had purchased the country, and made arrangements to pay for it; and now, with the consent of France, possession is to be taken; when behold! an objection is made to that part of the intended statute which confers on the President the power to occupy and hold it peaceably for the nation.

But, let it be examined fairly what Congress are meditating to do. The third section of the fourth article of the constitution contemplates that *territory* and other *property* may belong to the United States. By a treaty with France the nation has lately acquired title to a new *territory*, with various kinds of public *property* on it or annexed to it. By the same section of the constitution, Congress is clothed with the power to dispose of such

territory and *property*, and to make all needful rules and regulations respecting it. This is as fair an exercise of constitutional authority as that by which we assemble and hold our seats in this House. To the title thus obtained, we wish now to add the possession; and it is proposed that for this important purpose the President shall be duly empowered. There is no person in the nation to whom this can be so properly confided as to the President.

Mr. DANA said if the amendment proposed by the gentleman from Pennsylvania were inserted, it might imply that we may pass laws that were unconstitutional; it was, therefore, superfluous. It is objected to the scope of the second section, that it is unconstitutional; insert the amendment and it nullifies it. The gentleman from New York (Mr. MITCHILL) has referred to a subject with which he is well conversant. He is correct in stating that the formal style of the English acts is in the name of the King. In the formal style of the acts of Parliament, the King is legislator; but will it be inferred from this circumstance that he is the real legislator? The gentleman is too well acquainted with the constitution and laws of that country, not to know that the King, though nominally the dispenser of justice, cannot himself sit upon the bench, and that this has been the case since the act of settlement. He might, in support of this position, refer to the declaration of a celebrated Chief Justice of England, who had said that the honor of the Crown had nothing to do with the courts of justice.

The gentleman is equally unfortunate in his remarks on the power of Congress to make rules for the government of a Territory. It is objected to this, that in this case you make no laws at all. Is it to make laws, to say a man may do as he pleases? The proposed government is not even provisional or circumscribed. Insufficient also is any argument deducible from the ordinance establishing territorial governments. He presumed the ordinance alluded to was that of 1787. Under that ordinance the President is authorized to appoint the judges of the Territory; but once appointed, they hold their offices during good behavior. Who, under that ordinance, make the laws? Neither the judges nor the President. No laws can be accepted but such as have received the sanction of a representative body. What is proposed by the bill? That all powers, military, civil, and judicial, exercised by the officers of the existing government, shall be vested in such persons, and shall be exercised in such manner as the President shall direct. He may,

under this authority, establish the whole code of Spanish laws, however contrary to our own; appoint whomsoever he pleases as judges, and remove them according to his pleasure; thus uniting in himself all the power, legislative, executive, and judicial. This, though a complete despotism, gentlemen may perhaps say is necessary. If so, let the military power be exercised by the President as commander-in-chief of the armies.

Mr. EUSTIS said it was possible the bill under consideration might in its details be objectionable, but in principle it was certainly sound. The Government of the United States has a constitutional right to acquire territory, and they have consequently a right to take possession of it when acquired. The taking possession of it was not only the right, but the duty of the Government. And how is this to be effected? Will any gentleman venture to propose a delay until Congress shall have passed a new code of laws? Are gentlemen, at this late day, to be informed that this would be to throw away one of the most valuable acquisitions made by our country since the adoption of the constitution, or the Declaration of Independence? As the gentleman, last speaking, rightly observes, the entire government of Spain ceases on our taking possession. Are we then to abandon the people to anarchy?

As to the extent of the power vested in the Executive, it arises from necessity. This is a new case altogether. There is no doubt that on many particular subordinate points, respecting the secure possession of this country, difficulties may present themselves. But Mr. E. presumed and expected that the same wisdom that acquired it, would preside over the councils of the nation to meet and overcome those difficulties. The second section of the bill contemplates the transfer to officers of the United States, of the same powers now exercised. It may be that the exercise of all these powers will not be necessary; while it is possible that others may be necessary. There may be difficulties of various kinds. He should name none. But as they arise, it will be the duty of the Government to be prepared to meet them. He would, therefore, wish this act rather to increase than curtail them; and that the President should be authorized not only to continue all necessary existing powers, but to institute such other powers as may be necessary for the well-being of the Territory. Till when? Until this House and the other branch of the Legislature shall make the necessary laws. The powers delegated by the bill are imposed by the imperious circumstances of

the case. What if forcible possession shall prove necessary, and the innocent inhabitants should be slaughtered, through a want of the powers necessary to preserve tranquillity and good order; whose will, under such circumstances, will be the governing one? Will not the President, in such event, have all the powers now given him?

Mr. R. GRISWOLD.—The powers proposed to be conferred by the gentleman are without limits. It may be necessary for the welfare of the people, to secure their religion. The President may be, therefore, constituted grand inquisitor, he may also be made a king, and likewise a judge, for the good of the people. I am not, said Mr. G., willing myself to give him such extensive powers. I can, however, well account for certain gentlemen urging on this occasion the old French argument of “imperious necessity.” But such a pretext can never justify me in giving a vote that will violate the constitution. I can, in truth, see no such necessity, as provision can be made for admitting these people to the enjoyment of all the privileges stipulated by the treaty, without involving a violation of the constitution. Gentlemen may criminate, as they please, the motives of those who are for restraining this extension of executive power; but I trust, whatever may be the feelings of gentlemen, that the committee will not be impressed with the same opinion entertained by them; but that if they consider this delegation of power as repugnant to the constitution, they will not agree to it, or, in other words, to the investiture of the President with absolute power over this province. If, on the other hand, they think the delegation is constitutional, they will feel no repugnance to agreeing to it; because, as I observed before, the power will be of short duration, and will not, probably, be abused.

As to the idea of some gentlemen, that this territory, not being a part of the United States, but a colony, and that therefore we may do as we please with it, it is not correct. If we acquire a colony by conquest or purchase—and I believe we may do both—it is not consistent with the constitution to delegate to the President, even over a colony thus acquired, all power, legislative, executive, and judicial; for this would make him the despot of the colony. Mr. G. concluded his remarks by observing that he had no jealousy of the abuse of this power by the President; but not being, in his opinion, authorized by the constitution, he could not agree to vote for it.

Mr. SMILIE said, this subject struck him differently from other gentlemen. If it appeared clear to him that the constitutional right to delegate the

powers contemplated by the second section did not exist, he should vote against it. But he entertained no doubt on this point. He knew that it had been doubted whether the constitution authorized the Government of the United States to acquire territory; but those doubts were this day abandoned. He agreed in opinion with the gentleman from Massachusetts, (Mr. VARNUM,) that the Constitution of the United States did not extend to this territory any further than they were bound by the compact between the ceding power and the people. On this principle they had a right, viewing it in the light of a colony, to give it such government as the Government of the United States might think proper, without thereby violating the constitution; when incorporated into the Union, the inhabitants must enjoy all the rights of citizens. He would thank gentlemen to show any part of the constitution that extends either legislative, executive, or judicial power, over this territory. If none such could be shown, it must rest with the discretion of the Government to give it such a system as they may think best for it. At the same time, Mr. S. said, he would pledge himself to be among the first to incorporate the territory in the Union, and to admit the people to all the rights of citizens of the United States.

Mr. RODNEY.—When a constitutional question is made, and constitutional objections urged by a respectable member of this House, they shall always receive from me a respectful attention. On this occasion I shall endeavor to answer the objections, and remove the doubts entertained by some gentlemen. I believe we shall find that, by adopting the second section of the bill under consideration, we shall not infringe the constitution in the remotest degree. No person is more opposed to the extreme of absolute and unlimited power, or to vesting in any man that authority which, by not being circumscribed within known bounds, may be easily abused. No man can be more opposed to the exercise by the President of powers exercised by the Spanish inquisition, and authorized by other Governments. But cases may occur where, for a moment, powers to which, without an absolute necessity, no one would agree, become necessary to be vested in some department of the Government; and I am in favor of this section for the reasons assigned by my friend from Virginia, to wit, that the exercise of the powers delegated will be confined to a short space, and will be of no further duration than shall be necessary to obtain the end of a secure possession of the Territory.

The United States, it is acknowledged, have a right to extend their territory beyond that which they possessed when the constitution was formed. If, then, there exist the right to acquire territory, there is a consequence of the laws that pervade all civilized nations, which will show not only the constitutionality but the propriety also of this section. It is a received principle of the law of nations, that, when territory is ceded, the people who inhabit it have a right to the laws they formerly lived under, embracing the whole civil and criminal code, until they are altered or amended by the country to whom the cession is made. This is the received principle of the law of nations, and operates wherever the right to acquire territory is previously given. I will put a plain case, on the ground so commonly of late resorted to, that of acquiring territory by war. The right to make war is vested by the constitution in the Government of the United States. Suppose we had gone down the Mississippi, and favored the wishes of some of our citizens. Would not gentlemen, in that case, have acknowledged that we should have possessed the right of laying contributions? Should we not have had the right of saying to those who exercised the powers of government in that country, "Begone! We will make new arrangements; the powers of government shall be exercised by such particular organs as we like. Your laws and your religion shall be preserved; but your officers shall be replaced by ours." Under the laws of nations we should have enjoyed all these powers.

But, independent of this power conferred by the law of nations, I am inclined to think the provisions of the constitution apply to this case. There is a wide distinction between States and Territories, and the constitution appears clearly to indicate it. By examining the constitution accurately, it will be found that the provision relied upon by the gentleman from Connecticut will not avail to support his argument. It will appear that it is to operate in the case of States only. By the third section of the fourth article of the constitution, it is declared that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or any particular State."

This provision does not limit or restrain the authority of Congress with respect to Territories, but vests them with full and complete power to

exercise a sound discretion generally on the subject. Let us not be told this power, from its greatness, is liable to abuse. If arguments are drawn from the abuse against the use of power, I know no power which may not be abused, and it will follow that the same arguments that are urged against the use of this power may be urged against the use of all power.

We may be told that, in the government of the North-western Territory, there are certain fixed rules established. But by a recurrence to the ordinance for the government of that Territory, and to the laws of Congress subsequently made, it will be seen that Congress have conceived themselves to be possessed of the right, and have actually exercised the power, to alter the Territory, by adding to or taking from it as they thought proper, and by making rules variant from those under which it was originally organized.

In the Territories of the United States, under the ordinances of Congress, the governor and the judges have a right to make laws. Could this be done in a State? I presume not. It shows that Congress have a power in the Territories, which they cannot exercise in States; and that the limitations of power, found in the constitution, are applicable to States and not to Territories.

The question was then put on striking out the second section, and lost—ayes 30.

The bill was ordered to be engrossed for a third reading to-morrow.

FRIDAY, October 28.

Louisiana Treaty.

The bill sent from the Senate, entitled “An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof,” together with the amendments agreed to yesterday, was read the second time, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy the territory ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the Army and Navy of the United States, and of the force authorized by an act passed the third day of March last, entitled ‘An act directing a detachment from the militia of the United States, and for erecting certain arsenals,’ which he may deem necessary, and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

SEC. 2. *And be it further enacted,* That, until the expiration of the present session of Congress, or unless provision be sooner made for the temporary government of the said territories, all the military, civil, and judicial powers exercised by the officers of the existing Government of the same, shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property, and religion.

On the question, Shall the bill pass? the yeas and nays were required, and stood—yeas 89, nays 23, as follows:

YEAS.—Willis Alston, Isaac Anderson, John Archer, David Bard, George M. Bedinger, Samuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, John W. Eppes, William Eustis, William Findlay, John Fowler, Peterson Goodwyn, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas,

Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Jos. Winston, and Thomas Wynns.

NAYS.—William Chamberlain, Martin Chittenden, Clifton Claggett, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Joseph Lewis, jr., Thomas Lewis, Henry W. Livingston, Nahum Mitchell, Thomas Plater, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Tenney, and Samuel Thatcher.

SATURDAY, October 29.

Mourning for Edmund Pendleton.

Mr. EUSTIS rose and observed, that within a few days past the House were called upon to take notice of an event which, perhaps, would be more interesting to posterity than to the present generation; the death of one of those illustrious patriots who, by a life devoted to his country, had bequeathed a name and an example to posterity which he would not attempt to describe. He had information that another of these sages, EDMUND PENDLETON, of Virginia, had paid the last tribute to nature.

On this occasion he begged leave to offer to the House the following resolution:

Resolved, That this House, impressed with a lively sense of the important services rendered to his country by EDMUND PENDLETON, deceased, will

wear a badge of mourning for thirty days, as an emblem of their veneration for his illustrious character, and of their regret that another star has fallen from the splendid constellation of virtue and talents which guided the people of the United States in their struggle for Independence.

The resolution was immediately taken up, and agreed to—ayes 77.

WEDNESDAY, November 2.

Road to Natchez and New Orleans.

Mr. MITCHILL called the attention of the House to a subject of considerable importance, growing out of our possessions on the Mississippi. He stated that the mail to Natchez was at present transported by a route circuitous and difficult of performance. The Cherokee country, which constituted a part of it, was so destitute of water and articles of subsistence, as to render it necessary for the conveyor of the mail to carry whatever himself or his horses required. Even the water used was carried in goat skins. A great portion of the country was likewise infested with robbers. The measure he proposed was to inquire by what means the carriage of the mail to the Natchez and New Orleans could be facilitated, so as to abridge the time now consumed, and lessen the dangers and difficulties attending the transportation. Mr. M. believed a route might be pursued whereby four hundred miles could be saved in the present distance to the Natchez. Mr. M. desired such an inquiry to be made into the means of accomplishing this important object, as should, while it tended to promote the great political and commercial interests of the country, convince the Indian tribes that our object was not to invade their rights. He further observed, that the usual voyage to New Orleans was about thirty days. If the route by land should be improved, that place might be probably reached in ten days. He therefore offered the following resolution:

Resolved, That the Committee on Post Offices and Post Roads be directed to inquire by what means the mail may be conveyed with greater facility and dispatch, than it is at present, between the City of Washington, and the Natchez and New Orleans.

Agreed to without a division.

MONDAY, November 7.

Another member, to wit, OLIVER PHELPS, from New York, appeared, produced his credentials, was qualified, and took his seat in the House.

THURSDAY, November 10.

Another member, to wit, JAMES GILLESPIE, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, November 14.

A petition of Andrew Moore, of the State of Virginia, was presented to the House and read, complaining of an undue election and return of Thomas Lewis, to serve as a member in this House, for the district composed of the counties of Greenbrier, Kenawha, Monroe, Botetourt, and Rockbridge, in the said State.

Ordered, That the said petition be referred to the Committee of Elections.

TUESDAY, November 15.

Another member, to wit, GEORGE TIBBITS, from New York, appeared, produced his credentials, was qualified, and took his seat in the House.

THURSDAY, November 17.

Postage of Newspapers.

Mr. G. W. CAMPBELL.—There is a subject to which I wish to draw the attention of the House. It is, sir, the postage charged on the transportation of newspapers in the mail. This subject I conceive of sufficient importance to meet the attention of this House, as it affects the means of acquiring political information in the different parts of the Union.

I presume it will not be denied, that the most effectual way of rendering the people at large useful citizens, and of securing to them their liberties and independence, would be to increase the sources of information, make them well acquainted with their political rights, and also with the proceedings of their Government. So long as they are informed on those subjects, so long they will be disposed to acquiesce in, and support such measures as may be calculated to promote the general good, but will be prepared to resist any attempts that may be made to infringe their rights by those in power. It is believed that newspapers are the most general and effectual means of disseminating political information among the citizens at large; and it ought therefore to be the object of Government to facilitate their circulation as much as possible. I conceive, sir, the most direct way to attain this object would be to cause them to be transported in the mail free of postage.

The moneys arising from the postage on newspapers cannot certainly be such an object to Government, as would justify the principle of laying a tax on information, or pursuing any measures that would have a tendency to diminish, in the least degree, the means by which it may be acquired. It seems to be admitted by all those who have considered the subject, that the Post Office establishment was never intended as a paramount source of revenue; and therefore we find that the moneys arising therefrom have not generally been taken into the calculation, in the estimates of our finances. The whole amount of the postage on newspapers I believe to be very inconsiderable, as an item of revenue; and a great proportion of it, as I am informed, is given to the deputy postmasters for keeping the accounts of such postage, and for collecting the same: and if information is to be relied upon, many of those deputy postmasters, who are allowed about fifty per cent on the amount of postage thus collected, are of opinion that the labor of keeping those accounts and of collection, exceeds this compensation; and they would be well satisfied that no such postage existed. If this statement be correct, it will go a great way to prove the measure impolitic.

But perhaps it may be said that the postage to be collected on newspapers, has a tendency to ensure their arrival at the places of destination, and the delivery of them to those to whom they are directed. This, upon investigation, will, I believe, be found not to be the case. It is made the duty of the postmasters, by law, to forward and deliver newspapers, as well as letters,—they act upon oath, and if a sense of

propriety in their conduct, and the obligation of an oath, would not induce them to perform their duty in this respect, it cannot be expected that the paltry emolument accruing to them from their part of one cent, or one and a half cents on each newspaper, would have that effect; and even this sum must be still less relied upon, as an inducement, when it is considered, as already stated, that the labor required in keeping accounts for this purpose and in collection, is not in reality compensated by the sum received. In order, therefore, to bring this subject fairly before the House, I move that the House come to the following resolution:

Resolved, That so much of the act to establish post-offices and post roads in the United States as charges a postage on the transmission of newspapers ought to be repealed.

Ordered to lie on the table.

FRIDAY, November 18.

Two other members, to wit: JOSEPH BRYAN, and SAMUEL HAMMOND, from Georgia, appeared, presented their credentials, were qualified, and took their seats in the House.

MONDAY, November 21.

Two other members, to wit: SIMEON BALDWIN and BENJAMIN TALLMADGE, from Connecticut, appeared, produced their credentials, were qualified, and took their seats in the House.

WEDNESDAY, November 23.

Repeal of the Bankrupt Law.

The House resolved itself into a Committee of the Whole, on the resolution, offered by Mr. NEWTON, for repealing the Bankrupt law.

The resolution was advocated by Messrs. NEWTON, ELLIOT, SMILIE, HASTINGS, STANFORD, and RANDOLPH; and opposed by Messrs. JACKSON, EARLY, SKINNER, and EUSTIS.

The advocates of repeal observed that though the resolution had lain on the table for a considerable time, purposely with a view to collect public opinion, no remonstrance hostile to it had been received from any part of the Union, and that this circumstance indicated the unfavorable sentiment entertained of the bankrupt system; and that even among those most materially interested in its provisions, a dead silence prevailed. Some gentlemen were averse to the repeal, inasmuch as the law would expire by its own limitation, in a few years; but the House should recollect that in the mean time they were responsible for all its evils and iniquities. If, too, it should be suffered to die a natural death, the inevitable effect would be that those who are now struggling to avoid bankruptcy will precipitate themselves into such a situation as to avail themselves of its benefit.

With regard to the principle of the present bankrupt system, and probably of any other bankrupt system that could be devised, it was unjust, inasmuch as it favored one class of citizens, the merchants, at the expense of all other classes; to advance the interest of the first it sacrificed the interests of all the other members of the community. To prove this, it was only necessary to illustrate it by the common case of a merchant availing himself of the benefits of bankruptcy, and thereby cancelling the demands of the mechanic or the farmer who might be his creditor; and of the same individual mechanic or farmer, the debtors of another merchant, remaining his debtor with their property subject at any period of their life to his seizure. In the case of the insolvent merchant his debts were totally discharged; whereas in the case of the insolvent mechanic and farmer, they were of eternal obligation. The preferable system was that established by the several States, which existed before the bankrupt system, and which still existed, extending to all insolvent debtors the same relief.

It was contended that the partial operation of the bankrupt system had the most mischievous influence on the morals of the mercantile world. That it operated as an impunity to fraud and negligence; that it created extensive credits, and excited a spirit of the most prodigal expenditure; that although the American merchants were probably the most honest and certainly the most able and enterprising in the world, the facility with which credits were

obtained, and the impunity with which risks were incurred, had, under the auspices of this law, introduced into their private expenditures a ruinous extravagance; and that nothing was more common than to see a merchant, of but small capital, living at an expense superior to that of the European trader who had realized his plum, and at an expense which shamed the frugal disbursements of the affluent planter. What were the effects? The scene of luxury and splendor was enjoyed for a few years, and was succeeded by a failure. Did it become the Legislature to encourage, or repress this spirit?

The principle of the bankrupt system was inequitable as it regarded the relation of debtor and creditor. However it might be averred to the contrary, it was a truth that its provisions operated to the advantage of the debtor, and of course to the detriment of the creditor. There was no weight in the remark that the commission was taken out at the instance of the creditor, as that was merely a nominal act, a creditor usually being made use of who was the friend of the bankrupt. That it operated to the benefit of the debtor was clear from its liberating all his future acquisitions, after availing himself of the benefit of a commission, from seizure: whereas, under an insolvent law, the person alone was released. That hence sprang up a ten-fold temptation to fraud under this act, over that which existed under the common insolvent laws. For that under the latter an insolvent debtor, if guilty of a fraudulent concealment of property, could at any future period be called upon to satisfy the claims of his creditors by a delivery of his visible property; while, under this law, the bankrupt may live in the greatest splendor, even ostentatiously displaying his property, without rendering it liable to seizure. Fraud once successfully perpetrated and concealed, every restraint is removed; and so deleterious had this effect been that it had manifestly inflicted a deep wound upon the confidence of man with man in the ordinary transactions of life.

It was further contended, that while justice and humanity dictated the liberation from arrest of the body of the unfortunate debtor, justice inhibited the exoneration of property from going to satisfy just debts; that the obligation, wherever the ability existed, to pay just debts, was eternal, and that this law, in having a retro-active effect, was unjust. Evils infinitely greater had been inflicted by inconsiderate and fraudulent debtors taking refuge in the provisions of the bankrupt law than from all the inhumanity

exercised by merciless creditors over unfortunate debtors. That the principle of the bankrupt law was also retro-active, inasmuch as it destroyed the grade of dignity existing in many of the States, by which a bonded debt obtained a preference over an open account; that it absolutely impaired the subsisting contract between the person holding and the person signing the bond.

It was remarked that the principle of the bankrupt law, however good in theory, could never be carried into effect, as had been proved by a long course of British experience, without a recurrence to those sanguinary laws which they had introduced for the prevention and punishment of fraud, but which were so abhorrent to our code of laws that public opinion could not tolerate them.

The expenses of going through the forms of bankruptcy constituted no inconsiderable objection to the system. The appointment of a Commissioner was understood to be in no small degree lucrative, and the various processes through which the bankrupt was compelled to go, in practice, reduced the little property he had left to a state still less. Indeed, from the practical effects of the system, it would appear that it had been made more for the emolument of the Commissioner than for the benefit of the creditor.^[7]

However necessary this system might be in England, who owed almost the whole of her prosperity to trade, it became not a nation, the leading feature of whose character was agriculture, to tread in her footsteps; but, on the contrary, to avert rather than to hasten the period when such a system would be rendered necessary; that, in truth, the spirit of trade in this country was sufficiently vigorous, and only required the common protection given to all other occupations, to prosper to every beneficial purpose.

In the commercial world, the honest, though unfortunate merchant, had nothing to fear from his creditors. A long experience had shown that the mercantile world felt with sympathy and acted with magnanimity to the unfortunate. In addition to these objections, it was urged that the bankrupt law was injurious, as it enlarged the sphere of the Federal courts. The constitution was a system of compromise. Many powers were given without a view to their immediate exercise. It did not, therefore, follow that, because the power given to establish a uniform system of bankruptcy was given, it must now be exercised. The powers of the General Government, if

not too great, were sufficiently great. It became Congress, therefore, neither to take from nor add to the powers of the State courts. To increase the powers of the Federal courts, through the operation of the bankrupt system, was to derogate from the powers of the State courts. The State tribunals were weak enough, without thus trenching upon them.

The authorities under this law not only went to enlarge the powers of the Federal Government generally, but particularly to the extension of executive power. The appointment of Commissioners of Bankruptcy was an additional weight thrown into the scale of executive patronage. The power of that department ought to be viewed with an eye of jealousy, and the House, however willing to allow to it the enjoyment of all fair and necessary power, ought vigilantly to guard against its undue increase. It might be answered that this evil might be removed by placing the appointment of the Commissioners in the hands of the courts. But this would not be the effect. The Judicial Department, in the aspect of its political weight, was not to be contemned. So long as it remains, as fixed by the constitution, it will rest for support somewhere—it will naturally ally itself to some other department of the Government, and the inducements to such alliance will be most naturally held out by the Executive; but however peculiar circumstances might at this time indicate otherwise, such a tendency was a kind of political gravity, which, however it might for a time be checked, would eventually exert its influence.

On the other hand, the opponents of the repeal observed that the silence of the public on the subject indicated neither hostility nor opposition to the present system of bankruptcy; if it indicated any prevailing sentiment, it was that of confidence in the judgment of their representatives. If the system really was so unpopular as some gentlemen had represented it to be, their tables would ere this have been covered with memorials for its repeal, whereas not a single petition to that effect had been presented during the session.

They contended that it would be true policy to suffer the act to expire by its own limitation. Little more than two years would elapse before the arrival of that period. This conduct was dictated by the undisputed fact that the present system had been adopted as an experiment. Hence the limitation of the act. This experiment was now in a fair course of trial. Little more than three years had elapsed since its commencement, and sufficient time

had not yet passed to test the goodness or the badness of the principle it involved. It was a fact that the distresses of the commercial world called forth such a system when it was formed in the year 1800; it was a fact that it had done much good; and it might be that a system of bankruptcy, improved to the extent of which it was susceptible, would be of permanent utility. Amendments, radical amendments, the system certainly required; and should the House determine not to destroy it, the amendments could and doubtless would be made.

It was believed that the general sentiment of the nation concurred in the propriety of affording some relief to the distresses of the commercial world. On the form and extent of that relief great contrariety of opinion existed. It was the opinion of well-informed merchants and of the best writers, that a greater relief should be afforded to the misfortunes of men engaged in trade than in other occupations. To the argument that the proper relief to be extended should be left to the determination of the States, the objection that the laws of the different States were on this point various and contradictory, was conclusive. Trade, of all human occupations, embraced the widest range. Its operations were confined to no particular State or climate, but pervaded the whole world. It was of great importance then, if practicable, that laws in relation to it should be equally wide with this extensive range. Though this was utterly impracticable, yet it was practicable to make the same laws pervade a whole nation. Of this opinion were the venerable patriots of 1789, who framed the constitution; such was the spirit of the constitution itself; and such its language in speaking of uniform laws respecting imports, bankruptcies, and intercourse between the several States. Not that the power to pass such laws was imperative: but they manifested the sense of that body and the spirit of the instrument, that all laws on those subjects should be uniform throughout the United States.

To the argument, that the exoneration of property from the payment of just debts was a violation of justice, it was replied, that however correct the principle might be in ordinary cases, it did not hold in commercial concerns. In other employments an inability to comply with contracts was generally the result of idleness or imprudence; but so great and inevitable were the risks attendant on commerce, that no human prudence could guard against them.

Of trade, credit was the life; without it, it could not exist. In this country, too, it was the great source of revenue. How impolitic then was it, in a country where the whole of the revenue, and much of the wealth of its citizens, depended upon trade, to adopt regulations which would repress mercantile exertion and enterprise.

It was contended, that it was not true that the principle of a bankrupt law operated in favor of the debtor; the reverse was the case, and constituted one of the strongest arguments of its superiority to insolvent laws, under which the time of surrender was left to the option of the debtor; whereas, under a bankrupt law, the creditor, whenever he had reason to apprehend the fraud or failure of his debtor, could take out a commission under the bankrupt law; the creditor may arrest the prodigal or unjust career of the debtor; while, under the insolvent law, the debtor rarely surrenders his property, until he has squandered nearly the whole, or until he has made a fraudulent transfer of it. Such was the operation of the principle of a good bankrupt system; with regard to the present it was admitted that its provisions were unfair, and operated frequently the other way.

A leading argument in favor of a bankrupt system was that it multiplied checks against fraud; there would of course be less temptation to commit fraud, as the chances of concealing it diminished. In most countries the terrors of an awful punishment awaited the commission of fraud under this act, even the terrors of death. Though it might not be sound policy in this country to make punishments so terrible, yet it was always within the power of the Legislature to make transgressions so penal, as to guard against the apprehended evils.

It was contended that one great object of the constitution in bestowing this power on the General Government was the establishment of national credit upon the broad principles of justice; such was the effect of the system of bankruptcy by which the same obligations were imposed upon the merchants of all States in their relation to each other, and towards foreigners. Remove this system, and you virtually re-enact the partial and varying laws of the different States. In Virginia, for instance, the person only of the debtor is liberated, while in Maryland both person and property are liberated. Will not the citizen of one State acquire advantages over the citizen of another, and will not foreigners have reference in their dealings to the laws of the States, and prefer dealing with the citizens of that State

where there shall exist the greatest security for the recovery of their debts? Will not the citizen of one State remove into another, and evade the operation of the laws of the States where contracts were made? The friends of the repeal say the bankrupt system is retrospective in its operation. That was true, inasmuch as it changed the relations of debtor and creditor. But what will the repeal do? Contracts have been made under the contemplated existence of the act for a fixed period. By repealing it before that period arrives, you likewise change again the relations of debtor and creditor.

About four o'clock, the debate being closed, the question on the resolution to repeal, was taken and carried in the affirmative, ayes 94.

The Committee rose, and the House immediately took up their report, on agreeing to which the yeas and nays were required, and were, yeas 99, nays 13, as follows:

YEAS.—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George M. Bedinger, Silas Betton, Phaniel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, William Chamberlain, Martin Chittenden, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, James Elliot, John W. Eppes, William Findlay, John Fowler, James Gillespie, Calvin Goddard, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, William Hoge, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., John B. C. Lucas, Andrew McCord, David Meriwether, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, John Smilie, John C. Smith, John Smith of Virginia, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne,

Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS.—John Campbell, Joseph Clay, Peter Early, William Eustis, Daniel Heister, Benjamin Huger, John G. Jackson, Thomas Lowndes, William McCreery, Nicholas R. Moore, Joseph H. Nicholson, Tompson J. Skinner, John Smith of New York.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. NEWTON, Mr. HAMMOND, Mr. TALLMADGE, Mr. VAN CORTLANDT, and Mr. MARMADUKE WILLIAMS, do prepare and bring in the same.

THURSDAY, November 24.

Amy Dardin.

On the motion of Mr. CLAIBORNE, the House resolved itself into a Committee of the Whole on the report of the Committee of Claims on the petition of Amy Dardin. The report is unfavorable to the prayer of the petitioner.

On agreeing to this report, a discussion took place which occupied the greater part of the day. Messrs. J. C. SMITH, GREGG, and MACON supported, and Messrs. CLAIBORNE, SMILIE, and ELLIOT opposed the report; when the question was taken on agreeing to the report of the Committee of Claims and lost—ayes 32.

Mr. CLAIBORNE then moved a resolution, “that the prayer of Amy Dardin is reasonable and ought to be granted.”

Messrs. CLAIBORNE and NICHOLSON supported and Messrs. GRISWOLD and GREGG opposed this resolution, which, on the question being taken, was carried—ayes 61, nays 38.

The committee then rose, and reported their agreement to the resolution.

Mr. GREGG moved an amendment directing the proper accounting officer of the Treasury to settle the claim of Amy Dardin, on the same principle with similar cases, the statute of limitations notwithstanding.

Messrs. GRISWOLD and GREGG supported, Messrs. NICHOLSON and CLAIBORNE opposed the amendment.

A concurrence in the report was then agreed to, and the Committee of Claims instructed to bring in a bill.

FRIDAY, November 25.

Ordered, That the petition of Memucan Hunt, William Polk, and Pleasant Henderson, for themselves and others, addressed to the General Assembly of the State of North Carolina; also, sundry resolutions of the said Assembly, respecting a claim for the value of certain lands in the State of Tennessee, presented to this House on the nineteenth of January, one thousand eight hundred and two, and the report of a select committee thereon, made the twenty-fourth of March, in the same year, be referred to the committee this day appointed on the memorial of the Legislature of Tennessee.

Bankrupt Law.

Mr. NEWTON called for the order of the day on the bill to repeal an act to establish a uniform system of bankruptcy throughout the United States; and the House then resolved itself into a Committee of the Whole on the said bill.

Mr. VARNUM moved an amendment, extending the period of repeal to the first of January, 1804, instead of from the passage of the act; and afterwards varied the motion, so as to leave the period of repeal blank.

This motion was supported by Messrs. R. GRISWOLD, EARLY, and SKINNER; and opposed by Messrs. SMILIE, NEWTON, RODNEY, and HASTINGS. Lost—ayes 25.

On motion of Mr. R. GRISWOLD, an amendment was introduced, directing the completion of all proceedings under commissions taken out previous to the repeal.

The committee then rose and reported the bill with the above amendment, in which the House immediately concurred, and ordered,

without a division, the bill to be engrossed for a third reading on Monday.

[The bill is concise, and is confined to repealing the bankrupt act, saving cases where commissions have been taken out previously to the passage of the act, at which time the repeal takes effect.]

MONDAY, November 28.

Public Roads.

On the call of Mr. JACKSON, the House resolved itself into a Committee of the Whole on the following resolution:

“Resolved, That provision be made, by law, for the application of one-twentieth part of the net proceeds of the land lying within the State of Ohio, sold, or to be sold by Congress, from and after the 30th day of June, 1802, to the laying out, and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio river, and to the said State of Ohio: in conformity with the act of Congress, entitled ‘An act to entitle the people of the eastern division of the territory north-west of the river Ohio, to form a constitution, and State government, and for the admission of such State into the Union on an equal footing with the original States; and for other purposes,’ passed upon the 30th April, 1802, as well as the act passed the 3d of March, 1804, in addition to and in modification of the propositions contained in the act aforesaid; and the ordinance of the convention of the State of Ohio, bearing date the 29th day of November, 1802.”

Mr. JACKSON called for the reading of the acts of Congress which were referred to in the resolution, which was done: he then moved that the committee rise and report their agreement.

Mr. VARNUM said he hoped the question would be taken separately on the resolution.

Mr. JACKSON hoped that gentlemen opposed to the resolution would rise at that time and express their opinions.

Mr. NICHOLSON was opposed to the resolution, but was prevented from indisposition from expressing his sentiments; he would do it at a future period.

Mr. J. RANDOLPH was sorry that the indisposition of his friend from Maryland should prevent him from delivering his sentiments on this occasion. He was himself unprepared to speak on this question, but it appeared to him, from a complete view of the subject some time since, that the resolutions contravened one of the provisions of the law to which it was referred; by reverting to that law, it would be found that in one of the propositions offered by Congress to the State of Ohio, it was provided that one-twentieth part of the net proceeds, arising from the sale of lands in that State, should be laid out in roads to and from it, and laid out under the direction of Congress. The State of Ohio agreed to adopt the propositions if Congress would make an amendment, (which he read.) He wished to call the attention of the committee to the facts, and wished them to attend to the different propositions. He should not have troubled the committee but from an apprehension that when gentlemen had taken up an opinion, they were loth to abandon it. One of the propositions of Congress was, that one-twentieth part of the net proceeds arising from the sale of lands in the State of Ohio should be laid out under the direction of Congress in the making of roads from the Atlantic to that State. The State of Ohio agrees to the proposition with this amendment, that not less than three per cent. should be laid out exclusively in that State, under the direction of their Legislature. He conceived that the last proposition was only a modification of the former, and that the three per cent. was a part of the five, and not an additional allowance; if the latter had been intended, why, he asked, was it not so expressed? There were several other propositions and they were stated to be amendments. He considered Congress never intended to grant more than five per cent. and should therefore vote against the resolutions.

Mr. R. GRISWOLD apprehended there could be no doubt as to the construction which Congress gave to the law in question; there might be some doubt whether that construction was a sound one; he, however, thought it perfectly so. In the year 1801, Congress provided that one-twentieth part of the net proceeds arising from the sale of lands in the State of Ohio, should be applied to making roads to that State, under the direction of Congress. The proposition was laid before the State of Ohio. The

Convention of Ohio agreed to it, provided Congress would consent to a modification of it; they wished some part of the five per cent. to be laid out exclusively in their own State and under the direction of their own Legislature; they therefore proposed that three per cent. should be laid out in the State, and under the direction of the Legislature of Ohio. If the State of Ohio had intended that the three per cent. was to be added to the five, they would have stated it (as in the other propositions) to be in addition to it. The committee which were on the subject last session, gave the law the same construction which he did, and the House concurred in that construction. He thought they were under no obligation to lay out more money than they had agreed to do, and if the committee would attend to the subject, they could be under no difficulty to determine the construction. We had an appropriation of two per cent. to make, and perhaps it might be necessary to pass a law to that effect; but he could not consent to give any more.

Mr. G. W. CAMPBELL would beg the indulgence of the committee while he said a few words on the subject before them. As he should vote in favor of the resolution on the table, he conceived that when they were about to determine on the construction of a law, they were only to refer to the face of it, and not to inquire what the framers of it meant. He begged leave to read the law on the subject, and said that the law of Congress concerning five per cent. was in force, unless repealed by another law; and the subsequent law, which provided for the laying out of three per cent. in roads, was either in addition to or a repeal of it; he believed that it was an addition to it. It could not be the intention of the Convention of Ohio to accept of three per cent. to be laid out in their own State, and under the direction of their own Legislature, in lieu of five per cent. to be laid out under the direction of Congress. He should, considering the appropriations to be distinct ones, vote in favor of the resolutions.

Mr. RODNEY deemed it necessary to make but few observations after the able arguments of his friend from Virginia, (Mr. RANDOLPH,) and the luminous observations of the gentleman from Connecticut, (Mr. GRISWOLD,) against the resolutions. The question to be determined, was, whether the five per cent. was to be given exclusive of the three? It had been said that they ought not to consider the intention of those who framed the law, but he conceived it to be proper, in order to give a right

construction. When they reverted to the propositions themselves, they would find one of them was, that provided the State of Ohio would not for a limited time tax the lands of the United States, that then one-twentieth part of the net proceeds arising from the sale of lands in that State should be laid out in making roads to the State of Ohio, the same to be laid out under the direction of Congress. When this proposition came before the Convention of Ohio, they said that three per cent. ought to be laid out exclusively in their own State and under the direction of their Legislature. This could only be intended as a modification of the law. He did not think there was any difficulty in determining the construction of the law, and should vote against the resolution.

Mr. VARNUM conceived that the construction given to the law by the gentlemen from Virginia, Connecticut, and Delaware, was perfectly correct. He did not know whether it would be necessary to make an appropriation of the remaining two per cent. during this session, but in order to try the principle, he moved to strike out of the resolution the words one-twentieth and insert one-fiftieth.

Mr. SANFORD had not intended to have troubled the committee on this occasion, but being a representative from the West, it might be expected that he might be in favor of the resolution. But he did not conceive that more than five per cent. was ever intended to be given, and this was not a question of expediency. He did not believe that the Convention of Ohio intended that the three per cent. should be given in addition to the five, nor had they any reason to expect it. This ought not to be an Eastern and a Western question. If the five per cent. was now given, Mr. S. asked whether it would not operate for the benefit of the rest of the States as well as the State of Ohio? But, as they must determine, not what Congress ought to give, but what they meant to give, and he conceived that three per cent. was a part of the five, he should therefore vote against the resolution.

Mr. LYON spoke in favor of the resolution at some length.

Mr. MACON did not think it necessary to say any thing on the construction of the law, because he conceived the arguments of the two first gentlemen who opposed the resolution (Messrs. J. RANDOLPH and R. GRISWOLD) to be unanswerable; but as the question appeared to be made an Eastern and a Western one, he would say a few words. He considered the

whole United States concerned in it, and not merely the State of Ohio. He believed that the arguments of gentlemen, that they had not done justice to the State of Ohio, were groundless. There was no State in the Union which has been so much favored as that State. He was sorry gentlemen had used threats on the occasion, that if they did not grant this, they might not be attached to the Union; but he believed that the State of Ohio would be the greatest loser by it. He was willing to leave it to the Western people themselves to determine, whether Congress had not done them justice, and he was certain they would answer in the affirmative.

Mr. BOYLE did not consider this a question of party or of expediency; nor what Congress ought to give, but what they had given. If the construction of the law was difficult to determine, it ought to be taken against the United States and favorable to the State of Ohio, because Congress was the grantor and that State the grantee. This was the manner in which private contracts were always construed, and he thought it a sound one. The gentleman from Virginia (Mr. JOHN RANDOLPH) had said that the three per cent. was not intended to be given in addition to the five, because it was not so expressed; but Mr. B. said, the last law was not said to be a modification, the construction was therefore doubtful and ought to be taken favorable to the State of Ohio.

Mr. GODDARD did not think they were under any difficulty in determining the true construction of the law in question. He considered it to admit of but one construction; this appeared to him to be a negotiation between Congress and the State of Ohio. It was proposed by the former, that if the latter would not tax their lands for a limited time, the one-twentieth part of the net proceeds should be laid out in making roads for that state under the direction of Congress; the State of Ohio acceded to it, provided three per cent. should be laid out exclusively in that State, and Congress agreed to it; this appeared to him to be the true state of the case.

Mr. MORROW would beg the indulgence of the committee while he made a few observations on the subject. He was sorry this was made a party question. He read the report of the committee of Congress and the propositions of Congress to the State of Ohio; and observed that when the propositions came before the convention, they were pleased with them, but did not consider that the five per cent., which was to be laid out in roads, was an equivalent for what they asked: which was, that the State of Ohio

should not for a limited time tax the lands of Congress. How, said Mr. M., gentlemen would ask, was this known? He would answer, by an estimate of the value of both; therefore they agreed to the propositions, provided Congress would make an amendment, and allow them an additional three per cent. to be laid out exclusively in their own State and under the direction of their Legislature: to this Congress agreed. He conceived the question for them to determine, whether the three was in addition to or in lieu of the five; he believed it could not be the latter, because it would go to defeat the original design, which was facilitating the communication between the Eastern and Western States. He was in favor of the resolution, believing that it was the intention of the Convention of Ohio, at the time they agreed to the propositions, that the three per cent. was to be given in addition to the five.

The question was taken on Mr. VARNUM's motion to strike out one-twentieth and insert one-fiftieth, and carried—yeas 75.

The question was then taken on the resolution as amended, and carried without a division.

TUESDAY, November 29.

Amy Dardin.

Mr. CLAIBORNE called for the order of the day on the bill for the relief of Amy Dardin.

The motion of Mr. DAWSON being lost, there being only thirty-two ayes in favor of it, Mr. CLAIBORNE's motion was taken up.

Mr. SANFORD moved to postpone the order of the day on the bill for the relief of Amy Dardin till to-morrow, in order to introduce a resolution for the appointment of a committee to inquire into the expediency of extending the time for adjusting the claims of individuals for supplies furnished and services rendered during the Revolutionary war, with the view of trying previously to the granting individual relief the general principle, whether Congress would repeal the statutes of limitation.

After a debate of considerable length, the motion to postpone was lost.

The House then went into a Committee of the Whole on the bill, which was so amended as to allow Amy Dardin two thousand five hundred dollars for the horse Romulus, being the estimated value thereof, not including interest.

The Committee reported the bill so amended.

The question was then taken on two thousand five hundred dollars, and decided in the negative by the vote of the SPEAKER.

Mr. NICHOLSON moved to fill the blank with two thousand three hundred and twenty dollars, being the amount of principal and interest on the value of the horse.

Mr. SANFORD moved to fill it with one thousand dollars.

The House agreed to Mr. NICHOLSON's motion—ayes 58, noes 43.

The yeas and nays were then taken on the engrossing of the bill for a third reading—yeas 57, nays 49.

Ordered, That the said bill be read the third time to-morrow.

WEDNESDAY, November 30.

The SPEAKER laid before the House sundry depositions and other papers, transmitted from the counties of Greenbriar and Rockbridge, in the State of Virginia, respecting the contested election of THOMAS LEWIS, one of the members returned to serve in this House for the said State; which were ordered to be referred to the Committee of Elections.

Amy Dardin.

An engrossed bill for the relief of the legal representatives of David Dardin, deceased, was read the third time; and on the question that the said bill do pass, there appeared—yeas 58, nays 57. And Mr. SPEAKER having declared himself with the nays, the said question was, in conformity with the rules of the House, decided in the negative. And so the said bill was rejected.

MONDAY, December 19.

A memorial of the House of Representatives of the Mississippi Territory of the United States, signed by William Dunbar, their Speaker *pro tempore*, and attested by Richard S. Wheatly, their Clerk, was presented to the House and read, stating certain disadvantages to which the inhabitants of the settlement on the Tombigbee and Alabama rivers have been and are now subjected, in consequence of their remote situation from the other inhabited parts of the said Territory; and praying that a line of separation may be drawn between the settlements on the Mississippi river, and those of Washington District, or that judges, learned in the law, may be appointed to reside within the said district, for the benefit and convenience of the inhabitants thereof.

Ordered, That the said memorial be referred to the committee appointed, on the 25th ultimo, on the petition and memorial of sundry inhabitants of the District of Washington, situate on the Mobile, Tombigbee, and Alabama rivers, in the said Mississippi Territory; to examine and report their opinion thereupon to the House.

Mail Routes.

The House went into a Committee of the Whole on the following report of the Post Office Committee:

The Committee on the subject of the Post Office and Post Roads, to whom was referred a resolution of the 2d ultimo, directing them to inquire by what means the mail may be conveyed with greater security and dispatch than at present, between the City of Washington and Natchez and New Orleans, report:

That the late cession of Louisiana by France to the United States renders it an object of primary importance to have the nearest and most expeditious mode of communication established between the city of Washington and the city of New Orleans, the capital of that province; not only for the convenience of Government, but to accommodate the citizens of the several commercial towns in the Union.

That at present the mail is conveyed on a circuitous route from this place to Knoxville and Nashville in Tennessee, and from thence through the wilderness by Natchez to New Orleans, a distance of more than 1500 miles.

That, by establishing a post route as nigh on a direct line between those two cities, as the Blue Ridge and Alleghany Mountains will admit of, it will not only lessen the distance about 500 miles; but as this route will pass almost the whole way through a country inhabited either by citizens of the United States or friendly Indians, the mail will be more secure, and the persons employed in transporting it better furnished with the means of subsistence.

The committee flatter themselves that the views of the General Government, in effecting this important object, will be seconded by the governments and citizens of those States through which this road will pass, by laying out, straightening, and improving the same, as soon as the most proper course shall be sufficiently ascertained; but as this has not heretofore been used for conveying the mail between those places, they presume that the best route will be better known after it has been used for this purpose, than it can be at present; and with this view of the subject, they deem it improper at this time to designate intermediate points; they are, therefore, of opinion—

That a post road ought to be established from the city of Washington, on the most direct and convenient route to the Tombigbee settlement in the Mississippi Territory, and from thence to New Orleans.

And further, that a post road ought also to be established from the said Tombigbee settlement to the Natchez. This road will not only afford the inhabitants of that place a direct mode of communication with the seat of the Territorial Government, who at present are destitute of any, but will shorten the distance between this city and Natchez nearly three hundred miles. And for the consideration of the House, the committee submit the following resolution:

Resolved, That a post road ought to be established from the city of Washington, on the most direct and convenient route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement in the Mississippi Territory, and from thence to New Orleans; and also from the said Tombigbee settlement to Natchez.

Mr. STANFORD moved the insertion of the following words:

“And Carter’s Ferry on James river, Cole’s Ferry on Stanton, Dansville on Dan river, in Virginia; Salisbury, Beatty’s Ford, on Catawba, in North Carolina; Spartanburg, Greenville Courthouse, and Pendleton Courthouse, in South Carolina; and Jackson Courthouse in Georgia:”

His object being to designate the intermediate points of the route between the seat of Government and New Orleans and Natchez.

This motion was supported by Messrs. STANFORD, J. RANDOLPH, EARLY, EARLE, and MACON, on the principle that it was proper that Congress should designate the route, and on the ground that the route contemplated by the amendment would be the fittest.

On the other hand, the motion was opposed by Messrs. THOMAS, SMILIE, HOLLAND, CLAIBORNE, S. L. MITCHILL, and G. W. CAMPBELL, on the ground that a discretionary power should be reposed in the Postmaster General to designate the route; and on the ground that, if Congress should undertake to designate the route, the one fixed by the amendment was not an eligible one.

Mr. DENNIS declared himself in favor of the House exercising the power of designating the route, but was not sufficiently informed to vote on any particular line.

Mr. R. GRISWOLD moved that the Committee of the Whole should rise and ask leave to sit again, with the view that leave should be refused, and the report recommitted to the Post Office Committee, in order to obtain from them a detailed report, that would furnish the House with satisfactory information.

This motion was supported by Mr. GREGG, and opposed by Mr. THOMAS, and carried—yeas 70.

The House then refused leave to the Committee of the Whole to sit again—yeas 19, and recommitted the report to the Post Office Committee.

FRIDAY, December 30.

Three other members, to wit: EBENEZER ELMER, JOHN SLOAN, and HENRY SOUTHARD, from New Jersey, appeared, produced their credentials, were qualified, and took their seats in the House.

TUESDAY, January 3, 1804.

Light-House Duties.

Mr. MITCHILL observed, that there had been some conversation in the House during the last session, concerning the sums of money paid by our merchants on foreign voyages. He wished to renew that subject, as well worthy of the attention of Government.

Foreign nations levy money upon our vessels, which frequent their ports, for the purpose of supporting their light-houses. The sums paid by our merchants in compliance with these exactions are very considerable. The contribution which strangers are thus obliged to make, constitutes a fund, that goes a great way towards defraying the expense of those establishments, to the great relief of their own subjects.

The average amount of light-money paid by every vessel that enters a British port, is about four pence sterling the ton, for every light she may have passed inwards, or that she may be expected to pass outwards. Calculating by this rule, an American ship of two hundred and eighty-four tons, entering the port of London, is charged with duties for the maintenance of the following lights, all along up the British channel, to wit: Scilly, Longships, Lizard, Eddystone, Portland, Caskets, Needles, Owers, Dungenness, Foreland, Goodwin, and the Nore. They amount to thirty-four pounds sterling, and the stamped paper for the receipt four pence more. Besides this, the duties of the Trinity House, for such a ship, amount to nine pounds seven shillings and eight pence. In addition to which there is demanded and paid by virtue of an act of George III. for the maintenance and improvement of the harbor of Ramsgate, seven pounds and two shillings. So that the amount of these impositions for light-money and Ramsgate harbor money, on a ship under three hundred tons, for a single voyage to London, amounts to fifty pounds and ten shillings sterling, which is equal to two hundred and twenty-two dollars, independent of her tonnage, duties on merchandise, pilotage and other expenses.

An American vessel entering the harbor of Hull, the lights are charged as before, viz: Scilly, Longships, Lizard, Eddystone, Portland, Caskets, Needles, Owers, Dungenness, Foreland, and Goodwin; and to these are added the lights on the Eastern coast of England, such as Sunk, Harwich, Gatt, Lowestoft, Harbro, Winterton, Oxford, Shawl, Dudgeon, Faulness, and the Spurn. The amount of these demands for light-money on an American ship of two hundred and forty-five tons, is thirty-seven pounds and six shillings sterling. At Hull, the collector enforces payment of Ramsgate harbor duties to the amount of £6 2s. 6*d.*, and of Dover harbor dues to the amount of £3 1s. 3*d.* The demand for supporting lights, few of which perhaps were seen on the passage, and for improving harbors which were not entered by the ship, amounts to forty-six pounds nine shillings and nine pence sterling on a burthen less than two hundred and fifty tons; an amount of demand exceeding two hundred and four dollars.

An American ship goes to Liverpool, she is charged for the light up St. George's Channel. A ship of three hundred and fourteen tons is made to pay for supporting the lights at Milford, that called the Smalls, and another known by the name of Skerries. These several demands, with the price of stamps, come to £15 14s. 2*d.* sterling on a vessel of that burthen for one voyage, or more than sixty-three dollars for light-money alone. For each of these three light-houses the charge is exactly four pence sterling the ton.

Light-houses have been established by the Government of the United States on many parts of our extensive coast. Many parts of it are admirably illuminated. And the whole expense of these valuable establishments is defrayed from the Treasury out of the ordinary income. Foreigners who visit our ports participate the security and advantage of these guides to mariners, as fully as our own citizens; but they pay nothing for this privilege of directing themselves by our lights. Foreign nations have acknowledged the principle that duties ought to be collected from their commercial visitors, for supporting light-houses, and they compel our merchants to pay them. It is a correct principle of distributive justice, that we should cause our commercial visitors to pay something also for the establishment and improvement of our light-houses. A duty of tonnage, for this express purpose, could easily be laid and collected from foreign vessels, and would add materially to our means of keeping them in good repair and attendance. A sum, for example, of six or seven cents per ton

upon every foreign vessel for every light-house she shall have passed, will make a valuable fund for the humane and excellent institution of light-houses. To the intent that this interesting subject may be investigated and that our Government may avail itself of its own proper rights and resources, I move the following resolution:

“That the Committee of Commerce and Manufactures be directed to inquire into the expediency of laying and collecting a tonnage duty on foreign ships and vessels, entering the ports and harbors of the United States, for an equivalent for the advantages which such ships and vessels derive from the light-houses they pass, inwards and outwards.”

WEDNESDAY, January 4.

Addition to the Navy.

A debate of some length ensued on the motion of Mr. MACON to strike out the second section.

Messrs. SMILIE and J. RANDOLPH supported the motion. They contended that no necessity existed in the present situation of the United States for an augmentation of the Navy; that it remained in the same state it had been fixed in during March, 1801, with the addition of four small vessels for the Mediterranean service; that it had heretofore proved fully competent to the protection of commerce, even when the complexion of our affairs was less pacific than at present; that the Mediterranean service had evinced that large vessels produced in that quarter more decisive effects than small ones, and that of the former description of vessels we had a sufficient number unemployed; that one great occasion for small vessels was removed by the permission of the State of South Carolina to import slaves, which superseded the necessity of any additional force to restrain their illegal admission into the United States; that this addition to our marine force did not appear to be necessary, inasmuch as the President, whose constitutional duty it was to give information to Congress of the state of the Union, and who directed the armed force of the nation, had not intimated his opinion of its necessity; and that Congress might be sure, if he thought it necessary, he would not hesitate to apprize them of it; that in adopting this provision of

the bill the House was acting altogether in the dark, as no estimates of the expense had been furnished, and not even a committee appointed to examine either the propriety or expense of the measure. It was alleged that it became the Legislature, in the present posture of the national finances, to be uncommonly circumspect. New and heavy pecuniary obligations had been incurred, and time alone could show whether the present resources would be more than commensurate to meet them. That the Secretary of the Treasury, at the opening of the session, had spoken of the competency of our resources with a caution which ought to impress the House with the necessity of exercising strict economy, unless disposed to vote new taxes. To this point this measure manifestly tended, and it became those who were hostile to new taxes, to hesitate before they adopted a measure that promised to lead to it.

The motion was, on the other hand, opposed by Messrs. NICHOLSON, EUSTIS, R. GRISWOLD, and HUGER. They observed that the bill under consideration had received the sanction of the Senate, and it might be rationally presumed that they had previously to its passage received satisfactory proof of its necessity; that the first section authorized the sale of the frigate General Greene, in the lieu whereof it was contemplated to build or purchase two small ships; that this measure therefore constituted no increase of the Navy beyond its present strength; that so far as related to expense, whatever the temporary cost, arising from the building or purchase might be, the permanent expense of two small vessels would be greatly inferior to that of one large one; that the annual expense of a forty-four gun frigate was \$104,000, while that of a vessel of sixteen guns was only \$36,000; that with regard to the argument of gentlemen drawn from a want of estimates, it was idle, as estimates had been furnished at the last session, as the basis of adding four small vessels for the Mediterranean service, which amounted to \$96,000, which sum appeared to be sufficient. If, therefore, four vessels cost \$96,000, two would not cost more than \$50,000; that with regard to the necessity of these ships, Congress were the proper and constitutional judges; that it was their special duty to provide and maintain a navy, and to provide for the common defence and general welfare of the United States; and that the absolute dependence placed by gentlemen on Executive mandates was unprecedented, anti-republican, and unconstitutional; that it became the Legislature to judge for themselves as to the propriety of the measure; that from the knowledge they possessed of the

state of the country, and the extended sphere of commerce, abundant evidence was presented of its necessity. It was a fact well ascertained that, for Barbary warfare, these small ships were eminently useful, and that service required relief; for in case of a disaster occurring to one of our present small vessels, it was proper to be provided with others that might promptly make good the deficiency. That the acquisition of Louisiana would undoubtedly require some naval force to ensure the collection of the revenue in that quarter; and that the state of the West Indies absolutely demanded an addition of some small vessels to protect our trade from the barges that were fitted out by the brigands for the purposes of depredation; that it was a fact that if the Executive, at this moment, possessed one of these ships, it would be immediately sent to the West Indies; that there were other important purposes for which these vessels were wanted. The Government had frequent occasion to send special Envoys, on points of vast importance, to the two great powers in Europe. Was it then safe, or becoming the dignity of the nation, to send such characters in a private merchantman, subject to the search or capture of any armed vessel of Europe?

Before a question was taken on the motion to strike out the section, Mr. JACKSON moved that the committee should rise. If they rose he would oppose their having leave to sit again, with the intention of referring the bill to the Committee of Commerce and Manufactures.

The committee agreed to rise—ayes 63.

Leave having been refused to them to sit again, Mr. J. RANDOLPH moved that a committee be appointed to inquire whether any, and what, further additions may be necessary to the Naval Establishment of the United States,

Mr. ALSTON moved to amend the motion by striking out “a committee be appointed,” and inserting “the Committee of Commerce and Manufactures be instructed.” Messrs. ALSTON, NICHOLSON, and EUSTIS supported, and Mr. J. RANDOLPH opposed this amendment. Carried—yeas 51, nays 46.

The motion thus amended was supported by Messrs. HUGER and ELMER, and opposed by Messrs. VARNUM and SMILIE. Carried—yeas 57, nays 44.

Mr. JACKSON then moved the reference of the bill to the Committee of Commerce and Manufactures. Agreed to without a division.

THURSDAY, January 5.

Official Conduct of Judge Chase.

Mr. J. RANDOLPH said, that no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the Constitution of the United States, and of many of the States also, had rendered the magistrates who decided judicially between the State and its offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement whether of intimidation or seduction which could cause them to swerve from the duty assigned to them might be removed. But such was the frailty of human nature that there was no precaution by which our integrity and honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir, of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States who has been found wanting in his duty to himself and his country. At the last session of Congress a gentleman from Pennsylvania did, in his place, (on the bill to amend the Judicial system of the United States,) state certain facts in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as to those whom I represent, to investigate the charges then made, and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and to report their opinion whether the said

Samuel Chase hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House.

After the motion made by Mr. J. RANDOLPH had been read from the Chair,

Mr. MITCHILL said, before the question was taken, he should be glad, from the novelty and serious nature of the proposed measure, to hear a statement by his friend from Virginia of the reasons in detail on which it was founded.

Mr. J. RANDOLPH observed, that when he was up before he had stated that the gentleman from Pennsylvania (Mr. SMILIE) had, in his place, at the last session of Congress, given a description of the official conduct of the officer to whom the resolution referred, which he considered the House bound to notice. It could not be conceived that the gentleman would have laid before the House a statement, the facts of which were not supported by his own knowledge, or by evidence on which he could place the utmost reliance. He did not conceive this to be a time to decide whether the information exhibited by the gentleman from Pennsylvania was or was not correct. At present an inquiry alone was proposed. If it should be made, it must result either that the conduct of the judge would be found to be such as not to warrant any further proceedings on the part of the House, or such as would require the interposition of that authority, which, as the immediate representatives of the people, they alone possessed. If on inquiry the committee shall be persuaded that the judge has not exceeded his duty, they will so report; if, on the contrary, they find it such as to require the interposition of the House, they will recommend that course of proceeding to which the House alone is competent. With respect to the facts which had come to his knowledge, Mr. R. said that they were such as he did not wish to state. He preferred its being done by witnesses, who were most competent to do it correctly.

Mr. ELLIOT said, I am as deeply convinced as the gentleman from Virginia that the streams of justice should be preserved pure and unsullied. I am also sensible that the Judicial Department ought to attach to itself a degree of independence. I am of opinion that this House possesses no censorial power over the Judicial Department generally, or over any judge

in particular. They have alone the power of impeaching them; and when a judge shall be charged with flagrant misconduct, and when facts are stated which shall induce them to believe those charges true, I shall be at all times prepared to carry the provisions of the constitution into effect, in virtue of which great transgressors are punishable for their crimes. The basis of this resolution is, that a gentleman from Pennsylvania, at the last session, stated that the judge named in it had been guilty of improper conduct. Of these charges I am uninformed, and every new member must be uninformed. It is astonishing to me that we are called upon to vote for an inquiry into the character of a judge without any facts being adduced to show that such an inquiry should be made. If the resolution pass in its present form, it appears to me that we shall thereby pass a vote of censure on this judge, which neither the constitution nor laws authorize. If the judge be guilty, I should suppose the first step proper to be taken would be for some person aggrieved, or for members having personal knowledge, to exhibit facts on which the House may act. I can never consent, because the gentleman from Virginia, or any other gentleman, says that there are facts which have come to his knowledge that induce him to think an inquiry ought to be instituted, to vote for it, unless those facts are first stated. I can never agree to any act which shall in this manner, without the exhibition of proof, impose censure or suspicion on a judge. This course may be perfectly Parliamentary; but it strikes me as altogether unprecedented. I shall, therefore, until some facts are adduced, resist every attempt to impose a censure upon the conduct of any public officer.

Mr. SMILIE.—If the gentleman from Vermont had commanded a little patience, he would have perceived the remarks which he has just made to have been altogether unnecessary. He would have perceived the necessity imposed upon me by the observations of the gentleman from Virginia of stating those facts to which that gentleman alluded. It must be seen that these proceedings contemplate the possibility of an impeachment. It will be recollected by gentlemen who were in Congress at the last session, that I was then led to give a statement of facts respecting the conduct of Judge Chase on a particular occasion. That statement was not made with a view to impeachment. A bill had been introduced to change the districts of the circuit courts of the United States; when I discovered that Mr. Chase was assigned to the district of Pennsylvania, I felt interested in having him transferred to another district, considering that his previous conduct had

rendered him obnoxious to the people of that State. These circumstances I stated to the House, and was in consequence called upon to assign my reasons why Judge Chase was obnoxious to the people of Pennsylvania. This is the history of the business so far. I am now called upon to state the facts which I mentioned on that occasion. This I shall do briefly.

A man of the name of Fries was prosecuted for treason in the State of Pennsylvania. Two of the first counsel at that bar, Mr. Lewis and Mr. Dallas, without fee or reward, undertook his defence. I mention their names to show that there could have been no party prejudices that influenced them. When the trial came on, the judge behaved in such a manner that Mr. Lewis declared that he would not so far degrade his profession as to plead under the circumstances imposed upon him. Mr. Dallas declared that the rights of the bar were as well established as those of the bench; that he considered the conduct of the judge as a violation of those rights, and refused to plead. The facts were these: The judge told the jury and the counsel that the court had made up their minds on what constituted treason; that they had committed their opinion to writing, and that the counsel must therefore confine themselves to the facts in the case before the court. The counsel replied that they did not dispute the facts, but that they were able to show that they did not constitute treason. The end of the affair was, that the counsel retired from court, and the man was tried without counsel, convicted, and sentenced to death.

After this the Attorney General wrote a letter to Messrs. Dallas and Lewis, requesting them to furnish their notes and opinions for the use of the President. They drew up an answer, in which they stated that the acts charged against Fries did not amount to treason, but were only sedition; and that they were so considered in the British courts. This letter was read to me by Mr. Dallas. After receiving the letter the President pardoned the man.

Mr. J. CLAY.—This debate appears to me to arise from causes the most extraordinary, and such as we are not accustomed to hear assigned on this floor. The gentleman from Virginia has made a motion justified by his own knowledge as well as that of my colleague; and this motion is opposed in a most extraordinary manner. I believe this is the first instance in which a motion to appoint a committee of inquiry into the official conduct of a public officer has been opposed. We are told by the gentleman from Vermont that this House has no right to pass a censure on a judge, and that

judges should be highly independent. I am afraid that unless great care be taken the doctrine of judicial independence will be carried so far as to become dangerous to the liberties of the country. This motion does not, however, affect the character of the judge. Let it also be recollected, that if the reputation of the judge be at stake, the reputation of this House also is implicated. I consider this House as the constitutional guardians of the morality of the Judiciary. Whenever even suspicion exists as to that morality, a committee of inquiry should be appointed. For the pure administration of justice is surely more important than the reputation of any particular judge. I am sorry my colleague thought it necessary to make any statement of facts to the House. I believe that more important facts than he has mentioned will be stated by witnesses. I believe likewise the reputation of the judge will be better preserved by the appointment of a committee than by assertions made on this floor by particular members, not responsible elsewhere for what they allege.

With regard to my opinions in this case, whatever my political impressions may be, they are entirely unbiassed. I have heard facts stated, but I cannot say that they have been satisfactorily proved to my mind. There are other charges equally reprehensible. Under these circumstances, I ask if the character of the judge is not more implicated by a discussion of his official conduct on this floor than by appointing a committee to obtain facts. If he is guilty of the facts alleged against him, no gentleman will say that he is not impeachable. If he is only suspected of them, there ought to be a committee, that if guilty he may be impeached, and if innocent, be freed from the imputation thrown upon him.

Mr. R. GRISWOLD.—Gentlemen will acknowledge that this is a subject of great importance and delicacy. No one will doubt but that we ought to execute our duty so as to preserve the fountains of justice pure, and that we ought at the same time to treat the important character of a judge, or of any other high officer, with respect. I do not know but that this mode of procedure is warranted by precedent. But if it is, it is unknown to me. As the resolution now stands, I do not think it perfectly correct. The honorable gentleman from Virginia says he is acquainted with facts that warrant the proposed inquiry. The question is whether the House ought to be governed by the opinions of any one member. We know not what those facts are; the gentleman declines stating them. I do think, as the subject now strikes me,

that the conviction of any one member of the propriety of this measure cannot warrant the interposition of the House. Instead of taking the individual opinion of a member, it ought to be stated that certain facts exist, which, if proved, will justify an impeachment. I do not know whether these ideas are not incorrect, having never before contemplated, or had a suspicion that such a motion would be made.

As to the remarks of the gentleman from Pennsylvania, I do not consider them as entitled to much weight. If the facts stated by him were of his personal knowledge, they would undoubtedly merit attention. But he merely states that which he has received from others, and which amounts to nothing more than that the judge refused liberty to the counsel to argue a point of law after it was decided, and confined their argument to facts. In so doing the judge may have erred, but it was an error of judgment, for which he cannot be impeached. No lawyer will perhaps say that it was not the province of the judge to decide the law, and that he has not the right to prevent counsel from arguing it after his mind is made up. But this information is not of the knowledge of the gentleman. Are we then to institute an inquiry into the conduct of a high officer of the Government merely on hearsay? This has never been done under our Government. In the late case of Judge Pickering proof was furnished by the affidavits of witnesses testifying certain facts. I do not therefore consider it correct to proceed to inquire on the opinion of any gentleman. The proper course is first to have proofs which will justify ourselves to our own consciences in making the inquiry—for we ought not to touch the character of a judge, unless we are satisfied from facts that there is good reason for an investigation into his conduct. Gentlemen will not say that making an inquiry into the official conduct of a judge does not touch his character.

Gentlemen say if this committee find the conduct of the judge to have been correct, they will make a report to that effect; but it does not follow that the report will contain all the evidence adduced, and suspicion may still rest on the character of the judge, and that some facts may not be stated, which, if stated, would show his misconduct. Whereas, if the business be brought generally before the House, on the exhibition of certain facts, the public will be enabled to decide whether they warrant impeachment or even suspicion. With this view of the subject, I am of opinion that it will be best to delay acting in this affair until facts shall be disclosed which will justify

the step now proposed to be taken. I have as high a respect for the opinion of the gentleman from Virginia as for that of any other member on this floor; but I doubt whether we can justify our votes on the opinion of any single member; facts alone ought to govern our opinions. I, therefore, for the purpose of considering the course most proper to be pursued, move a postponement of the further consideration of the motion until to-morrow.

Mr. J. RANDOLPH.—Were I the personal enemy of the gentleman who is the object of this resolution, I should take precisely that course which, on this occasion, the gentleman from Connecticut seems more than half inclined to take. That gentleman wishes the resolution to lay until to-morrow, in order that he may have time to consider whether he can bring himself to refuse the inquiry altogether. He says that he cannot, or rather (for he speaks doubtingly) he thinks he cannot see the propriety of instituting an inquiry without evidence. What evidence? Nothing short of legal proof—testimony on oath. And what is the object of the resolution? To acquire that very evidence. If we had the evidence, to what purpose make inquiry? As, however, the evidence cannot be had without inquiry, and the gentleman will not grant the inquiry but upon the evidence, it is plain that if we take the course which he recommends, we must go without both. Will gentlemen offer objections against inquiry which are applicable only to impeachment? If an impeachment were moved, they would have a right to call for evidence. But what is the object of the present motion? Merely to inquire whether there exists evidence which will justify an impeachment. But this inquiry we are told cannot be instituted on mere hearsay, although we have the declaration of a member in his place. What would be said of a grand jury, who being informed by one of their body that A or B could testify to the fact of a murder being committed within their jurisdiction, should refuse an application to the court to have them summoned, and because they could not find a bill of indictment unsupported by evidence, should reject that evidence which might be within their reach? I profess not that tenderness of conscience which has been displayed by the gentleman from Connecticut. My conscience teaches me to accuse no man wrongfully, but to deny inquiry into the official conduct of no one, however exalted his station; and I had supposed, from his practice, that the gentleman held the same opinion. For it will be recollected that on the eve of the close of the last session he had himself instituted an inquiry which went to impeach the conduct of some of the first officers of the Government. No one on that

occasion stepped in between the demand for an inquiry and those officers implicated in it. No inquiry was made, and it precluded any further proceeding on the part of the House, since the charges which had been attempted to be brought forward would not bear examination. Mr. R. concluded by calling for the yeas and nays.

Mr. GREGG said he should vote against the postponement, and in favor of the resolution. The case was somewhat new, but he perceived no impropriety in giving it the same direction with all the other business originated in the House. What is this committee to be appointed for? To investigate facts and report them to the House. Was it not most proper that gentlemen whose characters were implicated should have, in the first instance, facts stated privately before a committee, than that parts of their character should be immediately brought into view before the House? He recollected one fact not yet alluded to in debate. In 1792, after the army under the command of General St. Clair was defeated, great dissatisfaction arose, and the character of the commander was implicated. The idea was that the expedition had not been conducted with propriety. The business was brought before Congress. It was understood at that time, whether justly or not, Mr. G. would not pretend to say, that the commander-in-chief could not be tried by a court martial. Congress therefore took up the business, and appointed a committee of inquiry, who went through a lengthy examination of the subject. Mr. G. mentioned this precedent that gentlemen might turn their attention to it.

Mr. R. GRISWOLD said—I had hoped that the language used by me, when I was up before, would not have led gentlemen to suppose that I was acting as the friend or the enemy of Judge Chase. I am acting in neither capacity. I am acting only as a member of this House, who ought to be anxious on an occasion of such importance to take that course which is most consistent with propriety; that course which results from the duty this House owes the nation, and that duty which they owe the character of a judge. It did appear to me that it was not correct to call the character of a public officer into question unless some necessity should first appear. No facts are presented on this occasion. The gentleman from Virginia has said that he is in possession of facts, or of something which makes him believe that an inquiry is proper, but he does not choose to communicate those facts. The gentleman from Pennsylvania has given us his information. The question is,

whether it is proper on these light suggestions to institute a solemn inquiry into the character of this judge. It appears to me that we ought not to throw any imputation on the character of any officer without evidence that such an inquiry is necessary. The case mentioned by the gentleman from Pennsylvania (Mr. GREGG) does not apply. Dissatisfaction existed in the country and in this House on the events of a campaign; an inquiry was instituted; but what was its object? The committee were appointed to inquire into the general causes of the failure of the expedition; they were not instructed to inquire into the character of a particular officer.

The gentleman from Virginia has referred to another case, when he says that we were ready enough to institute an inquiry, and has left it to be inferred that the inquiry was made without any previous proofs of its necessity. But certainly on that occasion inquiry was not made without proof. I suppose the inquiry alluded to was that which related to the conduct of the Commissioners of the Sinking Fund. It was instituted on a report made by them, and which we thought was not satisfactory. The resolution offered was adopted, and inquiry was made, the result of which is well known to every gentleman. It follows, therefore, that there are no precedents adduced which apply to the present case.

It is my wish that the proceedings of this House may on this occasion be perfectly correct, and that we may not be precipitated into the adoption of this resolution without due consideration. If it is correct to vote an inquiry in all cases where a member rises on this floor and desires it, it is correct to vote it in this case. In this case a gentleman rises and says that he is satisfied an inquiry ought to take place. The question is, whether it is proper to inquire on the suggestion of a member? If it is proper, without facts being adduced, then it will be always proper to inquire whenever any member requires it, and it will be also proper whenever any individual citizen requires it. This course I have never thought correct. On the contrary, I think some facts ought to be previously presented to establish the necessity of an inquiry before it is voted. In the case of Judge Pickering a very different course has been pursued. The appointment of a committee of inquiry originated from a Message of the President. We find in February, 1803, the House received the following Message:

“The enclosed letter and affidavits, exhibiting matter against John Pickering, District Judge of New Hampshire, which is now within Executive cognizance, I transmit them to the House of Representatives, to whom the constitution has confided a power of instituting proceedings of redress, if they shall be of opinion that the case calls for them.”

This Message was referred to a committee, with the accompanying papers, furnishing evidence of the necessity of an inquiry. But the course pursued to-day is very different. A gentleman gets up and moves an inquiry into the conduct of Judge Chase, and says that he is of the opinion that it ought to be made. The course, I think, is incorrect. Some facts ought first to be adduced. I repeat it, I am on this occasion neither the friend nor the enemy of Judge Chase. I am the friend of this House; I wish its proceedings to be correct, and I hope they will not do hastily what they may hereafter regret.

Mr. DENNIS.—The only question now before the House is, whether they will postpone the consideration of the motion on the table. I cannot but express my surprise that the gentleman from Virginia should oppose this motion, when several have declared that they are not prepared to vote on this resolution. Gentlemen ought to recollect that, according to our rules, on all motions which require the concurrence of the two Houses, one day's delay is necessary. Although this resolution is not of this kind, yet it surely is not of inferior importance.

I believe that the gentleman alluded to by the motion would rather court than shrink from an investigation of his official conduct. I believe, also, that it has become necessary, from the discussion of this day, that an investigation should take place. I am not, therefore, prepared at this time to say whether I shall not ultimately vote for an inquiry. But it appears to me that the course proposed is inverting the natural order of things, inasmuch as it institutes an inquiry not growing out of facts, but for facts. I believe also that the facts stated, if authenticated, will furnish no ground for an impeachment. Circumstances attending this motion show that the gentleman from Virginia does not consider them as a sufficient ground for an impeachment. The refusal to hear the point of law discussed was the act of the court. Mr. Chase did not sit alone on the bench. Another judge must have been associated with and have concurred with him. If so, why does not

the resolution allude to the other judge? Why select one judge, when both are equally implicated in the charges?

I believe the most parliamentary way would be for a gentleman to state, in the form of a resolution, the grounds of impeachment, and then to refer such a resolution to a select committee for investigation. In this mode the House may correctly institute an inquiry, and send for persons and papers. This is the only parliamentary mode of proceeding. In every case where impeachments have been made, the facts have been stated in a resolution, concluding with a motion for an impeachment. The House possesses no censorial power over the judges, except as incidental to the power of impeachment. If gentlemen are possessed of facts, why not state them in the form of a resolution, and move an impeachment? Then, if the facts appeared to me to warrant an impeachment, I would not object to their going to a select committee, though I believe the most proper course would be for the House to send for persons and papers, and to examine for themselves. But it is extremely novel and unprecedented for the House, without facts, to institute an inquiry into the character of a high officer of the Government.

May they not, in the same way, extend their inquiry into the conduct of every judge in the United States, without stating any facts on which the inquiry is founded? For these reasons I shall vote for postponing the further consideration of this resolution for one day, on account of the importance and delicacy of the subject, and the serious deliberation it is entitled to. I do not know whether, if sufficient time is allowed for consideration, and I shall be convinced that this course is consistent with parliamentary usage, I shall not be in favor of an investigation.

Mr. ELLIOT.—When the yeas and nays are called, I shall on every occasion rise in favor of taking them. I wish the votes I give in this House entered on the Journal, and known to every citizen of America. The more I contemplate the course pursued on this occasion, the more extraordinary and unprecedented it appears to me. The gentleman from Virginia rose, and, after an elegant exordium, stating that the streams of justice should be preserved pure, and other fine things, told us that he had received information of facts that convinced his mind that an inquiry ought to be made into the conduct of a judge. Suppose the gentleman, on facts known to himself, had stated his opinion, that an inquiry ought to be made into the conduct of the President of the United States; we have the same right to

impeach the President as a judge. If the inquiry would be improper in the one instance, without facts being adduced, it would be equally so in the other. For we possess no censorial or inquisitorial powers over the conduct of the judges of the Supreme Court. If Judge Chase has been guilty of misconduct, let it be stated. If that misconduct be of a private nature, let the House assume the character of a grand jury, hold private sittings, receive evidence, and determine whether the judge shall be impeached or not. The gentleman asks whether a grand jury in the case of a charge of murder can send for persons. Undoubtedly they can. But did gentlemen ever hear of their appointing a committee to inquire whether a man charged with a partial offence ought to be indicted? We are called on as the grand inquisitors of the nation, to appoint an inquisitorial committee to get evidence; for it is granted that as yet we have none. I believe that no committee of this nature ought to be constituted, without previously ascertaining facts that will warrant the delegation of such great power. No accusation, even, is before us; but we are called upon to appoint a committee to look one up—a committee to be invested with power to send for persons and papers—a committee to inquire in private. I will never consent to the appointment of such a committee, until facts that will justify the inquiry are stated.

The facts adduced by the gentleman from Pennsylvania, if proved, could not induce me to believe that the judge is impeachable. I may suspect that his conduct was erroneous and improper, but I cannot conceive it proper to impeach a single judge for the act of the court. Believing, therefore, this conduct unprecedented, unparliamentary, and replete with improprieties; believing it novel; believing that, in an affair of so much consequence, we ought not to proceed with precipitation; believing that we are entitled to demand one day to reflect upon it—I am proud, on this occasion, to record my vote in favor of the postponement until to-morrow; and if it were for a week, I should with equal pride and pleasure vote for it.

Mr. HOLLAND moved an adjournment.

Mr. J. RANDOLPH said, that considering a motion to adjourn equivalent to a postponement for a day, he moved the taking the yeas and nays upon it.

Mr. HOLLAND moved an adjournment, on which the question was taken—yeas 52, nays 62.

YEAS.—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Edwin Gray, Gaylord Griswold, Roger Griswold, John A. Hanna, Seth Hastings, James Holland, David Hough, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, Tompson J. Skinner, John Cotton Smith, John Smith of Virginia, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

NAYS.—David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findlay, James Gillespie, Andrew Gregg, Thomas Griffin, Samuel Hammond, Josiah Hasbrouck, William Hoge, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of New York, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, and Richard Wynn.

The question of postponement recurring,

Mr. HUGER considered the course contemplated by the resolution as improper, unparliamentary, and unprecedented. To make up his mind on the course proper to be pursued, he was in favor of the postponement.

Mr. HOLLAND observed that he had moved an adjournment to allow those gentlemen time for reflection who had not yet made up their minds on the propriety of the motion. He was himself of this number. Having been allowed no time for reflection, he did not feel perfectly satisfied with the appointment of a committee of inquiry before any facts had been substantiated. Desiring further time to form his judgment, and seeing no occasion for precipitation, he should vote in favor of a postponement.

Mr. G. W. CAMPBELL.—I will not, at this late hour, detain the House with the expression of my ideas in detail. I am as desirous as any member of this House that the streams of justice should flow pure and unsullied, as on their purity depend the safety and liberties of the people of the United States. But when we are about to enter into measures for preserving them clear, we owe it to ourselves to preserve order in our conduct, and to act in such a manner as we shall be able to justify to our constituents. Every member of this House, on such an occasion, ought to be as cautious in his proceeding as a judge in delivering his opinions, lest, while we are condemning the conduct of the judge, we ourselves go astray from our duty. For this reason, I am against the adoption of a measure which may throw a censure on a character invested by the United States with high authority, until I am convinced we have sufficient grounds for doing so. The resolution on the table can have but one object, to wit: the direction of an inquiry whether sufficient evidence can be procured to authorize an impeachment. I conceive that this House cannot proceed in any other way. I am therefore of opinion, that, before the vote for an inquiry, there ought to be probable grounds that facts exist that authorize an impeachment, and that evidence can be procured of their existence. I am not prepared to say, from any thing which has been adduced, that such evidence does exist. I conceive that until probable grounds are shown, we ought not to authorize such a procedure, inasmuch as it may establish a precedent that we may hereafter regret—a precedent which will put it in the power of any member to move and obtain an inquiry into the conduct of the President, a judge, or any other officer under the Government. Under these circumstances, I am not prepared to say this is the regular course of proceeding. I do not profess to have much knowledge of parliamentary proceedings, and have therefore waited, before I expressed my opinions, to hear such precedents as gentlemen could adduce. Having heard none, I conclude none exist.

I conceive that the act of this House, in voting for a committee of inquiry, is equivalent to the expression of the opinion that they have evidence of the probable grounds of the guilt of the judge. The gentleman from Virginia has told us that the powers of this House are, in some degree, like those of a grand jury. I agree that they have all the powers of a grand jury, and it is on this ground that I deny the power now contended for. I say that a grand jury has no right to send for testimony: they have only a right to receive testimony from any one of their body, and to receive such witnesses as the court may send them. If, then, there be evidence in the present case, let us act upon it, even though it be *ex parte*, and although that might, perhaps, be going too far.

I repeat it, I have heard no statement satisfactory to my mind that there are probable grounds for proceeding in this business. It is true, the gentleman from Pennsylvania has made a statement, but that statement appears to me to depend not so much on facts as on opinions; and it is not my wish to decide on the propriety of the conduct of the judge until the facts are before us. It is certain that a judge has a right to control counsel, and to say when his mind is made up, while it is also his duty to hear the allegations that shall be made.

In addition to these reasons for a postponement, I am also in favor of it, because, whenever a sincere desire exists to gain information, which can only be done by allowing further time, I shall always be in favor of it, when no material injury can result from the indulgence.

Mr. MOTT.—I am in favor of the postponement, because I wish time for consideration, and because I am against the resolution itself. I think it is improper to go into such an inquiry before specific charges are laid before the House, when it will be proper for the House to consider whether those charges are sufficient to sustain an impeachment; then it will be proper to proceed, and not till then. No charges have yet been laid before the House: we have only been told by one member that he is satisfied sufficient grounds exist.

Mr. J. RANDOLPH was sorry to be obliged to trespass again on the patience of the House, but the direct application made to him by the gentlemen from Tennessee and South Carolina, imposed upon him the necessity of stating his reasons for proceeding in what they were pleased to

term so precipitate a manner. They ask, why not have laid the resolution on the table by way of notice to the House? Because, sir, I cannot in a matter of extreme delicacy make the opinions of other gentlemen the standard of my own actions. I should have conceived the character implicated in the resolution as having just cause of complaint against me, had I not been ready to decide in a moment on it, and did I not press its immediate decision. I should have deemed it an act of cruel injustice to have hung the inquiry over his head even for a day. I should have expected the reproach of setting suspicions afloat whilst I avoided examination into them; for I should have deserved it, had I pursued the course which gentlemen wish to adopt. I can see no difference between hanging up this motion for a day or a year but the mere difference of time. What is the object to be obtained? Do we wait for evidence, or any information, which will assist us in forming a correct opinion? Not at all. To-morrow the question will recur upon us—"Is it proper, from what has already appeared, to institute an inquiry into the conduct of this officer?" And this we are as competent to decide at this moment as at any future day. When, however, gentlemen consider a resolution to make inquiry the same as an inquiry already had, I am not surprised at finding myself opposed to them in opinion. I repeat that all their arguments are applicable to a motion of impeachment only. But it seems that no precedents have been adduced, and time is wanted to hunt them up. Gentlemen should recollect that but two cases of impeachment have taken place under this Government; one of a Senator from Tennessee, the other of a district judge of New Hampshire. By what precedents were the proceedings in these cases regulated? How is it possible in a Government hardly in its teens, where new cases must daily occur, as its various functions are called into exercise, to find precedents? It did so happen, in the case of the Senator from Tennessee, that the information on which his impeachment was grounded came from the Executive. But suppose that information had not been communicated by the Executive? Would that have precluded all inquiry? Suppose, too, in the case of Mr. Pickering, that no information had been received from the Executive, and that a gentleman from New Hampshire had risen and said, "However painful the task, I deem it my duty to state that the conduct of the judge of the district in which I reside, has been such as renders him unfit for the important station which he holds, and I therefore move for an inquiry into his conduct." Would the House have denied the inquiry? Will they rely

altogether on the attorney of the district, whose interest it is to be well with the judge, and whose patience must be worn out with his misconduct before he will undertake to call the attention of Government to it? Are gentlemen aware of the delicate situation in which those officers are placed? Suppose information had been given to a member of the malfeasance of a judge by a person who should say: "It is not pleasant to originate accusations; those who come forward in these cases undertake an invidious task; while therefore I wish my name not to be mentioned, I shall be ready, when called upon by proper authority, to give my testimony." This is a hypothetical case, but one by no means improbable. Would it not be a point of honor not to expose the name of the informant?

But, say gentlemen, the charge is of a general nature. While I do not admit the force of this remark, supposing it to be correct, I deny that it is a general charge. The inquiry is general, but it is founded on a statement made by the gentleman from Pennsylvania. I made no other statement. I have said that I believed there existed grounds of impeachment. What they are I shall not state here. They may be those exhibited by the gentleman from Pennsylvania, or they may be others. Will gentlemen assert that the statement of facts made by the gentleman from Pennsylvania will not, if true, warrant an impeachment? What does it amount to? A person under a criminal prosecution, having a constitutional right to the aid of counsel in his defence, has, by the arbitrary and vexatious conduct of the court, been denied this right. Such is the nature of the charge. Has it come to this, that an unrighteous judge may condemn whom he pleases to an ignominious death, without a hearing, in the teeth of the constitution and laws, and that such proceedings should find advocates here? Shall we be told that judges have certain rights, and, whatever the constitution or laws may declare to the contrary, we must continue to travel in the go-cart of precedent, and the injured remain unredressed? No, sir, let us throw aside these leading-strings and crutches of precedent, and march with a firm step to the object before us.

As to the motion of postponement, Mr. R. said it was of little consequence to him whether it prevailed or not. On a charge of specific malfeasance, he thought it impossible to refuse an inquiry. Whatever should be the result, he should rest satisfied with having discharged his duty to the House and to the nation. Believing the circumstances to demand inquiry, he

had made it. Without circulating whispers of reproach, he had given the person implicated that opportunity of vindicating his character which he himself should require if he stood in the same unfortunate situation.

The committee rose, and the House adjourned.

FRIDAY, January 6.

Importation of Slaves.

Mr. BARD.—For many reasons this House must have been justly surprised by a recent measure of one of the Southern States. The impressions, however, which that measure gave my mind, were deep and painful. Had I been informed that some formidable foreign power had invaded our country, I would not, I ought not, to be more alarmed than on hearing that South Carolina had repealed her law prohibiting the importation of slaves.

In the one case we would know what to do. The emergency itself would inspire exertion, and suggest suitable means of repelling the attack. But here we are nonplussed, and find ourselves without resource. Our hands are tied, and we are obliged to stand confounded, while we see the flood-gate opened, and pouring incalculable miseries into our country. By the repeal of that law, fresh activity is given to the horrid traffic, which has been long since seriously regretted by the wise and humane, but none have been able to devise an adequate remedy to its dreadful consequences.

Congress has but little power, or rather they have no power to prevent the growth of the evil. To impose a tax on imported slaves is the extent of their power; but every one must see that it is infinitely disproportionate to what the morality, the interest, the peace, and safety, of individuals, and of the public, at this moment, demand. And though in regard to their present case the power of the General Government may be insufficient to check the mischief, yet I hope they are disposed to discourage it, as far as they are authorized by the constitution. Therefore I beg leave to offer the House the following resolution:

“Resolved, That a tax of ten dollars be imposed upon every slave imported into the United States.”

Ordered to lie on the table.

Official conduct of Judge Chase.

The House resumed the consideration of the motion of the fifth instant, “for the appointment of a committee to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States,” and the said motion, as originally proposed, being again read, in the words following, to wit:

“Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase hath so acted in his judicial capacity, as to require the interposition of the constitutional power of this House:”

A motion was made and seconded to amend the same, by inserting, after the words “one of the Associate Justices of the United States,” the following words, “and of Richard Peters, District Judge of the district of Pennsylvania.”

Mr. SMILIE.—When the motion now under consideration was made yesterday, I should have felt surprised at the course which the debate took, had I not often witnessed such things in former times. It seems to be considered as improper that a gentleman should bring forward a motion for an inquiry into the official conduct of a public officer, and expect the House to comply with his request, unless he should at the same time produce such evidence as shall prove the facts charged. If this course of proceeding be correct, I have ever been in error. What does the gentleman from Virginia ask? Suppose he has taken exception to the conduct of the judge from some facts which have come to his own knowledge. Under such circumstances it will be allowed that it is the duty of the House to make the inquiry. When the question shall be whether an impeachment shall be preferred, it will be

proper that evidence should be produced. But now only a committee is asked to receive evidence, and to determine whether it be such as in their opinion will afford grounds for an impeachment. It is impossible for me to conceive any way that can be pursued which will be more favorable to the person whose character is implicated, than that which is proposed. It is merely to inquire whether such facts can be sustained as will afford grounds for an impeachment. Certainly in this stage of the business it is not necessary to produce evidence to the House, as the House are not competent to receive testimony, which a committee is. It is a rule of this House that so much respect is due to a member, that if he states that he possesses information proper to be communicated to the House, but which in his opinion ought not to be done but with closed doors, that, in such case, the doors shall be shut without any vote of the House.

Surely, then, on the request of a member for a committee of inquiry, that measure ought to be adopted. This, in my opinion, is the best course that can be pursued for the person implicated. There is, it is true, thereby expressed an opinion of some one member that this judge has done wrong. So far his character is implicated; this is the only possible way in which it is implicated. The committee are to inquire whether there are grounds for an impeachment or not. If they report that there are not grounds, the accusation will be dismissed; and if the report is that there are grounds, the House will at once perceive the necessity of taking this step to ascertain their existence.

Another ground of resistance is taken. It is said there are precedents for this proceeding. I believe that all precedents must have an origin; and that one person has as good a right to establish them as another. Our Government is young, and only two cases of impeachment have occurred under it. Most of our precedents respecting parliamentary proceedings are borrowed from England, and, if precedents are necessary in this affair, we must resort to that country for them. My opinion is that they are not necessary, and that common sense and the reason of the thing are all that are necessary to guide our decision in this case. There is, however, in the British annals, no deficiency of precedents. The first I shall mention is to be found in the case of the Earl of Strafford. I may be told that this precedent was established in turbulent times: I may also be told of the improper mode of proceeding. I do not pretend to vindicate the whole course of procedure. I think it was wrong. But with regard to the first stages of the business, I

believe them to have been correct. It will be seen that, in that instance, a more direct mode was pursued than is proposed in the present case.

The precedent I allude to will be found in Hume's History, vol. 2, page 249. That historian says,—“A concerted attack was made upon the Earl of Strafford in the House of Commons. It was led by Pym, who, after expatiating on a long list of popular grievances, added, ‘we must inquire from what fountain these waters of bitterness flow; and though, doubtless, many evil councillors will be found to have contributed their endeavors, yet is there one who challenges the infamous pre-eminence, and who, by his courage, enterprise, and capacity, is entitled to the first place among these betrayers of their country. He is the Earl of Strafford, the Lieutenant of Ireland, and President of the Council of York, who, in both places, and in all other provinces where he has been intrusted with authority, has raised ample monuments of tyranny, and will appear, from a survey of his actions, to be the chief promoter of every arbitrary council.’ Many others entered into the same topics, and it was moved that Strafford should be impeached. Lord Falkland alone, though the known enemy of Strafford, entreated the House not to act with precipitation. But Pym replied that delay would blast all their hopes; without further debate the impeachment was voted, and Pym was chosen to carry it up to the Lords.”

In this case it does not appear that any evidence was called for; a member of the House of Commons got up and declared his opinion of that officer, and the same session an impeachment was voted. This course of proceeding is very different from that now proposed. I will now refer to a more modern precedent which at the time does not appear to have been objected to. It occurred in the reign of George I., and will be found stated in Russel's “Modern Europe,” vol. 4, page 398.

“A new Parliament was called in which the interest of the Whigs predominated, and a secret committee, chosen by ballot, was appointed to examine all the papers, and inquire into all the negotiations relative to the late peace, as well as the cessation of arms by which it was preceded. The Committee of Secrecy prosecuted their inquiry with the greatest eagerness, and, in consequence of their report, the Commons resolved to impeach Lord Bolingbroke, the Earl of Oxford, and the Duke of Ormond, of high treason.”

One circumstance is worthy of attention. A cause of dissatisfaction at the conduct of the judge has undoubtedly prevailed. Whether he is wrongfully accused I will not say; but the dissatisfaction is manifest; for the representatives of two respectable States lately came forward and opposed his being assigned to circuits which embraced their States. This single fact ought to make an impression on the House.

It is alleged that there is no proof before the House; but one thing is notorious—is universally known. It is this, that this man (Fries) was tried before that judge for his life, and was tried without being heard. This fact cannot be disputed. When we consider the importance of the life of a citizen, and know that such an event has taken place, is it not the duty of the only body competent to inquire into the fact? With other gentlemen, I believe that the fountains of justice ought to be kept pure; I believe also that the judges are like other men, and that like them they are subject to the common frailties of human nature; and I do believe that when the frailties of human nature produce such effects, the House cannot be justified to themselves or their country without making an inquiry. Our duty to our country calls for it; our duty to the man who is implicated also calls for it. If innocent, a proper regard to his character claims it; and his friend from Maryland informs us that he will rejoice at this opportunity of coming forward and vindicating himself. If, then, the inquiry be equally necessary for placing the character of the man upon its proper footing, and for preserving the purity of justice, how can the House resist it?

Mr. DENNIS said he had only expressed an opinion that such an investigation would be rather solicited than avoided by Judge Chase.

Mr. LEIB.—I am by no means an enemy to inquiry, but I am not a friend to the partiality of this resolution. We are told that it is grounded on the misconduct of the Circuit Court in Philadelphia on the trial of Fries. If one judge of that court was guilty of misconduct, the other attending judge must have been equally guilty. The conduct complained of was the act of the court, and not of an individual judge. This resolution ought therefore to embrace both the attending judges. My opinion is that both are criminal, and ought to be brought to the bar of justice. I therefore move an amendment of the resolution by introducing the name of Richard Peters, so as to embrace an inquiry into the conduct of both judges, and call for the yeas and nays on the amendment.

Mr. J. RANDOLPH.—I wish to state for the information of those gentlemen who were not in the last Congress, that the gentleman from Pennsylvania, whose statement, thus made, is the groundwork of the present inquiry, did not offer any matter which tended to impeach the conduct of Mr. Peters, while there was a specific charge of misconduct brought against the other judge. In consequence of this charge I conceived it my duty to make an inquiry into the official conduct of Judge Chase. I mention this circumstance to show that however the charge of partiality may apply to the resolution, it cannot apply to the mover.

Mr. LEIB.—I do not charge the mover with partiality, but the resolution with embracing one judge instead of two. Judge Peters was on the bench at the time. This outrage upon justice was the act of the court. How the conduct, therefore, of one judge shall claim investigation, while that of the other is passed over in silence, to me is mysterious. I think impartial justice calls for an investigation into the conduct of both.

Mr. SMILIE said there could be no doubt that if the court was agreed, Judge Peters had been equally guilty of misconduct. On the trial of Fries, Mr. Chase presided, and Mr. Peters attended. If Judge Peters concurred in the decision, he was equally culpable.

Mr. NICHOLSON.—This resolution is grounded upon a statement made during the last session, by a member from Pennsylvania, implicating the character of one of the justices of the Supreme Court. Upon information thus given, my friend from Virginia has thought himself bound to bring the business before the House, that an inquiry may be made into his conduct. For myself I will never hesitate, I care not who the person implicated may be, and however exalted his station, to give my vote for inquiring into his official conduct, when a member of this House rises in his place, and states that, in his opinion, he has been guilty of misconduct. For this reason I shall vote for the amendment; it having been stated by a member that Judge Peters was on the bench and did concur with Judge Chase.

And on the question that the House do agree on the said amendment, it was resolved in the affirmative—yeas 79, nays 37, as follows:

YEAS.—Willis Alston, jun., Nathaniel Alexander, Phaniel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William

Butler, John Campbell, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, John Dennis, William Dickson, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findlay, James Gillespie, Edwin Gray, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Hoge, James Holland, David Holmes, Benjamin Huger, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Thomas Lowndes, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, James Stevenson, John Stewart, David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Marmaduke Williams, Richard Wynn, Joseph Winston, and Thomas Wynns.

NAYS.—Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Gaylord Griswold, Roger Griswold, David Hough, Samuel Hunt, Thomas Lewis, Henry W. Livingston, William McCreery, Nahum Mitchell, Samuel L. Mitchill, James Mott, Beriah Palmer, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, Henry Southard, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, John Whitehill, and Lemuel Williams.

Mr. LOWNDES.—Were I to be governed by considerations other than those resulting from a sense of duty, I should vote for this resolution, as I believe it would afford the character implicated the readiest mode of vindication. But I do not feel so high a respect for the opinion of any one member as to give up my opinion to his, as to the course most proper to be pursued on this occasion. The gentleman who has offered this resolution says, that the facts on which it is founded are within his own knowledge.

Let the gentleman then lay them before the House. Otherwise we shall legislate, not on the facts before us, but merely on the opinion of a single member, on facts only known to himself. We are told that this motion is founded on the statement of an honorable gentleman from Pennsylvania. What is that statement? That one of the counsel in the trial of Fries informed him that the judge declared the counsel had no right to argue a point of law after the mind of the court was made up. I ask if any gentleman is prepared to say that the judge was wrong? I am not prepared to say so. While, too, I am unwilling to detract from the respect due to the statement of the gentleman from Pennsylvania, I am equally unwilling to subscribe to his opinions. He may have misconceived the information communicated to him. It is said that it is necessary to preserve pure the streams of justice. I agree in this remark, and I say that the resolution on the table goes to destroy the independence of the judges, and of consequence to pollute the streams of justice; to make the judges the flexible tools of this House. It is impossible that under such circumstances men of talents and integrity will take seats on the bench, when their character shall be liable to be scrutinized without any facts being previously adduced.

I think it absolutely necessary that this resolution should not pass. For if it passes, it will establish a precedent that any member may procure an investigating committee to inquire into the conduct of any executive or judicial officer merely upon his opinion, unsupported by facts, that such an inquiry is necessary. Suppose parties to be nearly equally divided; a member has only to propose an inquiry into the conduct of any officer to whom he may feel inimical, and thereby throw a cloud upon his character, and render him the object of suspicion. Thus do I fear that this precedent will furnish the instrument of vengeance of one party against another. The price we pay for our liberties is the existence of parties among us; but it becomes us rather to restrain than to invigorate their passions. If we establish this precedent we shall render impeachment so easy, as greatly to facilitate the means of oppression.

Mr. LOWNDES concluded by saying, that in this affair he threw party considerations entirely out of view. He was personally unacquainted with Judge Chase, and if there was a single affidavit of his misconduct, the appointment of the committee of inquiry should have his vote; but that,

under the circumstances attending it, he considered the measure improper in every point of view in which he could consider it.

Mr. FINDLAY observed, that though the abstract right of the members to move for an inquiry into the conduct of public officers, in order to find whether presumptions against their character afforded ground for impeachment, was not expressly denied, yet the manner in which the opposition to the present resolution was conducted was equal to denying the right. He trusted, however, that the House would support this right, as it was one of the most important of any with which they were vested. It grew out of the power of impeachment, and it was necessary for the exercise of that power, and was justified by precedents. By the rules of the House any member has a right to have the doors shut, in order to move such a resolution as he thinks proper. This has been usual in cases of impeachment in Britain, from which we derive the forms of impeachment. There it has been common to shut the doors, and for a member to move for an impeachment of a public officer, and to procure the officer impeached to be taken into custody before there was time or opportunity to take any other testimony than the information stated by the member who moved the resolution, probably supported by public fame. Taking the party into custody was necessary to the circumstances of that country and the extent of punishment, which might not only affect the liberty and property, but even the life of the party found guilty. It was necessary, because of the influence of the powerful nobility, who might have it in their power to stand in their defence; but, as all the penalties in the power of this Government to inflict by impeachment only affect the official trust and character, taking into custody is unnecessary.

He observed, that the arguments in opposition to the resolution turned chiefly on the ground of expediency and of precedent.

In his opinion, it appeared not only expedient but necessary, from the notoriety of facts on which the resolution was founded; that they were publicly known and had impaired confidence in these judges, could not be denied. That it was known to Congress during the last session was acknowledged. It was not only known, but Congress acted on it. A bill was in progress before this House, appointing the attendance of judges to particular districts—the members of two respectable States, in which, by the bill, Judge Chase was appointed to attend, objected unanimously to that

appointment, because they had not confidence in him; and the facts on which the resolution is founded were stated on the floor, upon which the House altered the bill and appointed another judge to that district. This was a strong testimony that Congress believed that this open expression of want of confidence in that gentleman was justified by the facts that had been stated. He said, that though he had not at that time a seat in the House, he had expected an inquiry to be made into the causes of this want of confidence at that time. Perhaps it was prevented by the shortness of the session.

It is expedient for the character of the gentlemen and for the public good; for the gentlemen themselves, if they are innocent or have acted on justifiable ground; it is necessary that their characters may be vindicated, and confidence in their public conduct restored. It is expedient for the public good, because if the judges are guilty in the manner stated—if they have justly lost the confidence of the people and of Congress, as it appears, by the transaction of last session, one of them has done, the case ought to be examined and the citizens protected; for if he was unfit to preside on the bench for one district, he is unfit to preside in another. It is expedient, in order to secure the confidence of the citizens in the Government itself.

But precedents are called for by the gentlemen opposed to the resolution, and several of them contend that such special facts should be stated as would be unexceptionable ground of impeachment, before the inquiry is gone into. A gentleman from Vermont, (Mr. ELLIOT,) who argued yesterday in favor of postponement for further information on the subject, in the same argument said that he never would agree to the appointment of a committee of inquiry, until the charges were first stated and proved to his satisfaction. Mr. F. said he was astonished at this inconsistency. If the facts were first stated and established, appointing a committee of inquiry would be an absurdity. What would they inquire after but what they already knew? That gentleman and others, in order to defeat the resolution, gave the object of it an odious designation: they called it an inquisition, and spoke of it in such terms as if it was the well-known Spanish law of that name. The character of that court was too well known to the members of this House to require definition; it was sufficient to say that in it witnesses were examined without the knowledge of the party accused; that it compelled the accused to give testimony against themselves, and had authority to pass sentence of

the most dreadful kind, without appeal. The gentlemen knew that no such thing was intended by the resolution. The character of the judges had been impeached in public opinion by numerous citizens of all descriptions. Congress on that account gave a decisive testimony of want of confidence in one of them. The object of the resolution was to inquire whether there was a real foundation for this want of confidence and ill fame. If Congress did not make inquiry in such cases, who was to do it? It did not by the constitution belong to any other authority; every other method of proceeding would be as ingeniously objected to as the one proposed, by those who wished to prevent further proceedings in the case; denying the means of bringing forward impeachment, had the same effect as if the power of impeachment was renounced.

The power of this House has been asserted to be similar to that of a grand jury; this seems to be conceded on both sides, but though it bears a resemblance, it was not strictly so—it was more extensive. Grand juries were authorized to present such indictments or such complaint or information as were submitted to them by the Attorney General, or which they knew of their own knowledge. The attorney also inquires if there is probable ground for the complaint, and brings the witnesses before the jury, who examine them to establish the facts alleged; but this House has no officers authorized to make inquiry and bring forward the business in due form; therefore the House possess both the power of the Attorney General and the grand jury, with relation to impeachment; for where a power of decision is given, all the powers necessary to carry that decision into effect are implied. The making inquiry, procuring witnesses, or other testimony, and preparing the case in due form, is the object of the resolution; and if the House does not do it in this or some other such method, there is no other agent authorized to do it.

With respect to precedent and parliamentary usage, Mr. F. said he had formerly examined many, but was not prepared to state them at this time, and did not think them necessary on this occasion. In all the examples of impeachment by the British Parliament, from the reign of Henry VIII., when parliamentary power was reduced to a mere shadow, till the present time, when the parliamentary power has been amply enlarged and established, and their proceedings become more uniform, there will be shades of difference found in all of them, arising from various

circumstances; we have few precedents of our own, and of these few none of them apply to the present case. It is the constitutional duty of this House to impeach, when impeachment is necessary, and of the Senate to decide on impeachments; but with respect to the manner in which each House should proceed, they are not trammelled by forms nor entangled in precedents.

There are, however, examples of proceedings both with the British Parliament and with us, as similar to the method now proposed as the various cases would admit. With ourselves, the case of the unfortunate Western expedition mentioned by my colleague (Mr. GREGG) yesterday, was much more to the purpose than the gentleman from Connecticut (Mr. GRISWOLD) was willing to admit. Mr. F. said he had the honor to be one of the committee of inquiry which sat on that subject a great proportion of two sessions. The expedition was too late in setting out to the Indian country; they were said to have been illy provided with necessaries, and long detained for want of them; a large proportion of the army were killed or taken by the savages, and all the stores with the army left. The citizens were discontented, and numerous complaints were heard, but none knew with certainty whom to blame; a committee was appointed to examine witnesses and report the testimony to the House, in order to discover the party who had been to blame. Some had charged it on the commanding General, others on the Secretary of War, and others on the Commissary of Military Stores, and these last endeavored to wrest the blame from themselves and fix it on the General. It was certain that a great misfortune had happened, but it was not certain that any officer was to blame; no charge had been made to Congress against any officer, yet Congress thought proper to make an inquiry, and it was not opposed on account of want of form, or want of precedents, by any of the friends of the parties. Towards the close of the first session, the committee made a concise report, referring to a great amount of testimonies. Some of the parties implicated by the report thought themselves injured by it, and it was alleged that other witnesses ought to be examined. Consequently, at the next session, the business was recommitted to the same committee, and as it was near the close of the last session of that Congress, before all the witnesses were procured and examined, and the parties heard by the committee, each of the parties wrote and delivered to the committee a large book of explanations and defence. The committee reported a large wooden box full of testimony, of original letters and instructions, and the three books of explanations and defence accompanied

with some observations. It was not possible for that Congress to enter on the business, and the cause being of a transient nature, and the parties who applied for the second inquiry not wishing a disclosure of the testimony, the business was not afterwards entered on; but the mass of testimony, &c., is yet in possession of Congress. This, it is presumed, applies well in favor of the present resolution.

Gentlemen object to the resolution because of the indelicacy of implicating the character of a judge. They seem to believe the character of a judge to be sacred and immaculate. But are not judges men? Are they not men subject to like passions and like feelings as other men? Judges and other official characters voluntarily surrender a part of the rights they enjoyed in common with other citizens, in return for the honors and emoluments of office; others have a right to the privilege of trial by jury, in the decision of all charges against them; but public officers, by accepting of office, subject themselves under this Government, to trial by impeachment. Subjecting judges to impeachment, indicates, unequivocally, a constitutional opinion that judges would be even more liable to transgress than other citizens, and might transgress in a more aggravated manner than mere citizens. This mode of trial, however, in this country, is become almost a harmless thing; it is deprived of more than half its terrors. It does not reach life or property, but only the official character.

Mr. F. said he was a friend to the independence of judges, but that all independence in all Governments had its limits and restraints. It was not provided for the aggrandizement of the judges, but for the protection of the citizens. So far as it is applicable to this purpose, it is necessary, but any further, it is injurious and subjected to restraint. Under no Government with which we are acquainted are the judges rendered so independent as that of the United States. In Britain, from which we have derived the mode of our judiciary, the judges were appointed during pleasure; till, little more than a century ago, they were rendered independent by the Revolution Parliament for the security of the people against the encroachments of the Monarch, and the overbearing influence of a very powerful nobility; and for this purpose it was not only salutary, but absolutely necessary. But even with that boasted independence, that Judiciary is subjected to restraints and modes of correction not provided in the Federal Constitution. The judges are liable to be removed from office by the vote of both Houses of

Parliament, without trial. They are liable to be removed, or their standing changed by act of Parliament. That Parliament, on whose act their independence depends, can repeal the act; the two Houses of Parliament can make and unmake their Kings. They are also liable, by an act of attainder, not only to lose their office, but their estate, the honor of their families, and even their lives.

The Judiciaries in all the States of the Union are rendered less or more independent; some are appointed for shorter and some for longer periods. In New Jersey, they are appointed for seven years; they were so in Pennsylvania formerly; since the revision of the constitution they are appointed during good behavior; they are, however, subjected not only to removal by impeachment, but also by the vote of two-thirds of each House, for any cause which the House do not think a sufficient cause of impeachment; but in the Federal Government there is no method provided for removing them for the most scandalous indiscretions or incapacity, as even when they may unfortunately be under mental derangement, except by impeachment, which is inapplicable to official crimes, and conducted with tedious forms. The power of impeaching being the only shield provided by the Government for the protection of the citizens from judicial oppression, and this House being the only constitutional organ for obtaining information of official excesses, and bringing forward articles of impeachment, ought not to bind up their own hands from doing their duty, and this they will do if they reject the resolution now on the table.

But while the gentlemen consider the character of these judges so sacred that their conduct cannot be inquired into, notwithstanding such proofs of want of confidence in them, and that as a gentleman near me from South Carolina (Mr. LOWNDES) has said that he is afraid of impeachment, and grounds his fears on the incapacity or the unfitness of the members of this House, or because the members of this House may abuse the power; Mr. F. asked, were not the members of this House selected and qualified for the discharge of this necessary duty? Were they not appointed by a respectable authority as the judges? Were they not under a solemn oath of office for the faithful discharge of this as well as every part of their high trust? And were they not protected by special privileges and protection during the discharge of their trust equally with the judges, and their stations as respectable as the judges'? They are not only protected from civil actions, but are not

subjected to impeachment for misbehavior in office as the judges are. They are, in their official capacity, subjected only to the censure of public opinion. If this is true, it is improper, it is impolitic, for the members of this House to degrade their own character: it amounts to saying they are not capable of discharging the trust they are solemnly bound to discharge, and ought not to have been invested with. He knew, however, that this was only introduced as an excuse for unwillingness. But the same gentleman adds, as a reason for opposing the resolution, that he is not acquainted with the history of the business. That is probably the case with him and others, especially such as had not a seat in the last session of Congress, or who resided at a great distance from the scene alluded to in the resolution. Admitting this to be true, the best and the only regular way to become acquainted with the history of the case, is to carry the resolution into effect—to have a committee appointed with such power as would enable them to procure such information as that gentleman and every other member could depend on. The gentleman's objection, in fact, is one of the strongest arguments in favor of the resolution. The gentleman from South Carolina has, however, offered one other objection to the resolution, which merits some notice. He has said that if a committee is appointed for the object proposed by the resolution, men of character and talents will not accept of appointments in the Judiciary. The solidity of this objection will be best examined by the test of observation and experience. It has been already mentioned that several States have appointed their supreme judges for short periods, and that others have vested the Legislature with the power of removing judges from office without impeachment, merely on their own opinion. Can the gentleman from South Carolina say—can any member on this floor, where all the States are represented, say—that these States are deficient in judges of respectability and talents? They cannot say so—there is no such complaint. The Judiciary of New Jersey, where the judges are chosen but for seven years, is as respectable, and the application of her laws as well brought home to the security and happiness of her citizens as they are in the States where judges are appointed for life. The same may be asserted with confidence of the State of Pennsylvania before the revision of her constitution, as they are since. There is this difference, however: where they have been appointed for limited periods there have been no impeachments or removals, and generally, if not always, the judges were reappointed, and justice was well administered; but since they have been

appointed for good behavior, there have, at least in Pennsylvania, been both, and more complaints of inattention, expense, and delays, in the administration of justice than had been formerly. Many of the judges, however, are very respectable, and enjoy a high degree of confidence, but not more confidence than they did before the change of the constitution. There has been no attempt to remove or impeach the judges of the Supreme Court of that State.

To inquire into the conduct of the judges when confidence is evidently wanting, is the only true way to secure the respectability of the Judiciary. If that necessary confidence is withdrawn without cause, an official inquiry will restore confidence and the usefulness of the judges. This observation is supported by precedent and parliamentary usage. In that country from which precedents are so frequently sought, one precedent offers itself to recollection. In the year 1730, a committee of the British House of Commons was appointed to examine the jails. In the course of examination, the committee discovered that Sir Robert Eyres, Chief Justice of the Common Pleas, a judge of very respectable character, was suspected, not of tyranny on the bench, or of putting any man's life in jeopardy, but of having held an improper correspondence with a person confined for crime or misdemeanor, and this suspicion chiefly supported by anonymous letters. A committee of the House of Commons were appointed to make inquiry, and it was found, to the satisfaction of the committee and of the people, that the allegations on which the suspicion was founded were false, and the judge's character was vindicated and restored.

Mr. F. said this precedent applied well to the present case. If the judges mentioned in the resolution had done their duty, their characters would be vindicated by the inquiry, and the public confidence in their integrity restored; if they were guilty, and not entitled to confidence, they ought to be removed from office, and neither the one nor the other could be done unless the inquiry proposed was authorized.

He said that the inquiry was necessary to secure the purity, honor, and usefulness of the Judiciary Department. If that House refused or neglected to exert the powers vested therein for securing public confidence in the Judiciary, unprincipled men would find means of recommending themselves to appointments, and would vitiate the streams where justice is expected to flow, and the citizens would be oppressed without the means or

hopes of redress, and would feel the effects of tyrannical power in the administration of a government which, in its other departments, was the greatest and best of any in the world. Let proper inquiries be made where they are necessary; let the character of judges unjustly charged be vindicated, and the vicious and unworthy be removed, and improper characters will cease to intrude themselves; their friends will not dare to recommend, and Congress will have confidence that the laws which they pass will be applied agreeably to their genuine principles, to the protection and ease of the citizens; if we do not provide for this, we had better cease to make laws.

If virtuous men are appointed and the vicious discouraged, Congress may, from particular circumstances, be called on to make inquiries, but very rarely indeed to be employed in impeachments, (no men of real virtue and talents would refuse a seat on the bench for fear of inquiry or impeachment.) He said that the judges of the Supreme Court in the State he had the honor of representing, though they differed in political opinions, administered justice with such purity and diligence, that though some of them had been long in office, they enjoyed the confidence of the citizens, were in no danger of impeachment or removal by vote, and he believed would not shrink from inquiry if necessary. The more extensive the confidence of the citizens that was reposed in the Judiciary, the easier it would be to supply vacancies with men of character and talents. He said that among several other observations which occurred to his mind, with offering which he would not now detain the House, he had once thought of stating other charges against the official conduct of these judges, of which he had been well informed, but on due reflection he declined mentioning them, and thought it most for the public good to insist on the appointment demanded by a member on the responsibility of his own official character, and as a matter of right, and would do nothing that would impair the weight of the precedent that he hoped would be set by agreeing to the resolution as it stood.

Mr. F. said that having so long engaged the attention of the House he would conclude by observing, that as the case now stood it is proper for all the members to vote for the resolution; those that believed as he did, that there was a want of necessary confidence in those judges, and that this want of confidence was occasioned by their unauthorized and oppressive

conduct, were obliged in conscience to vote for the inquiry; and every member who believed the judges to have done their duty, and that the public confidence is withdrawn from them without cause, are bound in duty to vote for the resolution, in order that the judges may have an opportunity to vindicate their character, that confidence in them being restored they may become useful to the public; therefore, in every light he could view it, he was convinced it was his duty to vote for the resolution, and would act accordingly.

Mr. JACKSON.—As, Mr. Speaker, this subject is novel in its nature, and may be important in its consequences, I presume there exists a disposition to hear the reasoning which any gentleman may be disposed to offer upon it. It is with this view that I rise to express my opinion in favor of creating a committee of inquiry. I consider this House as the grand inquest of the nation, whose duty it is to inquire, on a proper representation, into the conduct of every official character under the Government. Like a grand jury, we ought, in my opinion, at the instance of any member, to send for all persons possessed of information calculated to throw light upon the conduct of any individual inculpated. A contrary doctrine would lead to the most unfortunate consequences. It would lead to this, that a minority would never be able to inquire into the conduct of a State offender, unless such inquiry were favored by the majority. As it is now contended that the inquiry is not a matter of right which any member may demand, but a matter of favor, to be granted according to the pleasure of the majority, it may be said that, if a majority favor an individual, he will always escape without an impeachment. But I believe otherwise; and that the Senate, like a virtuous judge, will not suffer an atom of prejudice or partiality to fall into the scales of justice.

But, say gentlemen, though it may be the duty of the House to impeach an officer, it is necessary that facts, warranting such an impeachment, should be first presented. This is not the course pursued in cases where a grand jury is called upon to act. If a murder is committed, it is their duty to inquire, and diligently inquire, who is guilty of the act, and to send for all persons capable of giving information respecting it. Such is the practice. If it shall be required to furnish facts, as is urged by gentlemen, the consequence will be that offences of the highest nature will be committed with impunity. It has been observed that it is odious to undertake the task of

a public informer. But what the constitution and laws make our duty, so far from being odious, is honorable; because we thereby discharge a duty imposed upon us by our oaths, and because we show ourselves unawed by the vicious conduct of bad men. If the character of a public informer be odious, are we to expect that private individuals will come forward with affidavits? In such a case, to say the least of it, the duty would be of an unpleasant nature.

We have, in the course of this debate, been frequently called upon for precedents, and been told, that, when found, they ought to be adhered to. In a country from which we are accustomed to draw precedents—England—common report has been considered as a sufficient authority for similar inquiries. We do not, however, ask for an inquiry in this case on common report, but on the declaration of a member of this House, made in his place. Suppose there was no such declaration, has not a common report, from Maine to Georgia, condemned the conduct of the judge in the case of Fries and others, at Philadelphia, in the case of a grand jury in Delaware, whom he directed to inquire for seditious practices, and in the case of Callender, in Virginia? Has not the general sentiment of the country charged him with having, in these cases, abused his powers as a judge by tyrannizing over those who were brought before him? If we possess the right to inquire, on common report, surely we ought to institute this inquiry on the prevalence of so general a sentiment. To such an inquiry I would unhesitatingly agree, if the character of the President were implicated, the opinion of the gentleman from Vermont to the contrary notwithstanding. I would likewise agree to make the same inquiry in any other case; because the inquiry would redound to the honor of the individual implicated, if innocent; and because, if guilty, he ought to be punished.

I am sorry my friend from Pennsylvania stated any facts, as I do not consider it necessary that the House should be acquainted with any facts to make this inquiry; and because I think the facts, stated as grounds of impeachment, are not such as will warrant an impeachment. I have always understood that it was the right of a judge to expound the law, and I have known frequent instances where the court have refused the counsel the liberty of discussing the law on points on which they have made up their minds. While I am free to declare that the conduct of the court in the trial of Fries is not, in my opinion, such as to require an impeachment, yet I am in

favor of instituting the inquiry. But, say gentlemen, by the passage of this resolution, we shall censure the judge. I believe not. If I believed so, I would first require testimony; for I hold it a good principle, that no man ought to be condemned until he has been heard. In my opinion, this resolution will have no such tendency; as, if the judge has not been guilty of misconduct, the inquiry will redound to his honor, and as it is the duty of a virtuous man to demand an inquiry whenever charged with an offence.

Gentlemen, in opposition to this measure, say they wish to guard against suspicion. But suspicion has long since gone forth; has been heard and re-echoed from every part of the Union; and the only way of defeating it, if ill-founded, is to institute an inquiry, and if the character of the judge be innocent, to pronounce it so. I am surprised to find gentlemen, who profess a friendship for the character of one of the persons implicated, opposed to this inquiry, when they believe him innocent. I should suppose it their peculiar duty to call for the inquiry, that the accused might have an opportunity of proving to the world that his character has been assailed without cause.

Mr. R. GRISWOLD.—After what has passed on this floor, there can be no doubt that the gentlemen whose characters are implicated by this resolution will ardently desire an investigation of their conduct; and if, on this floor, we were merely to consult our own wishes, we should unanimously agree on an investigation. But this is not our duty; our duty is to take on this, as well as on all other occasions, a correct course; to take those steps only which are warranted. It is because I doubt, after considerable deliberation, whether this course is warranted, that I am opposed to it. What, I ask, is the nature of the resolution on the table? It contains no charges against the judges implicated; it only proposes to raise a committee to inquire whether their official conduct has been such as to justify the interposition of the constitutional power of this House. If a committee of inquiry is raised, what will be their powers? One thing will certainly follow. They will be clothed with a power to send for persons, and probably for papers. Is it consistent with principle to appoint a committee, which, from its nature, must be secret, with power to ransack the country in the first instance for accusations against the judges, and then for proofs to support them? Is this correct? Are gentlemen prepared to say so? to seek for accusations, and then for proofs to support those accusations, against high officers of the

Government? For one, I believe that this course is not correct. I believe it to be dangerous. I agree with the gentleman from Vermont, that it operates in the nature of an inquisition. A committee will be raised to act in secret, first to find an accusation, and next to prove it. If there is now any accusation against the judges, let it be made; let it be made on this floor; and, as the gentleman from New Jersey has observed, let us ascertain, if true, whether it will be a sufficient ground for an impeachment. This will be a correct course, and it will be the only safe course. If, on the contrary, we proceed in the manner proposed, it will be attended with this consequence: at the commencement of every session we shall raise a secret committee, to compose an inquisition, to ascertain whether there are not charges against some public officer, and to search for proofs to justify them. Is the Government of this country founded on this principle? I know that this secret course of procedure is practised by the Spanish Government, and by some others, but I never thought that it would be the practice of this Government. When a charge is made against a public officer, it ought to be boldly made. It ought to be made here, and should be committed to writing. Instead of this being done, there is no charge made. The resolution contains none. It is merely calculated to raise a secret committee. Why? Because the gentleman from Virginia is of opinion that it is proper. Is his opinion, or the opinion of any other gentleman, to govern this House? Are we brought to this? I trust this is not the case. I trust that gentlemen will think it necessary not only to consider his opinion, but to form their own. What can gentlemen say, if they agree to this resolution? That they voted to investigate the conduct of two judges. Why? Because the gentleman from Virginia says it is necessary to investigate. Why investigate? Because the gentleman demands it. This is the language of that gentleman yesterday. Because a gentleman of this House gives his opinion of the course proper to be pursued on this occasion, it does not follow that we are to be governed by it. We may respect it; but we must respect our own opinions still more, if we faithfully discharge our duty. I am sensible that some facts have been mentioned by the gentleman from Pennsylvania, or rather, that that gentleman has heard a story; but it is mere hearsay.

I ask, also, how this formidable charge has rested to this day? When and where did the transaction, on which it is founded, happen? In Philadelphia, and in the winter of the year 1800, when Congress were in session within twenty rods of the place where the court was held. The gentleman from

Virginia, as well as other members on this floor, were then in the House. The case being, I believe, the only one in which there was a charge of treason, excited, in a considerable degree, the attention of members, many of whom attended the trial. How comes it, then, that this charge was not then made? If it shall be said the House did not interfere at that time because the criminal was lying under sentence of death, it will be recollected that, in 1801, Fries was pardoned. Why was not the inquiry then made? If it shall be said that it would have been imprudent to make it on account of the party then in power, why was it not made in the seventh Congress, when a change of men took place? How can gentlemen reconcile this great delay with the high regard they profess for the purity of the streams of justice, and for justice itself? For such is the respect they entertain for justice, that they have determined to bring to conviction this unjust and criminal judge. Gentlemen ought to account for this culpable neglect. It is impossible that they should have been ignorant of the trial of this man. It was not a sudden or a hidden thing, done in a corner; it was done in public, in the face of the Legislature, and yet it has slept to the present day. Under such circumstances, I submit it to the House, whether much respect ought to be paid to the hearsay of the gentleman from Pennsylvania. The very delay, and other circumstances attending this transaction, show that it is not of the serious nature contended. I therefore think that, if properly brought before the House, and suffered to rest upon proof, it would constitute no ground for impeachment. As to the proposed form of proceeding, if we examine precedents, we shall find that it is not warranted by them. None mentioned compare with the case under consideration. The precedent in the case of Lord Bolingbroke does not compare with that. In that case the House of Commons raised a secret committee to examine the negotiations made for a peace. The committee was not raised to impeach Lord Bolingbroke, but to investigate the negotiations of the Ministry; and on the disclosure of facts, which took place on that occasion, the impeachment was grounded. Such, also, was the case in the instance of the Western expedition. The House appointed a committee vested with general powers to inquire into the causes of its failure, without particular reference to the conduct of any person.

If we turn our attention to British precedents, we shall find that a committee has never failed to investigate the official conduct of any person contemplated to be impeached. In the case of Hastings, Mr. Burke came

forward and moved an impeachment directly. In all cases this course has been pursued in the British House of Commons. So far as we have precedents in this country, a similar course has been pursued. In the instance of Governor Blount, the Executive transmitted documents to this House, which contained, as it was supposed, evidence of his guilt; they were referred to a committee to examine them, and also to determine whether it was proper to print them. The committee reported that, in their opinion, they contained evidence of his guilt, and he was impeached. In the case of Judge Pickering, the same course has been pursued. The Executive transmitted documents to the House which contained, as it was supposed, proofs of misconduct, and the House proceeded to an impeachment. These precedents confirm the principle of those drawn from the practice of the British House of Commons. What course is now proposed? Without any charge against the judges, without any man saying they are guilty of any misconduct, we are about to appoint a secret committee, to determine whether any charges can be made, and whether any proofs to support them can be found. Although I am willing that the conduct of these gentlemen shall be investigated, for I am sure they must desire it, and although I have no objection to impeach them, if gentlemen wish it, and exhibit proper proofs on which to ground it, yet I cannot consent to pursue a course so improper as that now proposed. For this reason I am against the resolution, not because I am hostile to an investigation, but because I cannot consent to the appointment of a secret committee to search, in the first instance, for an accusation, and to look for proofs to justify it.

Mr. FINDLAY rose to explain. He said it was not the object of the House, in their investigation of the causes of the failure of the Western expedition, to make new arrangements, but to inquire into the conduct of certain officers who had directed it, viz: the Secretary of War, the Commander-in-chief, and the Commissary.

Mr. NICHOLSON said, he happened not to be in the House yesterday at the moment when the resolution under consideration was introduced; and when he entered he found the gentleman from Connecticut (Mr. R. GRISWOLD) on the floor, who concluded his remarks by moving a postponement. Mr. N. did not think it then correct to offer remarks upon the main question, but as the resolution itself was now under consideration, and the subject of no common nature, he could not think of passing a silent vote upon it.

When he rose to-day, for a few moments, on the motion to amend, by inserting the name of Judge Peters, he had then declared, and he now begged leave to repeat it, that whenever any member of the House should rise in his place and state that any officer of the Government had been guilty of official misconduct, he had no hesitation in saying, that he would consent to an inquiry. He cared not how exalted his station, or how far he was raised above the rest of the community; the very circumstance of his superior elevation would prove an additional incitement. Such, he said, was the nature of the Government, and so important the duty in this respect devolved upon the House of Representatives, that the conduct of the Chief Magistrate himself, as far as his vote could effect it, should be subjected to an inquiry whenever it was demanded by a member. The greater responsibility, the more easy and more simple should be the means of investigation. Were he, indeed, the friend, personal or political, of the officer charged, and he believed that impeachment would be the result of inquiry, it was possible that his feelings as a man might induce him to forget his duty as a Representative, and urge him to resist the inquiry; but, were he convinced of his innocence, he would do all in his power to promote it, in order that he might stand justified to the nation and to the world.

Upon the present occasion, he begged that he might not be understood to say that the offence with which these judges were charged, was such as would warrant an impeachment. But, while he meant not to commit himself on a question of such high moment, he could not avoid expressing his astonishment that the conduct stated should not only be defended upon the floor of the House, but entirely approved; that gentlemen should venture to declare that the court acted strictly in the line of their duty, in refusing to hear counsel on a point of law which involved the guilt or the innocence of the prisoner. A man was charged with the highest offence against the Government, and, if guilty, was subject to the severest and most ignominious punishment recognized by our laws. High treason was the crime, and death the penalty. The constitution declared that treason against the United States should consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. The framers of the constitution intended to be as precise as possible in their definition of treason; they were anxious that no room should be left for doubt afterwards. They had seen to what an infinite variety of objects the crime of treason had been extended in England, and wisely confined it here to the only two

offences which could be said to strike at the existence of the Government. The laws of the United States had declared that resistance to the execution of a law should only be considered as sedition, and had provided the punishment of fine and imprisonment. Fries was charged with resisting the execution of a law, and this offence the court determined to be treason, without hearing his counsel, and refused to permit them to address the jury on the subject, although the jury were the judges as well of the law as the fact. A resistance to the execution of a law, they construed to be treason, in the face of the act of Congress, which declared it to be a misdemeanor only, punishable with fine and imprisonment. These constructive treasons, he said, had been reprobated by the wise and good in all ages, and at a very early period in the history of English jurisprudence had received the pointed disapprobation of the Parliament. He adverted to what he called a wise and humane provision in the statute of Edward III., by which the judges were prohibited from declaring any thing to be treason not so expressly defined by the letter of the statute. That the court had given such an opinion, was not now, however, the point of charge against them; that they extended the doctrine of treason beyond both the letter and spirit of the constitution, was not now the foundation of the present motion. The accusation was that, in a case involving the life or death of a freeman, the party was condemned without a hearing; that he was denied the assistance of counsel, which was secured to him by the constitution of his country; that the right of the jury to decide both the law and the fact was refused; for it amounted to a refusal when the court would not permit the jury to be assisted by the arguments of counsel. He asked if gentlemen would consider it correct in a court, upon an indictment for murder, to prohibit the prisoner's counsel from contending before the jury, that the offence charged amounted to manslaughter only? Surely not. The question, in the case of Fries was, whether the act of which he had been guilty amounted to treason, or to a misdemeanor? and this the court refused to suffer the jury to have an argument upon. He declared that, in all criminal prosecutions, the jury had a clear, undoubted right to decide, as well the law as the fact; they were not bound by the direction of the court; and that, in capital cases, it was a right which they ought always to exercise. But, in Fries's case, the law was not permitted to be brought into the view of the jury by his counsel; the court denied to the prisoner the assistance of counsel, which was secured to him by the constitution, and he was condemned to an ignominious death, which he must have suffered but

for the subsequent interference of the Executive. Mr. N. said, he had thought proper to make these remarks in answer to those gentlemen who had undertaken to pronounce the conduct of the court to be strictly correct. Although he did not mean to commit himself by declaring that this afforded sufficient ground for impeachment, yet he could not avoid saying, that the refusal to hear counsel in defence of the prisoner, did not meet his approbation.

The gentleman from Connecticut had doubted whether the present proceeding was conformable to principle. He thought that we ought to have the proof before we take any steps to procure it. Mr. N. begged leave to ask how proof was to be procured before inquiry was made? In what manner information was to be obtained before it was sought for? If a member had stated upon oath that a judge had been guilty of improper conduct, which would warrant an impeachment, the motion would not be, in the first instance, to inquire, but to impeach. If information was necessary, how was it to be procured? By sitting here, and writing for depositions to be sent in? Surely not. If a person was in the lobby, acquainted with all the facts, how were they to be communicated to the House? Was he to come to the bar, and offer a voluntary affidavit, or would it be correct to introduce him without any previous proceeding? In that case, would it not be necessary to declare, by a prior resolution, that we would commence an inquiry before testimony could be offered at the bar? If a member should state that a witness was at hand who could prove official misconduct in a judge, the correct course would be to introduce a resolution, declaring that the House would inquire, and it could not be resisted. What, he asked, was the proposed course? Instead of making the inquiry in the House, it was requested that it might be made by a committee. Instead of using our power to bring witnesses before us, it is proposed to authorize a committee to examine them. This would be more convenient and more proper. To bring them before the House would be attended with inconvenience, and unnecessary delay. He could not tell what the mode of proceeding before the House of Representatives would be, but, generally, he believed, it was the practice for a member to propound the question to the Speaker; the Speaker then to propound it to the witness; the answer to be made to the Speaker, and by him reverberated back again to the House. He asked, if the House would consent to this? If they would agree to a course of proceedings so tedious, so procrastinating, so evidently

embarrassing? And yet this must be the course, unless that proposed was adopted.

It was said by a gentleman from Connecticut, (Mr. R. GRISWOLD,) that we were about to appoint a committee to ransack the country for an accusation, and afterwards to search for proof to support it. He complains that no accusation is made. Mr. N. averred that an accusation was made; it was made during the last session, and again repeated during the present. He asked, if it was no charge to declare that a judge had condemned a man to the most ignominious death, without a hearing; without allowing him those benefits which he claimed under the constitution? Was it a trivial circumstance for a member of this House to declare that a freeman had been indicted for a high capital offence; that he appeared at the bar and pleaded not guilty; that his counsel were ready to prove the truth of the plea, but that the presiding judge had refused to hear them? If this was not a charge, and a charge, too, of a most solemn nature, he did not understand the meaning of the words. It was brought forward as boldly as the gentleman from Connecticut could wish, and the only question now was, in what manner shall we inquire into the truth of it? Shall we appoint a committee to make the inquiry by calling witnesses before them, or shall we dismiss it without investigation? Shall we give it the go-by, and suffer the character of the judges to rest under an imputation so heavy? Shall we proclaim our own dishonor, by publishing abroad that a heavy charge had been made, in the face of this House, against one of the highest judicial officers of the Government, and that we were too pusillanimous to notice it?

What the gentleman meant by comparing the proposed committee to the Spanish Inquisition, Mr. N. did not really understand. Did the gentleman wish to make a false impression upon the public mind? Was he anxious to cast an odium upon the proceeding by calling it an inquisitorial committee, and affecting to believe that it was to be clothed with the powers of the Holy Inquisition? The Inquisition had the power to seize the person of the party, to deny him all access to his friends, to confine him in a cell, and refuse him all assistance whatever; to stretch him on the wheel, and rack and torture him into confession. Does the gentleman wish to induce a belief that this committee is to be clothed with the same powers? All committees appointed to inquire, might, to be sure, be called Inquisitorial, because they

were to make inquiry, but the epithet of Spanish Inquisition was intended to convey an idea totally incorrect.

The gentleman had asked why this charge had been suffered to rest so long? The facts upon which it was made were said to have taken place in 1800. Mr. N. thought it would be fair to reply to the gentleman that, possibly, he himself had, in some measure, accounted for the delay; the proper time had not before arrived. But if the act upon which the charge was grounded was criminal at that day, was it less so now? If Justice had slept so long, did it follow that she was dead? He hoped and trusted not. Though she had lain dormant till she was almost trampled to death, she was again roused to her accustomed vigilance, would pursue her victims, and drag them to punishment. The day of retribution, he hoped, was at hand.

The gentleman from Connecticut had declared that the proposed course was not warranted by precedent. He had noticed, but had not explained away, the precedents introduced by the gentleman from Pennsylvania, (Mr. FINDLAY.) His own precedent, derived from the impeachment of Mr. Hastings, instead of being in his favor, was directly against him.

In that case it was not pretended that the proof was before the House of Commons. Mr. Burke had derived his information from certain papers relative to Indian affairs, which some years before had been produced and referred to a select committee. In the year 1786, Mr. Burke rose in his place, not as a member of that committee, and charged Warren Hastings with high crimes and misdemeanors. About the same time he presented a written paper containing a specification of these charges. But this was not the impeachment. The written paper stated that as Governor General of Bengal he had disobeyed the instructions of the court of directors; that he had acknowledged himself perfectly acquainted with their wishes, but instead of obeying, had used his utmost endeavors to defeat them; and much more of an important nature. This he moved might be referred to a Committee of the whole House, in order that an inquiry might be made; and there was not a single dissenting voice. He did not adduce the proofs in the first instance, but stated his opinions that Mr. Hastings's conduct had been criminal, and demanded an inquiry. The Commons of England did not hesitate—they instantly resolved to inquire. No one was heard to declare that there was no charge, because there was no proof. Witnesses were brought to the bar and there examined by a Committee of the Whole, in support of the charges; nor

was there a motion to impeach until the testimony was gone through. On the contrary, the facts proved were reported by the Committee of the Whole, who likewise expressed an opinion that Warren Hastings had been guilty of high crimes and misdemeanors, and ought to be impeached. The impeachment therefore was not upon the motion of Mr. Burke, but upon the report of a committee, who under the instruction of the House had made an inquiry.

What then, Mr. N. asked, was the course now proposed? His friend from Virginia had called the attention of the House to certain alleged misconduct of a judge, which had been stated by a member in his place during the last session. That statement had again been repeated in the House yesterday, not in writing, indeed, but in language so clear and in terms so unequivocal that none were so stupid as not to understand it. Like Mr. Burke, he asked that a committee should be appointed to inquire into the truth of the charge. The House of Commons had referred the subject before them to a Committee of the Whole, and the House of Representatives were moved to refer the subject before them to a select committee. A select committee was proposed, because it would be more convenient and more expeditious. If the subject might with propriety be referred to a Committee of the Whole, with equal propriety might it be referred to a select committee.

He had noticed this precedent, not because he thought it necessary to cross the Atlantic for authorities, but because the gentleman had introduced it as favoring his own doctrines. If there was already no precedent, in his opinion the House ought to make one; but he believed their own journals would furnish them with one. At the first session of the seventh Congress, in a very few days after the House met, Mr. N. said he had risen in his place, and stated that he had seen in the public prints, during the preceding summer, charges of a serious nature against an individual who had filled one of the highest stations under the Government, that he had misapplied considerable sums of public money, and was a defaulter to a very large amount. Upon this vague rumor, he had moved that the accounts of the former Secretary of State should be laid before the House. No gentleman then declared that it was necessary to have proof before an inquiry took place. No one dreamt that information as to facts was to be had, before it was sought for. Some indeed had asked how far the motion was to extend; whether it was to embrace all the other Secretaries of State? Others desired

that the accounts from all the departments should be called for, and finally it was determined to let the resolution lie for a short time. In a few days after, on the 14th of December, he modified the resolution, in conformity with the wishes of several gentlemen, and it passed directing that “a committee should be appointed to inquire and report, whether moneys drawn from the Treasury had been faithfully applied to the objects for which they had been appropriated, and whether they had been regularly accounted for,” &c. A precedent more in point he thought could not be desired. The inquiry was produced, not upon proof, not even upon the suggestion of a member, but because a report as to the misapplication of public money had circulated through the public prints of the day. He might be told perhaps that this was an inquiry of a general nature. But general as it might be, it was directed at the conduct of individuals, and under other circumstances might have furnished materials for an impeachment. The gentleman from Connecticut was a member of that committee, and Mr. N. asked him if he would pretend to say that it was a secret committee, as he had called that now asked for? Or was this only another attempt to impose upon the public?

Another precedent, he thought, might be furnished from the Journal, but he was unwilling to refer to it.

It had been said, too, that impeachments would be cheap if they were to be made upon the suggestion of a member. It appeared to him that the motion to inquire had been constantly mistaken for a motion to impeach. Did gentlemen suppose that an impeachment must necessarily follow an inquiry? It would seem as if they entertained a poor opinion of those whose conduct was the subject of discussion. But they ought to recollect that the impeachment could not be the act of any individual, nor of the committee, but of the House; and this, too, after all the facts were collected and presented, with the evidence to support them. If this mode was not to be adopted, he did not know any other manner in which an impeachment could be instituted, unless where the President thought the peace of the country or the revenue were endangered, and gave the information himself, as in the case of Governor Blount and Judge Pickering. Nor did he think this could affect the independency of judges, unless they were to be made independent of the laws, the constitution, and the people.

Had it not been for the debate which had taken place on this subject, he should have imagined that the friends to the judge would have been the first

to promote the inquiry after it was moved for. If he was innocent, the inquiry ought to be wished for: after passing through the ordeal, he would come out like pure gold from the crucible. If guilty, no man ought to feel a disposition to screen him from punishment. Mr. N. could not avoid on this occasion alluding to the recent conduct of a judge in a neighboring State, upon whose character an imputation of the blackest nature had been thrown by a miscreant. That judge, conscious of his own rectitude, and disdaining to shelter himself from inquiry, demanded an investigation of the charge, and the consequence was an entire and honorable acquittal.

Mr. ELLIOT.—When, in the course of a late debate in this House, it was observed that a member had advanced an anti-republican sentiment, the supposed imputation was repelled by the remark, that the gentleman to whom allusion had been made, had passed a political ordeal which few had experienced, and which ought to place his character as a republican above the reach of suspicion. I have myself suffered an ordeal of that description, under circumstances of gloom and depression which have fallen to the lot of but few young men of this country; and I am far from being confident that one ordeal only will fill up the measure of my humble fortune. A more anti-republican resolution than the one upon your table, sir, I think I never saw. Reflection has confirmed me in the opinion which I expressed yesterday, that it is unprecedented, unparliamentary, and tends to the assumption, on the part of this House, of a censorial and inquisitorial power over the Judiciary, unwarranted by the constitution. The intention and object of the mover, however, must have been extremely different; the motive is pure and the object meritorious; but that honorable gentleman, with all his talents and discernment, has, in my opinion, fallen into an error. I believe it a sound principle, that no official measures should be taken to censure or criminate the conduct of a public officer, until facts shall be stated which amount to a specific and definite charge of misconduct. In the present instance we have no written allegations, and what is the amount of the verbal information with which we are furnished? A gentleman from Pennsylvania has stated in his place that *he has heard* that some one of the judges, whose name appears in the resolution, was guilty of improper and oppressive conduct, in the exercise of his judicial functions, on a trial for treason some years since. And a gentleman from Virginia has stated that he has received information which induces him to believe that the inquiry he

demands will lead to an impeachment. Is it our duty to act upon the vague rumors of common fame, or the opinions of individual members?

The resolution under consideration has been materially altered this morning, and I gave my vote for the alteration, because I believed that the misconduct of a court ought not to be attributed to a single judge.

I feel it my duty, Mr. Speaker, to remark, that the information which is possessed by the members of this House, respecting the conduct of those judges, is extremely contradictory. No gentleman has told us that he possesses personal knowledge of the misconduct imputed to those officers; and I possess information on the subject, derived soon after the transaction, from a source which I considered as authentic, and which produced so deep an impression upon my mind, that I should scarcely abandon my belief of its authenticity, even from the general recollection of persons who were present at the scene. I understand that the judges did nothing more or less than decide a legal question in a legal manner. They did not interdict the counsel for the prisoner from examining a question of law, but they restricted them to what they considered as their legal and constitutional limits. They told them that the constitution of our country had clearly and explicitly defined the crime of treason, and confined them to the plain field of the constitution, inhibiting them from a resort to British authorities to prove that to be treason which the constitution of our country had not made treason, or to prove that what our constitution had made treason, was not recognized as such by foreign precedents. This statement may be incorrect, and, if it be correct, the conduct of the judges may have been improper and severe, but it cannot justify an impeachment. And if the court went farther, interrupted the counsel for the prisoner, informed them that it was the province of the court to determine points of law, declared that their opinion was fixed upon those points, and even forbade the counsel to prolong their arguments upon them, it might still be questionable whether the conduct of the court rendered its members liable to impeachment. A venerable gentleman from Pennsylvania, (Mr. FINDLAY,) who has long been in the service of his country, has been incorrect in stating that I had observed that I would never go into the inquiry without evidence; that incorrectness must have been unintentional; if I used an expression of that description, it was a *lapsus linguæ*: but I am confident that I said, and I am certain that I intended to say, that I thought it improper to institute the inquiry until some

fact or facts should be stated as a ground of accusation. A gentleman from Virginia (Mr. JACKSON) has told us that common fame is sufficient ground for impeachment in Great Britain. That gentleman has not adduced his authorities for this proposition, and, had he adduced them, I am confident they would not have answered his purpose, when contemplated in all their bearings, when examined with all their qualifications. The same gentleman also observed, if I understood him correctly, that were he satisfied that the conduct of the judges, in the case alluded to, was legal and correct, he would still vote for the inquiry. To me this declaration appears extraordinary. Why vote for an inquiry when satisfied that no criminality existed?

A gentleman from Pennsylvania, (Mr. SMILIE,) who contends that there is no necessity for precedent in the present instance, as we are competent to form precedents for ourselves, has yet thought proper to explore the books for precedents, and has presented us with the result of his labors. To guide our conduct on the present occasion, we are referred to the case of the Earl of Strafford, over whose tomb genius and virtue love to mourn, and will mourn in future ages! It cannot be possible that that gentleman wishes to recommend for our imitation that flagrant perversion of every principle of law and justice, that cruel catastrophe! A gloomy and terrible precedent, one of the most dark and disgraceful in the British annals, and utterly unsusceptible of application to the principles of a Republican form of Government. The gentleman from Maryland, (Mr. NICHOLSON,) to whom I listened with peculiar pleasure, and who has certainly displayed ingenuity, has been equally unfortunate in his selection of precedents, and in his application of them to the case under consideration. He has cited cases, which, by his own statement, militate against the principles he assumes. We are first presented with the celebrated case of Warren Hastings. In that case, a member rose in his place, and, after accusing Hastings of high crimes and misdemeanors, exhibited specific charges of malconduct, in consequence of which an inquiry was instituted. Here is a solid basis, and the very basis which is wanting on the present occasion, upon which to erect the superstructure of impeachment. That gentleman has also mentioned a resolution introduced by himself in a former Congress, which was expressed in general terms, and directed to general objects, and of course was perfectly dissimilar to the present one.

Allusions have repeatedly been made to a remark of mine in the debate of yesterday, that this House is the grand inquest of the nation. It has been asked, if a grand jury were informed that a murder has been committed, would they not send for evidence to ascertain the fact? We are the grand inquest of the nation, and our practice ought, in many respects, to be analogous to that of grand juries; but in becoming that inquest, we do not entirely lose our deliberative and legislative character. I believe it would be descending from the dignity of our station, to listen to the murmurs of general rumor, and seek for guilt. I have heard that one of the judges whom we are called upon to censure, when in the exercise of his judicial functions, inquired of a jury, "Is there no sedition here? Are there no seditious newspapers within your jurisdiction?" I am ignorant whether this report be or be not founded on fact. But if it be true, let me ask, shall we not pursue a similar course by adopting the present resolution? Shall we not authorize a committee to inquire, Is there no judicial guilt abroad in our land? Is there no latent inquiry in some unexplored corner of our country? A grand jury is sworn diligently to inquire, and true presentment make, of all such offences against the laws of the land, as shall come to their knowledge. Have we taken such an oath? Are we under such obligations? And are we not about to attach to ourselves that character which gentlemen tell us is so odious, the character of common informers? I am under no fears that the stream of justice, which ought to be so pure, will become turbid, from a want of accusers, when our judges shall be guilty of crimes. When our courts shall become corrupt and despotic, patriotic motives will induce our citizens to bring forward accusations. I am also sensible of the propriety and force of the observation of the gentleman from Connecticut, (Mr. R. GRISWOLD,) that the trial in question was a transaction of great publicity, and all its circumstances must have been known to thousands of our citizens. This induces me to believe that the conduct of the court was not so oppressive and despotic as is now represented. Why has this awful charge slumbered so long?

One or two remarks upon the allusions that have been made to my observation, that we are about to assume censorial and inquisitorial powers, and I will dismiss the subject. What is the language of the resolution? Without the allegation of a single fact, it constitutes a committee to inquire whether the judges have not so acted in their official capacity as to render necessary the interposition of the constitutional powers of this House. The

expression is unequivocal; the allusion to the power of impeachment is perfectly obvious. This is what is called a *petitio principii*; it takes for granted, at least in some degree, what remains to be proved, that the conduct of the judges has been improper and illegal. Else why adopt a language which implies suspicion and censure? But gentlemen are alarmed at the epithet inquisitorial, and imagination teems with the horrors of the Spanish Inquisition. If the creation of this committee be an unauthorized act, if in creating it we transcend those limits which we ought, by a reasonable construction of the constitution, to set to our own powers, it instantly becomes inquisitorial in its nature and in its operation. We must delegate to it more than general powers. We must authorize it to send for persons, and probably for papers and records. The proposition is hostile to republican principles, and, as a republican, I cannot give my vote in its favor.

Mr. HOLLAND.—When I before addressed the House on this subject, I had no doubt of the charge being sufficiently explicit to found an inquiry into the conduct of the judges. My only doubt was whether it was proper to proceed without affidavit. Since yesterday I have reflected on the course pursued in similar cases; and I will state to the House the proceedings adopted in two or three cases in the Legislature of which I was a member. In the year 1796, a charge was preferred against certain judges of the State of North Carolina for illegally extending their power. A committee was appointed to inquire into their conduct, and the result was, that the judges had exiled certain persons from the State. The proceedings did not go so far as an impeachment; for the judges wrote an explanatory letter, which gave satisfaction, and they were acquitted with honor. The other charge, to which I have alluded, was against the board of army accounts; that also was referred to a committee. The last case is the most recent. A suspicion existed that the Secretary of State had been guilty of misconduct. A letter had been received by the Governor from some citizens to that effect; in consequence of which, and of other corroborating circumstances, the Legislature appointed a committee of inquiry, of which I had the honor to be a member. That committee was empowered to send for persons and papers. There was no specific charge, but an impeachment was contemplated, if the officer should appear to be guilty. The Secretary was brought before the committee, who examined him on oath, and reported the existence of frauds much more extensive than had been imagined; in consequence of which the

land office was shut up, and the Secretary notified that articles of impeachment would be exhibited against him. But the late period of the session not then admitting of a trial, it was postponed to the next General Assembly. At the succeeding Assembly the officer resigned, and superseded the necessity of an impeachment. He was afterwards indicted at common law. These precedents, drawn from the proceedings of the Legislature of the State which I have the honor to represent, induce me to think that the course proposed is proper; and I shall, accordingly, vote for the appointment of a committee of inquiry.

Mr. DENNIS said, he did not rise for the purpose of entering into an investigation of the merits of the question, but principally for the purpose of stating, in a few words, what appeared to be the difference between the friends and the opponents of the resolution. He had never experienced, on any occasion, a stronger conflict between inclination and duty than in the present instance. On the one hand, he was confident that, after the official conduct of the judges had been thus publicly implicated, it must be desirable to them that an investigation of the facts charged against them should take place, and it seemed to be a duty due to those gentlemen, that they should have an opportunity of being confronted with their accusers. On the other hand, we owe to the laws and constitution, as well as to those considerations which must always govern in the establishment of important precedents, a paramount duty, which appeared in this case irreconcilable with the indulgence of individual considerations. The true difference between the advocates and the opponents of the resolution appeared to be this: That the one thought it a proper procedure to raise an inquisitorial committee, without any definite or assignable object, and without stating in the resolution any specific charge. The other did not demand, as it had been supposed, the production of all the evidence in the outset of the proceeding, which might be necessary in the ulterior stages of the transaction, nor that precise and technical specification of the charges which might be proper in articles of impeachment, but only required that some fact should be stated, or charge alleged, as the basis on which to erect a committee. He believed, to create a committee by resolution, with general inquisitorial powers, without specifying any charge, or stating any reason in the resolution for the proceeding, was without precedent, and might become an engine of oppression. In order to satisfy the friends of the resolution on that, he did not wish to avoid that investigation which might be founded on proper

principles, and which he believed, after what has been said, is rather courted than avoided by the judges in question. He would beg leave to read, in his place, the form of a resolution, such as he supposed ought to be the groundwork of a procedure like this:

“Whereas information hath been given to the House, by one of its members, that in a certain prosecution for treason, on the part of the United States, against a certain John Fries, pending in the circuit court of the United States, in the State of Pennsylvania, Samuel Chase, one of the associate justices of the Supreme Court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner that, as the court had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine themselves to the question of the fact only. And whereas, it is represented that, in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact, and the said John Fries was found guilty of treason, and sentenced by the court to the punishment in such case, by the laws of the United States, provided, and was pardoned by the President of the United States.”

He said he read this by way of argument, to show that the present resolution ought to be rejected, and though he would not offer it himself, in case the resolution before them should be rejected, yet he would pledge himself to vote for such a one, if the gentleman from Virginia or any other member would offer it. The resolution which has been read, embraces all the facts stated by the gentleman from Pennsylvania, which contains the only charge that has been exhibited. But if any gentleman possesses a knowledge of any other facts or charges, let him specify them, and he would be willing to vote for an extension of the powers of the committee to them also; for he did not wish to confine the inquiry to the specific charge stated by the gentleman from Pennsylvania, if other gentlemen had charges to exhibit, and would state them in the resolution. If they would specify a charge or charges of a serious nature, and give us any reason to believe them true, although originating from hearsay evidence, he would vote for the inquiry proposed; and he begged that he should be understood as objecting rather on the ground that no charge had been specified, than on the ground of incompetent evidence. The vague charges verbally communicated by the gentleman from Pennsylvania, and none of which are reduced to writing, give no grounds of procedure; not only because, if true,

they constitute no cause for impeachment, but because they are not specified in the resolution.

The motion was then further amended to read as follows:

Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion whether the said Samuel Chase and Richard Peters, or either of them, have so acted, in their judicial capacity, as to require the interposition of the constitutional power of this House.

Mr. SPEAKER stated the question, that the House do agree to the said motion, as so amended, when an adjournment was called for and carried—yeas 61, nays 43.

SATURDAY, January 7.

Mr. NICHOLSON, from the committee appointed on the memorial of Alexander Moultrie, agent for the South Carolina Yazoo Company, and of William Cowan, agent of the Virginia Yazoo Company, made a report, going considerably into detail, and concluding with a resolution adverse to the prayer of the memorialist. Referred to a Committee of the Whole on Monday.

Official Conduct of Judge Chase.

The House resumed the consideration of the question depending yesterday, at the time of adjournment, “that the House do agree to the motion of the fifth instant, as amended by the House, for the appointment of a committee to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania.”

Mr. J. RANDOLPH expressed his regret that the attempt which he had made yesterday to reply to the very personal allusions of a gentleman from

Connecticut, (Mr. GRISWOLD,) whom he was sorry not to see in his place, had, by the adjournment, proved abortive. Such was his regard for the opinions of the House, that he should always, when called upon from a respectable quarter, justify any conduct which he deemed it proper to pursue in its deliberations. He felt it due to the respect in which he held the Chair and those around it, to reply to the remarks of the gentleman from Connecticut, and this consideration alone could have induced him to offer any thing in addition to what he had already advanced in favor of the motion. He should otherwise have left the resolution to its fate. In that fate he did not feel himself personally implicated. If it should be rejected, he would be satisfied in having done his duty, and the House, he supposed, would feel equally satisfied in having discharged theirs. It was asked, where was the mover of this resolution at the time when the alleged misconduct took place? Did it not, said the gentleman, pass under their own eyes? Were not their deliberations held on the very spot? and why had the motion slept until this day? He hoped he should be permitted to say that it did not pass under his eyes; although he knew, at the time of the condemnation in question, he did not become acquainted with the circumstances under which it took place until long after their occurrence. It was true that the deliberations of Congress were then held in Philadelphia, the scene of this alleged iniquity, but, with other members he was employed in discharging his duties to his constituents, not in witnessing, in any court, the triumph of his principles. He could not have been so employed. It would be recollected, that the information given by the gentleman from Pennsylvania formed the groundwork of his proceedings, and he asked whether it was more the duty of the mover of the resolution to have brought it forward than every other member of the House who was a witness of the statement made by that gentleman? This information, of an official nature, given by a member in his place, of a transaction in open court, and which it was the duty of them all to have noticed, had been called a story related on hearsay; a rumor of an affair which had happened in a corner; and the House was asked if they would take such evidence as ground of proceeding, on the *dictum* of any one member, however great their confidence in him might be? If he really felt that respect for the House which the gentleman from Connecticut had professed, he would not have insulted their understandings by such language. He would not have stood up, as *amicus curiæ*, to prevent their being precipitated into absurdity and injustice by an influential

member of their body. That, however, was the station which the gentleman had assumed, and he hoped the duties of it would be discharged with the fidelity which they required. After clothing himself with this character, Mr. R. said he expected to have seen him at his post—he regretted that he did not see him there, and that his duty did not permit him to withhold the observations which he was compelled to make. Whilst, however, the gentleman was engaged in discharging the new and important function with which he stood self-invested, he seemed cautious of replying to the masterly statement of his venerable friend from Pennsylvania, and which he believed had remained unanswered because it was unanswerable. It must, said Mr. R., be a subject of high gratification to us all, and I congratulate this House upon it, that age has not yet dimmed the lustre of those talents which have so long presided in the councils of this country. And if the time shall come when we are to resign our understandings, and place ourselves under the direction of an individual, I hope to be permitted to range myself under the banners of that tried patriot, and not under those of the gentleman from Connecticut. In the same spirit with which he challenged the confidence of the House, as a friend unwilling to see them led into error and absurdity, that gentleman had endeavored to alarm their pride by representing the motion as a demand made upon them. It was so. It was (if he might so express it) a writ of right, not of favor—and as such he demanded it, as such he urged it. But an objection was taken that no act of misconduct had been alleged. With his friend from Maryland he would say, that a fact of the first importance had been adduced, on which he was sorry his friend had not dwelled longer. It could not receive too much attention. On a trial for life and death, the jury, who were the constitutional judges both of the law and fact, were deprived of the right of a discussion of the point of law, “what constitutes treason?” The rights of the jury and of the accused were equally invaded. It was conduct not dissimilar to this, in a case of libel, which drew forth from the English Parliament the famous declaratory bill of Mr. Fox. Lord Mansfield had laid down the doctrine that the jury had a right to decide only upon the bare facts of printing and publishing, and not upon the question of guilt, which was compounded of the law and the fact. This produced the declaratory act which passed a strong censure on the practices of courts—since it did not amend or alter the law, but declared what the law was—and established the point resisted by the court, that the jury was the judge both of the fact and of the law. If, then,

on a question of criminal law, where the punishment was only fine and imprisonment, the conduct of a judge was deemed highly reprehensible in encroaching upon the rights of the jury, what shall we say of him who usurps those rights in a case of life and death, in a case of treason? This denial to the prisoner and the jury of the right of having the point of law discussed, seemed to be the first step towards assuming those powers in cases of treason, the exercise of which, in cases of libel, had drawn down upon the English courts the censure of their Parliament. Would the gentleman say this was nothing? Would he affirm that if a man were under trial for murder, the court would be justified in saying to his counsel, You may, if you can, disprove the fact with which the prisoner stands charged, but you shall not endeavor to show that it does not amount to the crime with which he stands charged? If you admit the killing, you shall not argue the point that such killing does not constitute murder. Would the gentleman contend that treason is better defined than murder? What is murder? Killing with malice aforethought; can any definition be clearer? What is burglary? Breaking in during the night. What is treason? The constitution defines it as levying war against the United States; adhering to their enemies; giving them aid and comfort. But what had definitions to do with the case? Because murder was defined, had counsel ever been stopped in an attempt to show that the killing with which their client stood charged was not a killing with premeditated malice, a killing which constituted murder? What was more common than to see the facts admitted, and the crime not only denied, but disproved to the satisfaction of the jury; and upon what principle shall counsel be arrested in the attempt to show that the facts charged in an indictment for treason do not amount to such a levying of war, or an adherence or aid to such enemies as would constitute treason? Mr. R. said that the fact mentioned by the gentleman from Pennsylvania was of a remarkable nature. He had never heard of a similar proceeding, and he rejoiced that another instance of so black a nature could not probably be furnished by any tribunal in this country.

The gentleman from Maryland, (Mr. DENNIS,) however, had entirely abandoned the ground taken by his friend. He agrees that there is a charge of an important nature exhibited, and if it was incorporated into the resolution, and the inquiry confined to that subject only, he would vote for it. The object of the one gentleman was only to confine the inquiry, whilst that of his friend was to deny it altogether. He could not thank the

gentleman for his liberality. He would have what he asked or nothing. He would never consent to confine the inquiry; if it could not be full and free, let it be denied.

The gentleman from Maryland had, with very little dexterity, endeavored to confound the resolution of inquiry with the articles of impeachment which may follow from it, and said that if the House would consent to confine the inquiry to any particular charge he would vote for it. It was true that after articles of impeachment should have been exhibited against the accused, the House would not be permitted to prefer any new accusation, or to adduce testimony to prove any guilt other than that which was charged in those articles. In the same manner as when a criminal was indicted, evidence would not be suffered to be brought forward to prove any act of criminality not contained in some one of the counts of the indictment. But would gentlemen persist in confounding things so entirely different, as to confine an incipient inquiry by the same rigid rules which would govern a criminal trial? It was trifling with the judgment of the House. The gentleman was eager for inquiring, but the charge must be incorporated into the resolution, and the inquiry confined to a specific point, before he could be brought to consent to it. Whatever other misdemeanors might come to the knowledge of the committee in the course of the investigation, he would not agree to have them reported to the House. And at the same time he told them of the struggle between his inclination and his sense of duty—his inclination as a friend of the accused to grant the inquiry, his duty as a member of the House and a friend of justice to refuse it. Mr. R. was sorry to find the gentleman in this awkward predicament; he regretted that it was out of his power to gratify him by narrowing the inquiry. This his duty would not suffer him to do. He hoped, however, the strength of the gentleman's constitution would carry him through the arduous struggle in which he was involved, by his wishes on the one hand, and his principles on the other.

Whilst so much was said on the subject of precedent, he hoped he might offer a few cases to their consideration. He did not come to the House armed with precedents. Neither his health nor leisure permitted him to search for them. Gentlemen of greater industry, and who attached more importance to them than himself, had furnished him with them. For his part he thought precedents had nothing to do with the case, but for the sake of those who thought differently, he would show the course which he

advocated was not destitute even of their support. Here Mr. R. referred to Mr. Hatsell's precedents. "On the 21st of April, 1626, Mr. Glanvylee, from the select committee appointed to consider of the charges against the Duke of Buckingham, reports that they desire the House will resolve whether common fame is a ground for this House to proceed upon?" It is resolved to consider this the next day. After a long debate the House resolve that, "common fame is good ground of proceeding of this House, either to inquire of here, or to transmit the complaint, if the House find cause, to the King or Lords."

Mr. R. begged to call the attention of the House to the opinion of a gentleman, delivered during the debate, to which he must be permitted to attach more importance than to that of the gentleman from Connecticut. When he mentioned the name of Selden, he believed he should stand justified in the opinion of the gentleman himself, and in that of his warmest admirers. "These cases (said Mr. Selden) are to be ruled by the law of Parliament and not by the common or civil law." Mr. Littleton says, "this is not a House for definitive judgment, but for information, denunciation, or presentment, for which common fame is sufficient." Mr. Noy says, "There are two questions—first, Whether a common fame? Second, Whether this fame be true? We will not transmit without the first inquiry: but without the second we may; for peradventure we cannot come by the witnesses; as if the witnesses be in the Lords' House."

Again, on the 16th October, 1667, the House being informed "that there have been some innovations of late in the trials of men for their lives and deaths, and in some particular cases restraints have been put upon juries, the matter is referred to a committee." This case (Mr. R. said) was precisely in point. "On the 18th of November, this committee are empowered 'to receive information against the Lord Chief Justice Keeling, for any other misdemeanors besides those concerning juries.'" Thus on a particular fact, innovation in trials for life and death, a committee was raised, and yet they were not confined to the examination of that single charge, but empowered to inquire generally into the misconduct of the judge. A stronger or more pointed precedent could not be conceived.

By the constitution, Mr. Randolph said, that House was vested with the sole power of impeachment. How this power was to be exercised must depend on their discretion, and on no other law or principle whatever: for

“these cases are not to be ruled by the common or civil law, but by the law of Parliament.” That law of Parliament it remained with them to establish. It could not be matter of surprise that he, one of the leading principles of whose politics it was to support the weight of that branch of the Government, and to be jealous of executive influence—it could not surprise any one, that he should exert himself in behalf of the constitutional rights of that House. When he saw the importance which was attached to precedent, he was more than ever solicitous for that which they were then about to establish. He trusted that they would not consent to abridge the power with which the constitution had invested them—to reduce it below the standard which the English House of Commons had fixed as the measure of their own power in similar cases. A time might come when a wicked President and his flagitious ministers might so conduct themselves in office, as to make every man regret the proceedings of that day, in case they should suffer their power to sleep. The refusing to exercise it, then, would hereafter be adduced as a denial of its existence. Such might be the circumstances of the times, that no private man would dare to step forward with a specific charge against the Executive. If they should deny an inquiry without a specific charge, they would do all in their power to screen such a President and such ministers at a future day. It had been remarked that, in this government, an officer found guilty, on an impeachment, could not be punished capitally. The sentence could only remove him from office, and disqualify him, for ever after, from holding one under the United States. If, in a country where the accused may be brought to the block, free, unfettered inquiry is warranted against any rank however exalted—would it be denied here, where the punishment was comparatively light? Should they hold the other departments of the Government more inviolable than they were considered even in England? Would they afford to a criminal, Executive or Judiciary, a shelter denied by the law of that government? He hoped they would not. He trusted that they would give an example of their readiness to bring every offender to justice, however great might be his station.

Mr. GRIFFIN.—I had hoped that no subject would have been agitated during this session which should have interrupted the tranquillity or disturbed the harmony of this House, so necessary to the faithful and correct discharge of our public duties; but, sir, I perceive, from the turn which the debate upon the resolution now before the House has taken, that sensations have been excited which I fear it will be difficult to allay.

The proposition now before the House, nursed with so much secrecy, and forced on us so suddenly and unexpectedly, comes in such a questionable shape, that I must beg the attention of the House for a few moments while “I speak to it.”

What, sir, does the resolution demand of us? That a committee be appointed to inquire into the official conduct of Samuel Chase and Richard Peters, &c. But how is this inquiry to be conducted? Are there any data by which the committee are to be guided? Is there any specific charge to which their attention or inquiries are to be directed? None. And who, sir, before this enlightened day ever heard of a committee of inquiry being raised, without possession of a single subject to direct or guide the inquiry? What, sir, erect an inquiring committee vested with all the rights of a Star Chamber, and yet assign them no specific objects of their duty! But, sir, the official conduct of these judges has given offence—and are we now, sir, to probe and search the whole judicial lives of these gentlemen, for causes of complaint and censure? Are the records of the States of Maryland and Pennsylvania now to be ransacked, for evidences of their guilt and cause of impeachment? I never have and never shall deny the right of this House to inquire into the conduct of public officers—but, sir, if the honorable mover of the resolution is serious——

[Here Mr. RANDOLPH interrupted, and desired the gentleman to explain his meaning by the word serious.]

Mr. GRIFFIN continued. I will answer the gentleman: my meaning is, that if the gentleman believes there are just grounds for impeachment—if he is in possession of information or facts, let him declare them, and if they appear to my mind to be sufficient whereon to ground an impeachment, let him demand it and I will join with him. Let him specify the instances of malfeasance of which these judges have been guilty, and I will unite with him—let him declare the misconduct of these public functionaries, and I will cordially co-operate with him. If these judges have travelled beyond the line of their duty, if they have wantonly exceeded the limits of their power, I will aid in the infliction of such punishment as they may merit; but, sir, I cannot, I will not, in this indirect manner, wound the feelings or censure the characters of men, holding high responsible offices under your Government. Could I induce myself to believe that the course now proposed to be pursued is correct, I will gladly give it my assent; but for

reasons very different from those the advocates of this measure adduce: could I deem it correct, I would support the resolution because I believe the characters implicated therein will safely pass the ordeal preparing for them, and that the inquiry will redound to their honor. I would cheerfully support the resolution, because, by the impeachment which I predict will follow, an opportunity will be offered to remove the load of unmerited calumny under which the Federal Judiciary of the United States have too long labored, and with which our public prints have been long filled. But the course is incorrect—the measure in its present shape appears to me to be fraught with incalculable mischief to our country, and I never will assist in the establishment of a precedent which may at some future day be made an engine of persecution, as “wicked as intolerant.” Mr. Speaker, let me ask of you, sir, to remember the consequences which may flow from the adoption of this resolution—let me conjure this House to reflect upon the dreadful effects which must arise to us, if, upon the bare assertion of a single gentleman, unsupported by any direct allegation, a committee of this nature shall be raised, a precedent of this kind established, what public character will be safe? nay, sir, how soon may not we ourselves feel its baneful influence? Far be it from me, sir, to impute to the honorable mover of the resolution any impurity of motives. I believe his conduct has proceeded from a consciousness of duty, and from a similar consciousness of duty I must oppose the measure. I cannot deny the power of this House to adopt the resolution upon your table, but I beg of you to pause ere you take the fatal step, and do not, because “dressed with a little brief authority, play such fantastic tricks before high heaven as make e’en angels weep.”

Sir, I have endeavored to discharge what I conceived to be my duty upon this occasion, and when experience shall fatally convince us of the dreadful effects of the precedent we are now about to establish, I shall derive consolation from the reflection, that I lent my feeble aid to check the overwhelming torrent.

Mr. EUSTIS said, he did not view this subject in the same light with the gentleman last up; he did not see those awful consequences which he had pointed out. He hoped the time would never come, when an inquiry into the conduct of an officer of the Government should be deemed a subject of alarm in that House. It was the first principle of the constitution, that every man was amenable to the constitution and laws of his country; and however

elevated any one might be, that he could not be raised above the reach of inquiry. The observations of the gentleman who had last spoken, and of others who had preceded him, were predicated on a principle that was not correct. If the resolution on the table was to impeach the judge, those observations would be relevant, but they were incorrect on the preliminary motion to inquire.

In making up, said Mr. E., my judgment on this subject, I have endeavored altogether to avoid the inquiry, whether the officer implicated in this resolution, has so conducted himself as to require impeachment by this House. I have not accepted the opinion of the mover of the resolution, and I have excluded all the other information adduced in the debate; because I consider it as alone applicable to the question of impeachment, which is not now before the House. The question before the House is a very different one, and, in my opinion, it is plain and simple. What is it? It is that a committee be raised to inquire into the official conduct of a certain public officer. When a member of this House, under the obligations of honor, and the additional obligations of an oath, rises and takes upon himself the responsibility of moving an inquiry into the official conduct of a public officer, which can only be effected in virtue of the impeaching power of this House, which power it exclusively possesses, I view the request for an inquiry in the nature of an information laid before the House as the grand inquest of the nation.

When this proposition was made, the mind of every gentleman was naturally cast about for the situation of the officers in question. If it shall be the opinion of the House that their conduct is such as to afford grounds for an impeachment, it will be granted that it is an indispensable duty to make the inquiry. If, on the other hand, the House are of opinion that no testimony can be produced which will lead to an impeachment, then it is due to the officers to institute an inquiry. The object of an inquiry is two-fold—arising from the duty to the people, and that due to the officer whose conduct is impeached. If gentlemen are of opinion that, in this case, there are no grounds for impeachment, then it is clear that the conduct and character of the officer ought to be vindicated, and the inquiry instituted to afford him the means. If they are of opinion that there are grounds for an impeachment, then the duty they owe to the people urges them to the inquiry. In the constitution I find no excuse, no justification, on which to ground a refusal

to institute an inquiry into the conduct of any public officer charged with misbehavior.

To such an inquiry, what is objected? That the power may be abused. Indeed, the objection is, that it is abused in this instance. How abused? To argue from abuse of the power against the use of it, is no argument at all. If the House believe either alternative I have mentioned, and one or the other you must believe, it is their duty to make the inquiry. But it is said that the committee are to be clothed with power to send for persons and papers. Granted. That power is indispensably necessary. It is said their powers are to be inquisitorial. This is not true. Will not the committee be accessible by every member of the House, and what are their ulterior powers but to collect facts, and to express an opinion whether they afford grounds for an impeachment? That opinion they will eventually submit to the House, and, without its approbation, it will be settled.

It is further said that no specific charge is adduced, and if there were, gentlemen say they would vote for the inquiry. But if a specific charge were made, I ask if any member would be enabled to give a more enlightened vote than on the present resolution? I consider the general power to inquire as most important, and that it is the duty of the House, on such occasions as the present, to enlarge rather than to narrow the field of inquiry.

It is further said that this course of proceeding will discourage respectable men from accepting the offices of Government. But certainly every officer, from the President to the most menial, knows that he holds his office subject to inquiry, to impeachment, and to punishment, in case of criminality.

If the House do not pursue the present course, from what quarter are they to expect the origination of an inquiry? Is it to be supposed that it will come from the citizen, when his life and fortune are probably at the disposal of particular officers charged with misconduct. This line of inquiry ought, in my opinion, to be courted and encouraged; more especially in this instance, after the course which the debate has taken, and after specific charges have been adduced. The debate has given an importance to the inquiry, which its original merits may not, perhaps, have entitled it to.

When this subject was first introduced, it appeared to me novel, and that there were no precedents in point under the Federal Government. It is time

that this precedent should be established. It is time that every officer should know that this House is ready at any time to inquire into his official conduct, if charged with misbehavior; and instead of declining the inquiry, in this instance, from a false delicacy to the officer, it becomes the House to embrace the resolution and make the inquiry. If evidence shall be collected, and it appears that there are no grounds for impeachment, the officer will be restored to the public confidence, and will be acquitted. If, on the other hand, it appears that he has been guilty of malfeasance in office, a duty will be imposed upon the House, from which they cannot recede, to bring him to trial.

Mr. THATCHER.—As gentlemen seem to consider the decision of the court in the trial of Fries as unprecedented, I beg leave to refer them to the cases of the United States *versus* Vigol, and the same *versus* Mitchell, 2 Dallas's Reports, 346 to 357. They will find that the decision of the court, in the case of Fries, was exactly conformable to cases adjudged in 1795. Without troubling the House with the whole of those cases, I beg leave to read the decision of the court in the last case. "The charge of the court, says the reporter, was delivered to the jury in substance as follows. Patterson justice. 'The first question to be considered is, what was the general object of the insurrection? If its object was to suppress the excise offices, and to prevent the execution of an act of Congress, by force and intimidation, the offence, in legal estimation, is high treason: it is a usurpation of the authority of Government; it is high treason by levying of war.'" The decision, sir, is also conformable to the English authorities. The charge then against Judge Chase and Judge Peters, after divesting it of the coloring which imagination has given it, amounts to this—that, in the trial of Fries for treason, the court prevented the counsel from arguing to the jury against a point of law long settled by that and other courts of the United States. I have attended closely to the statement made by the gentleman from Pennsylvania, (Mr. SMILIE,) and I believe I am correct.

The very point which the counsel of Fries would have argued to the jury, was that which had long before been settled by the courts of the United States. I contend, sir, that this court did no more than they had a right to do—no more than is practised by every well regulated court. They prevented counsel from arguing law in the face of the authorities, and of the opinion of the court. That this is usual, I appeal to gentlemen of the law who are

present. This, sir, is the only fact stated to the House upon which the motion is founded.

The gentleman from Virginia (Mr. RANDOLPH) has said, that he has been informed of facts, which convince him that an inquiry ought to be made. But that gentleman has not stated to the House what those facts are.

It has been contended, that where a member of this House shall state that he is convinced that an inquiry ought to be made, the House ought to institute such an inquiry. Precedents have been adduced to prove that this has been done in the British Parliament. There certainly has been no case cited where an inquiry has been commenced upon the motion without stating his facts or his evidence. But whatever may have been the practice in England I can never consent to vote upon any impressions or convictions but my own.

If the official conduct of the judges upon the trial of Fries was such as to require the interposition of this House why, (as the gentleman from Connecticut, Mr. GRISWOLD, has asked,) why was not this inquiry sooner announced? This trial, I am told, was in February, 1800. It took place within the hearing of Congress. It was the subject of universal attention. Why has it slept four years? Upon what ground shall we invest a committee with power to ransack the country for charges against our judges? Shall we, upon the motion of a member—shall we, upon the statement of the gentleman from Pennsylvania, (Mr. SMILIE,) commence an inquiry, troublesome and expensive—an inquiry, which must attach suspicion to the official conduct of the judges? Sir, I respect the conduct of the gentlemen who attempt to remove obstructions from the stream of justice, but I must be convinced that obstructions now exist, before I can vote for this resolution.

Mr. EARLY.—Like other gentlemen who have gone before me in this discussion, I do not consider myself at liberty to vote against the resolution on the table. Like them, I deem myself bound to vote for an inquiry into the conduct of any public officer, when that inquiry is demanded by a member of this House. After the view taken of the merits of this measure by the gentlemen from Pennsylvania and Virginia, I did expect that all further opposition to it would have ceased. In this expectation I have been disappointed.

I feel constrained to vote in favor of this resolution, because I believe that the inquiry it contemplates is an act of justice due to the people of the United States on one hand, and to the characters of the individuals charged, on the other. A charge of high crimes and misdemeanors has been made on this floor against two individuals, and two members of this House have demanded an inquiry into their official conduct. To this demand may be added the weight of public opinion. I am apprized of the delicacy of this ground, and when I resort to it, it is my wish to be understood as meaning that when charges of a high nature are instituted and reiterated from one end of the Union to the other, so as to create a general belief, so as to destroy confidence in the principle and integrity of those who administer justice, and to beget a suspicion that justice cannot be obtained equally by all men; under such circumstances the public voice demands an inquiry into the truth of the charges. Is this a fact, or is it not, in relation to the officers implicated in this resolution? I presume that it is the fact to a great extent will not be denied. Every gentleman on this floor, in the habit of reading the public prints, must have had so forcible an impression made on his mind on this subject, as not to have lost a recollection of the conduct charged upon one of the judges named in this resolution, in the case of Fries, Cooper, and Callender. I cannot, therefore, refuse my assent to the inquiry, because I believe it due to the public, as well as to the individuals charged with the improper conduct, and who, if they were on the spot, would undoubtedly memorialize us for an inquiry. Indeed one of the officers referred to in the resolution, if conscious of his innocence, ought, in my opinion, long since, to have demanded an inquiry into his official conduct, when he witnessed the strong and numerous charges against him in the public prints from one end of the continent to the other.

It is objected to this resolution that no proof has been adduced to the House of the truth of the allegations preferred. In my mind there is all the difference that can be imagined between an inquiry and an impeachment; and almost all the arguments urged on this occasion apply exclusively to an impeachment. A strong proof of this has been given by the gentleman who has just sat down. That gentleman (Mr. R. GRISWOLD) has taken this remarkable ground, that this House ought not to inquire without proof. I suppose he meant, by proof, the depositions of witnesses; this is, in other words, saying that we, whose constitutional duty it is to inquire, may omit to do it, because they whose duty it is not to inquire, have not done it.

The present resolution is nothing more than this: A certain officer of the Government is charged, in the face of the nation, with malfeasance in office, and a committee appointed to inquire into the truth of the charge. Gentlemen allege that the committee is to be appointed to inquire what accusations can be found, and then for testimony to sustain them. But this is not so. The accusations have been long since made, and they are not of a day, but of a year's standing.

The analogy between the functions of this House and a grand jury, is correct and forcible. Before a grand jury, it is the right of any individual to apply for and demand an inquiry into the conduct of any person within their cognizance; and it is more especially the right of any member of the jury to make such a demand; and it is their bounden duty, according to their oaths, to make the inquiry when so demanded.

The official conduct of the judges I view as more delicate and important than that of any other description of officers; for, on their impartiality the whole people of the United States depend for obtaining justice in ordinary cases, and individuals depend, in the last resort, for the preservation of their lives. Their official conduct should, therefore, not only be correct, but likewise free from suspicion. Simply to be charged ought to produce an inquiry; and I must confess that a recent case, in which the integrity of a judicial officer was impeached, excited my warmest approbation. I mean the case of a judge (Judge Tucker) in a neighboring State, who, on a suggestion believed by no man, deemed it a duty to himself and his country to demand an inquiry into his conduct.

Another view, by no means unimportant, which may be taken, is, that the reputation of the Government, of which the judges are a component part, demands the inquiry in question. Will any gentleman pretend to say that reputation is not at stake,—that it is not affected at home or abroad by the charges which have been so long and so loudly made? I presume not. Whether those charges are true or not, is not the question; for, whether true or not, so long as they are generally believed, the reputation of the Government is affected; its reputation for impartial justice is affected, and deeply too. To refuse this inquiry would be to give weight to this impression abroad—to add to the suspicion, at home and abroad, that impartial justice is not done to all men. Let us, then, make the inquiry, and restore the reputation of the Government, by inflicting a proper punishment upon these

officers, if guilty, and, if innocent, by proving the charges against them calumnies.

Mr. EPPES.—If, in adopting the resolution before us, we were to attach odium to the characters in question, I should feel no surprise at the course pursued by the gentlemen who oppose this inquiry. In this country the official conduct of every man is, and ought to be, subject to examination. It is not the examination, but the result of that examination, which attaches merit or demerit to a public character. In a Government like ours no principle ought to be cherished with greater care than a free inquiry into the conduct of public officers. So friendly am I to this principle in its fullest extent, so necessary do I believe it to be to the preservation of that purity in public officers essential to a republic, that it will always be sufficient for me to vote an inquiry, for a member to declare he considers an inquiry necessary. A proper regard to his own reputation will always, I am certain, prevent any member of this House from calling on us to exercise this important duty on light or trivial grounds. As to the extensive field of inquiry to which this doctrine may lead, I care not; and whenever a member of this House shall rise in his place and declare that he considers an inquiry into the conduct of a public officer or officers necessary, I shall be ready to pass the whole circle in review, to begin with the first and end with the last, to vote an inquiry into the conduct of each, and even to go further, to vote an impeachment if necessary. I shall on every such occasion consider it a duty I owe to the individual accused, and to the community in whose behalf the accusation is made, to vote an inquiry.

Thus much for the general principle which would induce me to vote for this resolution, if no specific charge had been made. In the present case, however, a specific charge of a serious kind has been made by a member from Pennsylvania; and, however gentlemen may have attempted to weaken the force of this charge, it does substantially amount to this: that, by the opinion of a judge, a citizen of the United States was deprived of his constitutional right to counsel, when arraigned for his life. I will not, however, dwell on this charge. It has been placed by a gentleman from Maryland (Mr. NICHOLSON) in a point of view satisfactory to myself, and, I believe, to the House. I consider it, however, my duty on this occasion to mention a trial which took place in the Commonwealth of Virginia, which affords another specific charge against Judge Chase. I was not present at

this trial, and am not personally acquainted with the circumstances. I believe, however, that in the Commonwealth of Virginia but one sentiment prevails as to the conduct of Judge Chase on this occasion, viz: that it was indecent and tyrannical. In the course of the trial he refused to allow a witness on the part of the prisoner to be examined, because the witness could prove the truth of a part only, and not the whole of the words laid in the indictment. By a system of conduct peculiar to himself, he deprived the prisoner of the aid of Mr. George Hay, as counsel, a man, who, although not as generally known as some others in our State, is inferior to none in his profession. I do not mention these circumstances as hearsay evidence, but as facts, which I am induced to believe can be established by legal testimony. If, on this statement, there is any gentleman who can refuse an inquiry, I am willing to leave him in the enjoyment of his opinion. For my own part, I shall be always ready, on the demand of any member of this House, to exercise my constitutional right of inquiry, and, without partiality or prejudice, pursue the course pointed out by my duty, whether it shall lead to impeachment or an honorable acquittal.

Mr. NICHOLSON rose for the purpose of calling the attention of the House to precedents. When he yesterday addressed them he had thought it unnecessary to introduce authorities from foreign nations; but as they had been insisted on by the opponents to the resolution, he would refer to two or three; and he was more solicitous to do so at the present moment, as he saw a gentleman from Connecticut (Mr. DANA) about to rise, and he wished to call the gentleman's attention to them, in order that he might remark on them, and show, if it was to be done, that they did not apply to the case under consideration. If gentlemen would refer to the powers exercised by the Commons of England, for time almost immemorial, and to those exercised by the several State Legislatures, he believed that precedents innumerable would be furnished. The Commons of England were the grand inquest of the nation. As such it was their duty to inquire into the official conduct of all those intrusted with the powers of Government. Every officer in the realm was liable to impeachment by them. The same principle would be found to run through the constitutions of most of the States, and it was wisely introduced into the Constitution of the United States. The power to impeach is admitted to be in the House of Representatives, and the only question is, as to the manner in which this power shall be exercised. The proposed method is called a loose one, and we are asked to show some

precedent for it. The House of Commons at the commencement of every session appoint what is there called a committee of grievances and courts of justice. Many of the State Legislatures appoint a similar committee annually, and, in the State from which he came, the House of Delegates always appoint a committee of grievances and courts of justice. It was one of their standing committees, and the appointment was as regular and as usual as the appointment of a committee of claims in this House. What then he inquired was the duty, what the authority of this committee? In England, in Maryland, and in every other State where it exists, it is their duty to inquire into the conduct of every officer of the Government, to call witnesses before them to prove official misconduct, to report offences to the House from which their powers are derived, and recommend the proper measures to be adopted.

This House, like the Commons of England, and the most numerous branch in the State Legislatures, is the grand inquest of the nation; they are to inquire into crimes and bring offenders to justice. It had not, he said, heretofore been customary for this House to appoint a committee of grievances and courts of justice, but he believed no man would deny the power, and when appointed they would not only have the authority proposed to be in this committee, but one infinitely more extensive. They would have the right to inquire into the conduct of all civil officers, and to report such facts as might come to their knowledge. If, then, we could with propriety, and agreeably to precedent, authorize an inquiry into the conduct of several hundred officers, could it be denied that the same precedent would warrant an inquiry into the conduct of two only? In *5th Comyn's Digest*, page 204, it would be found that a committee of grievances and justice was one of their standing committees, and in page 205 it was declared that they might "summon any judges and examine them in person upon complaint of any misdemeanor in office." He presumed it had not been thought necessary heretofore to appoint a general committee of this kind, but at present the necessity was apparent, as a complaint had been made to the House of the official misconduct of two judges. Again, in the same book, page 209, it is said, "The Commons are the general inquisitors of the realm, and therefore if a Lord, spiritual or temporal, commit oppression, bribery, extortion, &c., the Commons shall inquire of it, and if, by the vote of the House, the crime appears to have been committed, they transmit it, with the evidence, to the Lords." This, he said, would clearly

show, what indeed he thought common sense would teach every man, that the inquiry should be made before proof was exhibited upon which an impeachment was to be grounded. In the same page it would be seen that “common fame is a sufficient ground of a proceeding in the House of Commons by inquiry, or by a complaint, if need be, to the King or Lords.” And *Rushworth’s Historical Collection*, page 217, is cited, it is said, by some of the ablest lawyers of that day that “if common fame were not to be admitted as public accusers, great men would be the only safe ones, as no private man would venture to complain of them.” Mr. N. referred to these authorities at that particular stage of the discussion, as he was desirous of giving gentlemen an opportunity of commenting upon them. As he had no wish to prolong the debate, he would not multiply observations upon that point, but could not sit down without noticing what had fallen from a gentleman from Massachusetts, in which he had again attempted to vindicate the conduct of the judges upon the trial of Fries.

The gentleman had referred to a case in *Dallas’s Reports*, respecting the Western Insurrection, in which he says the point of law determined upon the trial of Fries, had been previously settled by one of the federal courts, and from thence infers that Mr. Chase and Mr. Peters were justified in preventing counsel from arguing it a second time. That such conduct might be perhaps excusable in a civil cause he was not prepared to deny; but, in a case of criminal jurisdiction, involving the guilt or innocence of a man whose life was to be the forfeit, he held it totally unjustifiable.

All men, he said, were acquainted with the circumstances of what was generally called the Western Insurrection. Some of the Western counties of Pennsylvania were opposed to the excise law. A considerable majority of the people had resolved to oppose its execution, and took strong measures to prevent individuals from accepting offices under it, and compelled some of them to resign the places to which they had been appointed. While they professed an attachment to the Government of the Union they resolved to resist the execution of one of its laws. Among these was a man by the name of Mitchell, and he was charged with high treason before the circuit of Pennsylvania in which Judge Paterson then presided. A doubt existed whether the resistance to the execution of a law, even by force of arms, was such a levying of war within the meaning of the constitution, as amounted to treason. What was the conduct of the judge on that occasion? He had no

disposition to preclude inquiry. He had no wish to keep the jury in ignorance by forbidding fair and open argument. On the contrary, it appeared from a note on page 348 that he called the attention of the prisoner's counsel to the point, and requested that they would notice it in their observations. This was done before the defence was opened, and he said he should beg leave to read a part of the argument made in favor of the prisoner.

“The counsel for the prisoner (E. Tilghman and Thomas) premised that they did not conceive it to be their duty to show that the prisoner was guiltless of any description of crime against the United States, or the State of Pennsylvania, but they contended that he had not committed the crime of high treason, and ought, therefore, to be acquitted on the present indictment. The adjudications in England upon the various descriptions of treason, had been worked incautiously, into a system, by the destruction of which the Government itself would be seriously affected; but even there, the best judges and the ablest commentators, while they acquiesce in the decisions that have already taken place, furnish a strong caution against the too easy admission of future cases, which seem to have a parity of reason. Constructive and interpretive treasons must be the dread and scourge of any nation that allows them—*1 Hale, P. C.*, 132, 259—*4 Black. Com.*, 85. Take, then, the distinction of treason by levying war, as laid down by the attorney of the district, and it is a constructive or interpretive weapon which is calculated to annul all distinctions heretofore wisely established in the grades and punishments of crimes, and by whose magic power a mob may be easily converted into a conspiracy, and a riot aggravated into high treason.”

Such, he said, was the opinion of two gentlemen ranking high in their profession, and who would not be charged with having any feeling toward the offence or the offender inconsistent with the rights or interests of the Government. The whole argument was too lengthy to be read to the House, but he considered it well worth the perusal of every American. Able as it was, however, it had not the wished for weight with the court. Judge Paterson gave the following charge to the jury: “The first question is, what was the general object of the insurrection? If its object was to suppress the

excise offices, and to prevent the execution of an act of Congress, by force and intimidation, the offence, in legal estimation, is high treason; it is a usurpation of the authority of Government; it is high treason by levying of war." Sir, said Mr. N., this opinion of the court may have been honest; I mean not to impeach the purity of motive which dictated it, but I mean to show that the offence with which Mitchell was charged, the resistance to the execution of a law, was not considered as treason by the highest existing authority of this country. Mitchell was pardoned by the President of the United States, and Congress, not long after, expressed their opinion on the subject in the most ample manner.

The trial of Mitchell which I have just quoted took place in 1795, and in 1798 the subject was taken up by Congress, who, by the act of the 14th of July, 1798, provided that the resistance to the execution of a law should be considered a high misdemeanor only, punishable by fine and imprisonment. The act is in these words: "If any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the Government of the United States which are, or may be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the Government of the United States, from undertaking, performing, or executing his trust or duty, he or they shall be deemed guilty of a high misdemeanor, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding \$5,000 and by imprisonment during a term not less than six months nor exceeding five years." Here, sir, the resistance to the execution of a law is declared to be a high misdemeanor only, punishable by fine and imprisonment. Fries was tried in 1800, two years after the passage of this law. The offence of which he had been guilty was rescuing prisoners from the marshal by force, thereby, in the language of the act, "preventing an officer of the United States from performing and executing his duty," and it was to show that he was punishable under this act by fine and imprisonment only, that his counsel were desirous of bringing the law before the jury. This, however, the court refused; the man was convicted of high treason, and was sentenced to a most ignominious death. Let such conduct be vindicated where and by whom it may, I must declare that it can never meet my approbation.

Mr. DANA.—It is to be regretted, Mr. Speaker, that a resolution so novel and of so much importance as that on the table was not postponed, at least for one day after it was presented to the House. Had this been done, gentlemen might have had some opportunity deliberately to examine the subject, before they were required to make a decision. But as the resolution was moved without giving any previous notice, and has been pressed upon us immediately after it was moved, I do not feel myself prepared, as I could have wished to be on such a question, before attempting to deliver my sentiments in this House. Unprepared, however, as I am, I request your indulgence while I offer a few remarks.

I will first attend to some precedents mentioned by the gentleman from Maryland, (Mr. NICHOLSON.) He has stated that it has been usual in the English House of Commons to appoint a committee for courts of justice, with power to inquire into the proceedings of courts, and for this purpose to call persons before them for examination. But, sir, is not such a committee appointed for general purposes, not directed against any individual, and therefore not affecting the character of any magistrate? Their powers relate to the judicial system generally, and do not implicate any one of the judicial officers. Does the resolution on the table propose a committee of this kind? On the contrary, it is explicitly directed against two of the judges. If gentlemen would justify their proceedings by the practice of the British House of Commons, let the resolution be made to have a general reference to all the courts, instead of being pointed, as it now is, against particular persons. In its present form it departs essentially from the principle of the case mentioned by the gentleman from Maryland, and therefore cannot be warranted by that precedent.

The gentleman has also stated that a committee was appointed by the last Congress to investigate the accounts of the officers of Government, merely upon common report. But it should be remembered that those officers were officers of the Executive Departments. It is the acknowledged duty of such officers—it is made their duty by law to give information to Congress, whenever required, upon any of their public transactions. And it is the peculiar right of the House of Representatives, as guardians of the Treasury, at any time, to inquire into the expenditures of public money. But are the judges of the United States placed in the same situation with the Executive officers? Are they to be under the same control, and equally dependent? You

may indeed impeach the judges, if guilty of impeachable offence. But what other power over them is given you by the constitution? It should further be remembered, that the resolution for appointing the investigating committee did not criminate any particular officer. At first it was proposed to examine only the accounts of the former Secretary of State. But upon its being suggested by a gentleman from Massachusetts, (Mr. EUSTIS,) who has been so strenuous an advocate for the present resolution, that it would be improper in that manner to attack the character of a particular officer, the resolution was made general, and extended to the accounts of all the Executive Departments.

Upon the like principle, the resolution now on the table is improper. My objection to it is, that it points out two particular officers as objects of suspicion, and proposes a committee for inquiring into their conduct without assigning any cause, and without specifying any subject of inquiry. Gentlemen have expressed a dissatisfaction that such a committee should be compared to the Star Chamber or the Inquisition. If they do not perfectly resemble the Star Chamber, formerly known in England, or the Inquisition of Spain, the proposed powers of the committee are certainly indefinite and inquisitorial. Perhaps, if a comparison was necessary, they might more properly be compared to the State inquisitors of Venice, who are well known to have formed one of the most detestable tyrannies ever tolerated in a country pretending to freedom.

If charges were specified in the resolution, a member of this House on moving it might then have a right to demand an inquiry. But are the House bound to investigate the conduct of a particular officer, without any charge against him? Gentlemen have said much about the general right of this House to inquire into the conduct of public officers, as if this were the point in dispute. But who has denied the right of inquiry as incident to the power of impeachment? When any officer is charged with an impeachable offence, it is admitted to be, and from the nature of the thing it might be, the right of the House to inquire into the truth of such charge. I trust no gentleman in opposition to the present resolution can be found so ignorant of the true principle on which it is opposed, as to deny the responsibility of the public officers, or the right of the House to inquire into their conduct. But, the right being admitted, the question is made as to the exercise of that right in the manner now proposed. When this House is called upon to direct the

whole force of its influence against a particular judge, is it not reasonable, is it not just, that some charge should first be stated against him? This is but a decent respect to judicial character. It is but a decent respect to the character which becomes the assembled Representatives of a nation. The person implicated might then be enabled to meet the inquiry and obviate unfounded suspicion. Our power with respect to the judges is the power of impeachment; but we are not, therefore, justified in wantonly assailing their characters and sporting with their sensibility to reputation. The right of inquiry relates to impeachable offences. Shall we, then, inquire where no offence is stated? So far is the resolution from stating what would warrant an impeachment, that it does not mention any offence, or refer to any transaction.

The gentleman from Virginia, who moved the resolution, (Mr. J. RANDOLPH,) has, indeed, declared his own conviction, that the judicial officer in question had done wrong. Might not other gentlemen also have their opinions and exercise their own judgments in forming them? They ask for the reasons of his conviction before they vote for his resolution. His information, he says, was received in such a manner that he does not choose to disclose it. If any person has communicated any thing to him confidentially, he is not desired to name his informant. The gentleman shall not be desired by me to make any disclosure which would offend against the most delicate sense of honor. But can it be improper for him to state the general nature of the offence which he believes to have been committed? Will this violate any honorary confidence? He is desired to make such a statement that other members of the House may have an opportunity of judging whether the believed offence will warrant a vote of impeachment. In cases of this kind, is any member to be deemed infallible? When a gentleman, in his place, states a fact as of his own knowledge, his veracity is regarded as unquestionable; but his infallibility is not supposed to extend to matters of mere opinion. Upon the principle of its being possible for the gentleman from Virginia to err in opinion, and its being equally the right of the other members to judge what conduct amounts to an impeachable offence, it might have been reasonably thought that he would at least state to the House the nature of the facts on which he relies as the basis of his resolution. If he, or any other member, declaring his conviction that a judge has misdemeaned himself in office, will exhibit to the House a statement of any fact, or series of facts, which would warrant an impeachment, I will be

ready instantly to vote for an inquiry. But nothing of this kind is exhibited, and therefore the resolution on the table is now opposed. Before you agree to oppress a judge with all that weight of suspicion which may be imposed by a vote of this House, let him be permitted to know what part of his conduct is supposed to be exceptionable, that opportunity may be had in the progress of any inquiry to vindicate himself against unmerited reproaches! Instead of a course of proceeding so fair and obviously just, the resolution on the table marks two of the judges for public suspicion, without specifying any supposed misconduct. It marks them as public objects of suspicion throughout the whole of their judicial life, and, without naming any thing, invites private enemies to accuse them of every thing.

To support such a resolution, common fame has been mentioned in the course of debate, as a sufficient ground of proceeding; and this idea is supposed to be authorized by English precedent. Whatever may have been done formerly, and in a period of rudeness or violence, the more improved system of modern jurisprudence should discard such a doctrine if it ever prevailed. But even that doctrine, if admitted, would not justify you in adopting the present resolution. You cannot thence infer the propriety of proceeding against a person who is not accused of any thing punishable. Will it be pretended that the common fame, which is to be a ground of proceeding, does not refer to any offence or to any transaction? Common fame, if admitted for proof, must be supposed to apply to some subject of complaint. On the principle even of this very questionable doctrine, a statement of some charge is requisite. What, then, in the present case, is the accusation which could be supported by common fame? If there be any such, let it be stated.

The gentlemen who advocate the resolution in its present form fail in their efforts to support it, notwithstanding all the aid which they have sought from “the leading-strings and crutches of precedents,” (to use the language of the gentleman from Virginia.) On general principles, on the broad basis of universal right, the resolution is condemned; and no precedent is adduced which can justify it. I do not wish to shield any public officers, whether judges or others, who may merit impeachment, but I wish the House, when acting as public accusers, to proceed in such a manner as not to do injury to any individual. Justice is due to the individual as well as to the public. No public duty can require this House to adopt a resolution of

general reproach, yet stating no public offence. And it but illy accords with the principles of justice to subject the judicial officers of the Union to all the inconvenience, vexation, and expense, of being obliged to vindicate themselves against secret accusations, which it may be more difficult to discover than to overthrow.

You will observe, sir, that I do not enter into any particular examination of the case referred to by the gentleman from Pennsylvania, (Mr. SMILIE,) whether there was a controversy as to prerogative and privilege between the court and the bar, in which the pride of professional rank appeared in opposition to judicial authority. Whether the judge very properly refused to yield to the counsel, or whether the court committed an error in pronouncing the law, these are topics which I think it needless to examine in considering the resolution now on the table; for the resolution itself states nothing, and there is no case before us for examination.

On so grave a subject as the present, when we are called upon to aid in the administration of justice, it was to be desired that the advocates of the resolution should so far regard their own exhortations as to refrain from attempting to enkindle the animosity of party. The gentleman from Pennsylvania (Mr. SMILIE) seems to have thought himself at liberty to pursue a different course. But, considering the nature of the question on which our votes are to be given, I hope to be excused if I deem it not proper in this debate to reply to him on the various topics of party discussion which he has chosen to mention, although the task might be easy indeed to repel his charges against the former Administration. A single observation, however, may be proper on a law to which he has alluded in the language of censure. There was at least one prominent feature which might recommend it to the friends of truth. It expressly declared that the truth might be given in evidence.

Mr. DENNIS observed that in the course of the remarks which he had the honor of making yesterday, he had declared himself in favor of the proposed investigation, provided it were made on proper principles; and, in order the more clearly to illustrate his ideas and evince his sincerity, he had read in his place a resolution embracing all the facts which had been suggested to the House as the foundation of this proceeding. He had then said he would not pledge himself to offer a resolution such as he then read, but would vote for it if offered by others. As the gentleman from Virginia

(Mr. RANDOLPH) had not accepted his overtures, and in the course of his observations had done him the honor of noticing some of his ideas expressed in yesterday's debate, he rose principally for the purpose of offering an amendment, and partly for the purpose of replying to one or two of the gentleman's remarks. He was not a little surprised at the animated strain in which that gentleman had addressed the House in the course of this morning, nor did any thing appear to have fallen from any gentleman, in the course of the discussion, which appeared to him calculated to produce so much excitement as he had manifested. But as he did not claim to set up his own feelings or his own conduct as the standard by which the feelings or actions of others ought to be guided, and as the gentleman had applied his observations without implicating motives, he had not at all interrupted the equanimity of his disposition. He had exercised a right which he should always be disposed to accord to that gentleman, and every other member—the right of placing the observations of his opponents in the most ludicrous point of view of which they were susceptible. In this right he would also indulge himself whenever the subject required it.

The gentleman from Virginia, in replying to some of his observations, had said that he had conceived the charge exhibited was of a very serious nature, but did not appear to comprehend in what respect he considered it so, and therefore he wished to explain in what manner he considered it as such. He considered it as serious, inasmuch as it was calculated to excite suspicion and asperse the official conduct of the gentlemen in question; but did not mean to insinuate, but on the contrary repelled the idea of its being serious as regarded its sufficiency, if true, as a foundation of impeachment. In order to show that the conduct of the judges had not been so highly censurable even as the statement of the gentleman from Pennsylvania, (Mr. SMILIE,) or his colleague and the gentleman from Virginia, seemed to suppose, he begged leave to state his ideas as to the rectitude of their conduct. Here he might use the observation of the gentleman from Virginia, applied to one of his own remarks, and say that gentleman had with no great dexterity confounded two principles as distant from each other as the northern and the southern pole. He seemed to assimilate the case in which the court have arbitrarily withdrawn the question of law entirely from the jury, to the conduct of the court in this case, which only went to restrict the counsel from arguing before the jury a case already settled in the minds of the court, by a train of judicial determinations in similar cases, and in which

they left both law and fact to the determination of the jury; directing them as to the law upon the subject. He was warranted in his opinion, because the gentleman from Virginia, in illustrating some of his positions, had cited the case of libel as decided by Lord Mansfield, and Mr. Fox's celebrated declaratory bill, which grew out of that decision. What analogy has that case to the case in question? Lord Mansfield decided that in the case of a libel, all the jury had to do was to find the fact of publication or not, and that whether when published it were criminal or not, they had no right to determine, and thus withdrew the question of law altogether from their decision. This was justly regarded as a gross violation of that principle of the criminal law of that country, which invests the jury with the right to decide as well on the law as on the fact. This principle I fully acknowledge, and if the court in the case of Fries had deprived the jury of that right, and withdrawn the question of law from them, there might be some foundation for this resolution. But, according to the statement of the gentleman from Pennsylvania, the question of law and fact were both submitted to the jury, with the instructions of the court on the legal question. He had always been taught to believe that the court were the proper organ through which the law was to be communicated to the jury, though he did not deny but the jury had the right which they should cautiously exercise, but which they would always exercise, when they discover an inclination in the court to oppress the citizen or exculpate the guilty, to reject the direction of the court and decide for themselves.

But the complaint is, that the court denied to the counsel the privilege of arguing the law before the jury. Mr. DENNIS said he believed the court possessed a power of this nature, to be regulated by a sound discretion. If the court should believe that a question had been put at rest by a long train of judicial decisions, such as was the case in this instance, they not only have the right, but it becomes their duty to prevent a useless consumption of time, and to prohibit the counsel from agitating the question. Indeed it is indelicate in the counsel to impress on the jury an opinion of law contrary to the known opinion of the court; nor is there any court who will not take on themselves the right of checking counsel, in an attempt to mislead the jury on a question of law. Such was the practice of the courts in Maryland, and in that country from which we derive all our notions of jurisprudence.

But though he did not conceive that there was any ground for impeachment in the statement of the gentleman from Pennsylvania, yet he knew that this discussion would produce a vague and undefined censure, which he believed the judges in question ought to have an opportunity of repelling. He therefore moved the following amendment, by way of preamble to the resolution:

Whereas information has been given to the House by one of its members, that, in a certain prosecution for treason on the part of the United States against a certain John Fries, pending in the circuit court of the United States in the State of Pennsylvania, Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner, that as the court had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine their argument before the jury to the question of the fact only; and whereas it is represented, that, in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact, and the said John Fries was found guilty of treason, and sentenced by the court to the punishment in such case by the laws of the United States provided, and was pardoned by the President of the United States:

Resolved, That a committee be appointed to investigate the truth of the said allegations, and to report a statement of facts in the case aforesaid, with their opinion thereupon, whether the said Samuel Chase and Richard Peters, or either of them, have so conducted themselves on the trial aforesaid as to render necessary the interposition of the constitutional powers of this House.

This amendment embraces all the facts stated by the gentleman from Pennsylvania, points out a specific charge as the foundation of the proceeding, and yet, when attached to the resolution, gives to the committee the power of general inquiry.

We are told that the facts have been stated by a member on the floor, and there is no reason for stating them in the resolution. Will the statement of the gentleman from Pennsylvania appear on your journals, and how will it

hereafter be known that any fact was stated as the foundation on which to erect a committee with general inquisitorial powers? Posterity will only see the resolution, and to them it will be a precedent which will justify the creation of a committee of inquiry into the official conduct of any officer, without the allegation of a single fact, whenever a member may choose to be of opinion that a vexatious and expensive proceeding shall be instituted. It was therefore that he wished to resist the principle, and for that purpose moved the amendment.

Mr. HUGER said he had before stated, and he now repeated, that he was not averse to an investigation; but he did not consider himself bound to vote for a resolution so general and vague. If the amendment of the gentleman from Maryland were adopted, he should vote for the resolution.

Mr. NICHOLSON moved to amend the amendment, by striking out the whole of it after the word “Whereas,” and by inserting—

“Members of this House have stated in their places that they have heard certain acts of official misconduct alleged against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, judge of the district court of the district of Pennsylvania.”

Mr. HUGER had no objection to the insertion of the last amendment, but he had to striking out the first. He therefore called for the yeas and nays upon striking out.

The question was then taken by yeas and nays upon striking out, and carried—yeas 79, nays 41, as follows:

YEAS.—Willis Alston, jun., Nathaniel Alexander, David Bard, Geo. Michael Bedinger, Phaniel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, Wm. Eustis, William Findlay, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David

Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Richard Wynn, Joseph Winston, and Thomas Wynns.

NAYS.—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Samuel Taggart, Samuel Taney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

The question was now taken on inserting the amendment of Mr. NICHOLSON, and carried.

The question was then put upon agreeing to the amendment thus amended.

Mr. PURVIANCE said he could not vote for it because it did not state the fact. It declared that members of the House had stated that they had heard of official acts of misconduct of both the judges, when but one act had been charged against Judge Peters.

Mr. J. RANDOLPH observed that he perceived no reason for the preamble. He hoped therefore it would not be agreed to. General inquiry was his object, and, as going to limit it, he was against the preamble.

Mr. ELLIOT said that, had the amendment of the gentleman from Connecticut prevailed, he might have reconciled it to his mind to vote for

the resolution thus amended. But as it stood, he could not.

Mr. NICHOLSON remarked that when he offered the amendment, the incorrectness suggested by the gentleman from North Carolina had not occurred to him. To obviate this incorrectness he would move to amend the amendment by saying “a certain act of Richard Peters.”

The SPEAKER said this amendment was not in order.

Mr. NICHOLSON said that under such circumstances he must vote against the whole amendment.

The question being taken, the amendment as amended was lost without a division.

When the resolution for appointing a committee of inquiry was carried—yeas 81, nays 40, as follows:

YEAS.—Willis Alston, jun., Nathaniel Alexander, David Bard, George M. Bedinger, Phaniel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, Wm. Eustis, William Findlay, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, Wm. Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Wynn, Joseph Winston, Thomas Wynns.

NAYS.—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, Wm. Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Ordered, That Messrs. JOHN RANDOLPH, jun., NICHOLSON, JOSEPH CLAY, EARLY, ROGER GRISWOLD, HUGER, and BOYLE, be appointed a committee pursuant to the said resolution.

MONDAY, January 9.

Another member, to wit, WILLIAM HELMS, from New Jersey, appeared, produced his credentials, was qualified, and took his seat in the House.

WEDNESDAY, January 11.

Virginia Yazoo Company.

On a motion made and seconded,

“That the agent or agents of the Virginia Yazoo Company, ‘claimants of compensation under the late cession and convention between the State of Georgia and the United States, and the acts lately passed by Congress thereon, as purchasers of land in the Mississippi Territory, in the year one thousand seven hundred and eighty-nine, from the said State of Georgia,’ be heard in person, or by counsel, at the bar of the House, on Monday next:”

The question was taken thereupon, and resolved in the affirmative—yeas 61, nays 49.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the South Carolina Yazoo Company be heard by their agent, on Monday next, at the bar of the House:

And the said motion being twice read at the Clerk's table, a motion was made and seconded to amend the same, by striking out all the words from the word "Resolved," in the first line, to the end of the motion, and inserting, in lieu thereof, the following words: "That this House will, on Monday next, hear all the agents of the different companies claiming lands south of the State of Tennessee, who may choose to speak at the bar of this House."

And on the question that the House do agree to the said amendment, it passed in the negative. And the main question being taken that the House do agree to the said motion, as originally proposed, it was resolved in the affirmative—yeas 67, nays 46.

FRIDAY, February 3.

Georgia Militia Claims.

The House went into Committee of the Whole on the report of the Committee of Claims, on the petition of John M. Randolph and Randolph McGillis, which is unfavorable to the prayer of the petitioners.

The petitioners claim their pay as militiamen, called out in the State of Georgia for the protection of that State against the Indians. They allege, that, being called out under the authority of the Government of the United States, the General Government is bound to compensate them and the other men called out for their services.

The Committee of Claims report that the petitioners are to look for compensation to the State of Georgia, who, by the articles of cession recently concluded, had agreed to receive one million two hundred and fifty thousand dollars, in full for all demands for military service.

[This debate, though nominally on a private claim, retains a surviving interest from its historic details, its connection with the Georgia cession, its references to the Yazoo speculation, and its dependence upon the question of protection between the Federal Government and a State.]

Mr. EARLY.—Mr. Chairman: I cannot but be sensible of the difficulty which opposes itself to the present claim after an unfavorable report from the committee to which it was referred. And it is impossible not to discern that this difficulty is increased by the opinion of the Attorney General upon the construction of the articles of cession from Georgia to the United States. But as to that opinion, it may not be improper to observe, that so far as it applies to the case of the claimant, it is repelled by the positive certificates of two of the Georgia Commissioners, gentlemen of veracity and legal talents equal with himself. To give to the opinions, or rather the “private ideas and recollections” of that officer, the weight and authority which have been thereunto attached by the Committee of Claims, would be to adopt in practice a principle at war with the maxims of all free Governments; it would be to constitute the framer of an instrument the judge of its construction. This is the essence of despotism. But I apprehend that neither the principle laid down in that opinion nor the facts therein stated do bear upon the case; but that the facts do negatively prove that the claims now under discussion were not included in the compensation stipulated to Georgia in the articles of cession and agreement. The principles are, that the term “territory,” as used in the instrument, meant not only the territory ceded, but that retained. Now, Mr. Chairman, as I cannot possibly comprehend what bearing this has upon the question before us, I must be excused if I leave the Attorney General in the undisturbed enjoyment of his premises and pursue the discussion.

So early as the year 1787 the State of Georgia, being sorely distressed by the violence of the Indians, passed a law directing the establishment of two regiments of troops, to serve until a restoration of peace could be secured. But the enlistments not having been completed, in the following year a law was passed holding out additional inducement, and in the year 1789 the present federal constitution having gone into operation, and the rights of peace and war thereby vested exclusively in the General Government, the Legislature of Georgia passed a law discharging the troops which had been enlisted, and declaring the rate of pay which they should receive. For this

pay certificates were directed to be issued, and these certificates constitute a debt unredeemed to this day. [Mr. E. turned to the several laws above referred to, and read from each extracts as proofs of his statement.] Here, Mr. Chairman, you have unfolded a debt, which, without the least violence to construction, fills up the description given in the articles of cession. Here are expenses incurred by the State totally distinct from and unconnected with the claims now under discussion. It is important also to observe, that every attempt made by the State of Georgia prior to the cession to dispose of her vacant territory, appears from the face of the acts to have been dictated by a view of discharging the public obligations to those troops. No less than three attempts at a disposition of her territory were made prior to the cession. The first was an offer to cede to the General Government, in 1788, provided Congress would pay the expenses which had then accrued in defending the frontiers, and would yield the wanted protection in future at their own expense. This was rejected. In the following year a law passed for disposing of a part of the territory to companies, notoriously with a view to raise money wherewith to meet the same engagements. This also failed, for causes which have been amply unfolded to the House on another occasion. The next attempt was in the year 1795, which, in the very title of the law, is expressed to be made to meet the particular engagements to the same soldiery. Of the result of this transaction the House is also possessed. The last attempt was by the articles of cession. Thus it appears that in no instance were the present claims ever thought of as a debt to be met by the State of Georgia out of the proceeds of her unlocated lands, but that the expenses incurred by, and the engagements made to the troops in the years 1787, 1788, and 1789, were uniformly the moving cause toward a disposition of her territory.

The Committee of Claims however, sir, notwithstanding they have throughout their report endeavored to rest upon the Attorney General the responsibility of the construction given to the cession, have at the same time erected a pillar of their own to support it, where they saw it must fall. They well perceived that all reasoning upon the subject was idle, unless one principle could be established; this they have boldly advanced to, and, instead of proving, have assumed as the groundwork of their whole superstructure. It is, that the State was bound in the first instance to compensate the soldiery, notwithstanding the ulterior responsibility of the General Government. From this they infer that the State had a right and by

the cession did exercise the right of exonerating the latter Government. Now, Mr. Chairman, grant to the Committee their premises and there is an end to the question between us; their consequences must result. But, sir, I must supplicate their pardon if I refuse my assent to their position until my judgment is convinced. And I must be pardoned for saying that the reasoning to which they have resorted for the purpose of proving it, strikes my mind as the reverse of sound; that it proves too much to prove any thing. It is, that the State Government is in the first instance liable, because the troops were called into the field by the State Executive. This reasoning, Mr. Chairman, would go to prove that in every instance in which militia have been called into the service of the General Government, the States from which they were drafted were in the first instance liable for their compensation, because, in every case which has taken place, they were called into the field by State Executives. The truth is, sir, that in every case the orders have issued from the Executive of the General Government to that of the State Government, and that orders have from the latter issued in consequence thereof, for making the requisite drafts; so that the troops engaged in service under the immediate directions of the State, but under the mediate directions of the United States. This was the course pursued in both the insurrections in the State of Pennsylvania; it was the course in the State of South Carolina in relation to Indian invasion, at the same period at which the services were performed in Georgia for which we are now claiming compensation. It was the same course the other day with the troops ordered down the Mississippi to occupy New Orleans and its dependency. In all these cases the troops were compensated by the General Government in the first instance. It never entered the heart of any man that the States from which the drafts were made, were in the first instance liable, and that resort must afterwards be had by the State Government against the United States. I have always been taught that precedents established principles, but it now seems that the Committee of Claims in the profoundness of their researches have discovered that by assuming premises, principles may be established in the face of a uniform current of precedents.

There are, Mr. Chairman, two modes marked out in the constitution in which the militia may be called into service. The first is a case where from necessity the war attribute of sovereignty is left in the individual States. It is the case of invasion or such imminent danger thereof as will not admit of

delay. The other mode is that of issuing orders from the Executive of the General, to the officers of the State Governments. This is the usual method by which the militia of the States are drawn into the service of the United States. And it is of importance to observe here, that the act of Congress which was intended to give effect to the constitutional powers of the General Government to “call forth the militia,” authorizes the President “to issue his orders for that purpose to such officer or officers of the militia as he shall think proper.” For, inasmuch as there can be no other difference in a military point of view, and for military purposes, between the Governor of a State and the next highest military officer, than the difference of rank, the one being first, the other second, in command, it must follow that if the militia are to resort for pay to the State Governments because their orders have passed through the Governor, they must also resort to the same source in case their orders should pass through the second or third in command; the principles upon which the committee found their reasoning apply equally to both cases. The soundness of conclusions drawn by the committee is, therefore, not merely questionable, but to me it appears not difficult to prove that the conclusions themselves are at war with the most obvious principles of justice.

I hold it, sir, accordant with the most common rules by which individuals are regulated in a state of society, that when service is performed the party for whom it was performed is the only one responsible for the compensation. The rule applies with equal force to the case of Governments, who are moral agents. Happily, Mr. Chairman, there is no difficulty in ascertaining the party for whom the service was performed in the case under discussion. Fortunately for the States in general, it is made the constitutional duty of the General Government to “protect each of them against invasion.” And fortunately for the State of Georgia in the present instance, there is the recorded sanction of the Executive of the Union, couched in the following words—“If the information which you may receive, shall substantiate clearly any hostile designs of the Creeks against the frontiers of Georgia, you will be pleased to take the most effectual measures for the defence thereof, as may be in your power, and which the occasion may require.” If, therefore, the principles and reasoning of the committee be correct, it must follow that troops engaged in performing the constitutional duty of the United States must resort for their compensation

in the first place to the States. To premises leading to such conclusions, I will not, cannot yield assent.

Mr. Chairman: It is recollected that when this subject was under discussion at the last session of Congress, a distinction was taken between the situation of troops called into the field by order from the General Government, and those called out by the State Executive in virtue of authority given by the former. But, sir, I humbly apprehend that such a distinction is one of words, and not of principles. And I must here profess to the honorable Committee of Claims my profound acknowledgment, for furnishing me with an idea, and a mode of phraseology most suited to my purpose. They, in their report, have told the House that the “manner of exhibiting” the demand assuredly cannot change its nature. Now, sir, I repeat, in nearly their own words, that the manner of calling out the troops, cannot change the nature of the service. It cannot change the United States service into State service. And indeed the Committee of Claims themselves have given us the strongest proofs, that with them the distinction had no weight. For of claims which have been so contradistinguished in the reports from the War Department, there were committed to them both descriptions; but they draw no difference. Indeed, their principles would admit of none.

But, sir, if a difference in principle did exist between claims of the two kinds, it would prove nothing in the present case, because the difference does not here appear in fact; and I cannot but consider it as one of the unfortunate circumstances attendant upon our claims, that the epithet *unauthorized*, has, without foundation, been attached to them, because, as was supposed, they were founded upon services not specially ordered. The fact is, Mr. Chairman, that they were not only *authorized*, but they were *ordered*, by the General Government. I beg leave to compare the tenor of the orders for drafting the militia in Georgia, with the orders issued in other cases, about which no difficulty ever occurred. The words used in the Georgia case are, “you will be pleased to take the most effectual measures for the defence thereof,” &c. What are the words used in the orders issued to the governors of four States, to march militia to quell the insurrection in the Western counties of Pennsylvania? “I have to request your Excellency,” &c. The words are the same in every other instance in which militia have been ordered into the service of the United States. They are the same which were used for enlisting the one hundred horse and one hundred foot to serve

upon the frontiers of Georgia, about whose compensation there never has, until the present moment, been any difficulty; they are the same under which several corps were raised in the same quarter, whose services have long since been remunerated.

Let us here pause for a moment, and view the extent to which we shall be led by adopting the report. Sir, the principles of that report, and the application therein made of those principles, lead to a conclusion from which, if I mistake not, every gentleman upon this floor will revolt. Sure I am, every State in the Union will reject it with horror. What, sir! has the great, the all-important right of peace and war been yielded up by the States to the General Government, and yet the States bound to compensate for war services? It is no reply to this conclusion to be told that the States are only liable in the first instance; for it is then completely within the power of the General Government, by *withholding*, to make them bear the burden altogether. And to that may be added, that the expenditure might frequently be of such magnitude as to create extreme oppression in the imposition of taxes, and, in some States, might produce general ruin and bankruptcy.

Mr. J. C. SMITH observed that the Committee of Claims, in submitting to the House the reports then before them, had not been influenced by the magnitude of the sum claimed for services. The simple question considered by them, was whether compensation had, or had not been rendered for those services. The decision of this question depended on another question, whether from the nature of our Government, the State of Georgia was to be considered as, in the first instance, liable for the satisfaction of these claims. If this should be admitted, he thought the proper construction to be placed on the articles of cession was extremely plain. There are two ways in which the militia of a State may be called out by the Executive of the United States. The first is by a direct detachment of any portion of the militia. It was not necessary, in any instance, for the Government of the United States to call on the Executive of a State for this purpose. It was in their power directly to call into the public service a brigade or other division. This is one course, which may be pursued, and in this case it is admitted that the soldiers are soldiers of the United States, and that for their compensation they are to look to no other Government than that of the United States, in the first instance. The other course is that where a requisition is made by the General Government on the Executive of a State. What is the state of things

in this case? It must be presumed that the citizens of a State, thus called into service, are to look to their own State for compensation in the first instance, though he admitted that the General Government was in the last resort responsible. They are to look, in the first instance, to the State Government, for this obvious reason: The Governor of a State is not amenable to the General Government; and he consequently cannot be punished for exceeding their orders. Is that Government then bound at all events to pay the expenses incurred in consequence of the orders of the State Executive, when they may be in direct violation of the orders of the General Government? It is a clear position then, that when the militia are called out by the Executive of a State they are to look to the State in the first instance. Application may be made to the General Government in the first instance, and if there shall have been no disobedience to its orders it may make payment; but, put the case of the orders of the General Government being disobeyed, will it be contended that it will be obliged to remunerate services rendered in opposition to its commands?

Contemplating the subject in this view, it must be admitted that the militia are in the first instance to look to the State Government, which may make a compromise with the General Government.

The second question is, what is the nature of the compromise made in this case? The articles of cession purport to be [Mr. SMITH here quoted the beginning of these articles.]

It may here be proper to premise that Georgia is the first State in the Union that has ever received a compensation for her territory transferred to the United States. That territory was acquired by the joint exertions and blood of the citizens of all the States. Under such circumstances it becomes necessary to inquire into the compensation stipulated to be given by the United States to the State of Georgia; a compensation not given for the land, but for expenses incurred by Georgia in relation to it. The Attorney General tells us that these expenses were incurred for the portion surrendered to the United States, as well as for the whole State.

It behooves the gentleman from Georgia to show the precise expenses incurred. Were this once proved it would remove all doubt. The Commissioners who formed the articles of cession, it may be presumed, had before them the whole materials; and it must be inferred that the claims now

made were fully considered by them, and were, so far as they are just, included in the settlement. Mr. S. concluded his remarks by saying he felt no uncommon tenacity or zeal against the claims; but that he would be very willing to allow them in case it should be satisfactorily shown that they were not already compensated.

Mr. MERIWETHER and Mr. HOLLAND opposed the report, when a vote was passed against the claims—yeas 73, nays 28; when the House, on the motion of Mr. J. CLAY, postponed the further consideration of the subject till Monday next.

MONDAY, February 13.

Public Roads.

On motion of Mr. JACKSON, the House took up the bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio river.

Mr. J. CLAY moved to postpone the bill to the 1st Monday of December. Lost—yeas 41, nays 40.

Mr. R. GRISWOLD moved so to amend the first section, as to vest the President with a general power to appoint three Commissioners to designate a route, to be reported to Congress for their ultimate decision; which motion, after a short conversation, was agreed to by a considerable majority.

Mr. LYON offered a motion for empowering the President to designate the routes. Lost, without a division.

The committee rose and reported the bill with several amendments, in which the House concurred, and ordered the bill to a third reading on Wednesday.

TUESDAY, February 14.

Importation of Slaves.

The following motion, offered by Mr. BARD, was taken into consideration in Committee of the Whole:

“Resolved, That a tax of ten dollars be imposed on every slave imported into any part of the United States.”

On motion of Mr. JACKSON, it was agreed to add after the words United States, “or their territories.”

Mr. LOWNDES.—I will trespass but a very short time upon the attention of the House at this stage of the business, but as I have objections to the resolution, it may be proper that I should state them now. I will do so briefly, reserving to myself the privilege of giving my opinion more at length when the bill is before the House, should the resolution be adopted, and a bill brought in. I am sorry, Mr. Speaker, to find that the conduct of the Legislature of the State of South Carolina, in repealing its law prohibitory of the importation of negroes, has excited so much dissatisfaction and resentment as I find it has done with the far greater part of this House. If gentlemen will take a dispassionate review of the circumstances under which this repeal was made, I think this dissatisfaction and resentment will be removed, and I should indulge the hope that this contemplated tax will not be imposed. Antecedent to the adoption of the constitution under which we now act, the Legislature of South Carolina passed an act prohibiting the importation of negroes from Africa, sanctioned by severe penalties. I speak from recollection, but I believe not less than the forfeiture of the negro and a hundred pounds sterling for each brought into the State; and this act has been continued in force until it was repealed by the Legislature at its last session. This long interdiction, I think, manifests, on the part of the government of the State, a disinclination to the trade, and, had we received the aid from Congress which was necessary to enforce the act, the repeal which is now complained of would never, in my opinion, have taken place. But, Mr. Speaker, the State was unable to enforce its laws. It had given up to the Government of the United States all revenues derived from foreign imposts, and was, therefore, necessarily divested of the means of preventing the introduction into the country from sea of whatever the excitements to gain might allure it into. The geographical situation of our country is not unknown. With navigable rivers running into the heart of it, it was

impossible, with our means, to prevent our Eastern brethren, who, in some parts of the Union, in defiance of the authority of the General Government, have been engaged in this trade, from introducing them into the country. The law was completely evaded, and for the last year or two, Africans were introduced into the country in numbers little short, I believe, of what they would have been had the trade been a legal one. Under these circumstances, sir, it appears to me to have been the duty of the Legislature to repeal the law, and remove from the eyes of the people the spectacle of its authority being daily violated.

I beg, sir, that from what I have said, it may not be inferred that I am friendly to a continuation of the slave trade. So far from it that, without advertng to considerations by which I know other gentlemen are influenced, I think the period has passed when the interests of the country required, and her policy dictated, that an end should be put to it. I wish the time had arrived when Congress could legislate conclusively upon the subject. I should then have the satisfaction of uniting with the gentleman from Pennsylvania, who moved the resolution. Whenever it does arrive, should I then have a seat in this House, I will assure him I will cordially support him in obtaining his object. But, Mr. Speaker, I cannot vote for this resolution, because I am sure it is not calculated to promote the object which it has in view. I am convinced that the tax of ten dollars will not prevent the introduction into the country of a single slave. Gentlemen must be sensible of the truth of this observation, when they are informed, and the fact is too notorious even to be doubted, that, notwithstanding the expense and risk which attend an illicit trade, they have been introduced in very great numbers. Was I friendly to the trade, I should, without any hesitation, embrace the proposition contained in the resolution, and I should consider it a point gained of no small importance, that the Legislature of the General Government had given a sanction to it—for I can regard the Government deriving a revenue from it in no other light than a sanction. The gentleman from Pennsylvania, and those who think with him, ought, above all others, to deprecate the passing of this resolution. It appears to me to be directly calculated to defeat their own object—to give to what they wish to discountenance a legislative sanction; and, further, an interest to the Government in permitting this trade after the period when it might constitutionally terminate it. When I say that I am myself unfriendly to it, I do not wish, Mr. Speaker, to be misunderstood; I do not mean to convey the

idea that the people of the Southern States are universally opposed to it—I know the fact to be otherwise. Many of the people in the Southern States feel an interest in it, and will yield it with reluctance. Their interest will be strengthened by the immense accession of territory to the United States by the cession of Louisiana. Gentlemen cannot foresee what the situation of the country will be when the period arrives when Congress may constitutionally interdict the trade. The finances of the country, and the exigences of the times, may be such as to prevent the Government from dispensing with any part of its revenue. The tax, if imposed, will undoubtedly produce a revenue, and in proportion to the amount of this revenue will be the interest of the Government in the trade. But, Mr. Speaker, my greatest objection to this tax is, that it will fall exclusively upon the agriculture of the State of which I am one of the representatives. However odious it may be to some gentlemen, and however desirous they may be of discountenancing it, I think it must be evident that this tax will not effect their object; that it will not be a discouragement to the trade, nor will the introduction of a single African into the country be prevented. The only result will be, that it will produce a revenue to the Government. I trust that no gentleman is desirous of establishing this tax with a view to revenue. The State of South Carolina contributes as largely to the revenue of the United States, for its population and wealth, as any State in the Union. To impose a tax falling exclusively on her agriculture would be the height of injustice, and I hope that the Representatives of the landed interest of the nation will resist every measure, however general in its appearance, a tendency of which is to lay a partial and unequal tax on agriculture.

Mr. BEDINGER observed, that the gentleman from South Carolina had so fully expressed the opinions he entertained, that he should say but little. Every body who knew his opinions on slavery might think strange of the vote he should give against the resolution. There was not a member on the floor more inimical to slavery than he was, still he was of opinion that the effect of the present resolution, if adopted, would be injurious. He should, therefore, vote against it.

Mr. BARD.—It was my wish that the question before the committee might be taken without discussion, but, as the gentleman from South Carolina has preferred a different course, I beg permission to offer a few thoughts on the subject.

As to the constitutionality of the measure, I believe there can be but one opinion. It is pretty well understood that the union of the States was a matter of compromise; and, indeed, the language of the constitution suggests the idea that the convention which formed that instrument, must have had the emancipation of slaves under their consideration. They had achieved liberty, and their object was to transmit it to posterity; and we cannot permit ourselves to suppose that men whose minds were so enriched with liberal sentiments, and who had so often reiterated the sacred truth, "That all men were born equally free"—I say we cannot suppose that they would consider slavery to be a subject unworthy their discussion; and it appears to be equally suggested that the convention were not all agreed to an absolute prohibition of the slave trade, but yielded so far that a duty or tax might be imposed on the future importation of that description of people. The question, then, is only on the policy of laying this tax; and it appears that there can be no doubt on this question.

The slave trade, in terms, makes African men mere articles of traffic, and of course they must be as much a subject of commercial regulation as any other species of foreign manufactures. The tax will be high or low, in proportion to the price the article will bring. And if my information is correct, a slave will bring four hundred dollars; the tax, then, is but two and-a-half per cent., which is many degrees lower than any other imported article pays. The tax is a general one; no State in the Union is exempted; it will operate wherever its object can be found. It may be that some States will pay more and some less, but it will be at the option of any State how much, or whether it will pay any of this tax; for it will be just as the State shall please to deal in this article of commerce. And, on the score of uniformity, no objection can lie against the tax—the slaves have already been the object of direct taxation, and Vermont paid none of that tax, because she had none of that kind of taxable property; and yet I never heard it complained of as not being uniform. It is said the tax is impolitic, because it will not prevent the importation of Africans into our country. This may, indeed, be the case; and I believe it will be but a feeble check to the trade if not aided by nobler motives. However, if any of the States engage in the trade, the tax will have two effects—it will add something to the revenue, and it will show to the world that the General Government are opposed to slavery, and willing to improve their power, as far as it will go, for preventing it. Both these ends are valuable; but I deem the latter to be the

more important one, for we owe it indispensably to ourselves and to the world, whose eyes are on our Government, to maintain its republican character. Every thing compared to a good name is “trash;” and it rests with us whether we will preserve or destroy it. If our Government will respect power only, and justify whatever it may be able to do, then will our hands be against every man, and every man’s hand against us; and Americans will become the scorn of mankind.

On what principles, whether moral or political, I do not know; but so it was, that about the close of the Revolutionary war, the Quaker society in South Carolina brought the slave trade, or perhaps slavery itself, under their serious consideration, and declared it to be unjustifiable. They afterwards, in 1796 or 1797, addressed Congress on the subject; but failed in their object, and for no other reason, probably, than that the powers of Congress did not reach it.

Some years ago the States, even those in which slaves abound most, loudly exclaimed against the further importation of that class of people, and by their laws prohibited their traffic. Either they did this on moral principles or considerations of policy. In 1802, Congress stretched out her arm to aid the State Governments against the evil they so much deprecated, and passed a law inflicting fines and forfeitures on every man who should be found importing slaves into the United States. What might have been the issue of these combined exertions, or how far they might ultimately secure their end, I cannot tell; but, as to South Carolina, they have become nugatory; by repealing her prohibitory law she has rejected the interference of Congress. Why that State has done so; why she has abandoned a measure which, the other day, was considered so much her interest, I know not, nor is it for me to offer any conjectures. South Carolina is a sovereign State, and has a right to consult and pursue her own interest, so far as the general good will permit; for hitherto she may come, and no further. Every State has a right to import slaves if it so chooses, and Congress has a right to tax all the slaves imported; but when the powers of a State, though constitutional, operate against the general interest, then the exercise of those powers is politically wrong, because it is contrary to the fundamental principle of society, the public good, which is paramount to law and the constitution itself. And, in my opinion, the importation of slaves is hostile to the United States: to import slaves is to import enemies into our country; it is to import men who

must be our natural enemies, if such there can be. Their circumstances, their barbarism, their reflections, their hopes and fears, render them an enemy of the worst description.

Gentlemen tell us, though I can hardly think them serious, that the people of this description can never systematize a rebellion. I will not mention facts, it is sufficient to say that experience speaks a different language—the rigor of the laws, and the impatience of the slaves, will mutually increase each other, until the artifices of the one are exhausted, and until, on the other hand, human nature sinks under its wrongs, or obtains the restoration of its rights. The negroes are in every family; they are waiting on every table; they are present on numerous occasions when the conversation turns on political subjects, and cannot fail to catch ideas that will excite discontentment with their condition. And what is to be expected from the people of this description, but that they will some day, and especially if their importation continues, produce a disturbance that may not be easily quieted, or kindle a flame that may not be readily extinguished. If ten thousand of them have been, as it is said, smuggled into the United States, in the course of a year or two past, and if ten or fifteen thousand of them may now be legally brought annually into our country, for four years to come, it will hardly be imagined that the general interest will be unaffected by such an importation.

If they are ignorant, they are, however, susceptible of instruction, and capable of becoming proficient in the art of war. To be convinced of this we have only to look at St. Domingo.

There the negroes felt their wrongs, and have avenged them; they learned the rights of man, and asserted them; they have wrested the power from their oppressors, and have become masters of the island. If they are unarmed, they may be armed; European powers have armed the Indians against us, and why may they not arm the negroes? And if they are already as numerous as is consistent with safety, it must be extreme impolicy to import more; it is to accelerate an event which we cannot contemplate without pain.

Slavery is not only impolitic as it affects the strength and tranquillity of the United States, but as it prevents their wealth, which can only grow out of society where the arts, sciences, and manufactures, are cultivated and

improved. But, sir, I despise to argue on the advantages or disadvantages of what is contrary to the genius of our Government; what is radically unjust, and violates the principles of morality.

The Americans boast of being the most enlightened people in the world—they certainly enjoy the greatest share of liberty, and understand the principles of rational government more generally than any other nation on earth. They have denounced tyranny and oppression; they have declared their country to be an asylum for the oppressed of all nations. But will foreigners concede this high character to us, when they examine our census and find that we hold a million of men in the most degraded slavery? This is nearly one-fifth of our whole population; in some of the States nearly the half. Here, then, is a fact that must have weight to sink our national character, in spite of volumes to support it. It is a fact, from which foreigners will infer, that we possess the principles of tyranny, but want the power to carry them into operation, except against the untutored and defenceless African. If, then, we hold a consistency of national character in any estimation, we will give every discouragement in our power to the importation of slaves. It is in this view that the tax contemplated by the resolution is principally to be considered, and only incidentally as matter of revenue.

But, sir, I presume, on permission, to say, that the importation of slaves is in direct contradiction to the principles of morality. On these principles the Constitution of the United States is founded; on them every law ought to be founded; otherwise legislation will progress in the dark, and every step deviate still more from its true direction. “Do unto others as you would that others should do unto you,” is a law paramount to all human institutions; it is the fundamental law of human nature, of Christianity, and of every rational Government; it is a law which we wish all men to respect in their dealings with us; and it is a law which every man confesses he ought to observe, and, in spite of all the sophistry of depravity, must acknowledge himself subject to its cognizance. I need not, nor will I, ask if we have observed this law as to the Africans; for it must be obvious to every man that it is not possible to violate it in a greater degree than we have done towards that unfortunate and wretched people.

But, notwithstanding all the information our country enjoys, numbers in the Eastern States have been embarked, for some years past, in the cruel

traffic of slaves, and smuggling them into other States. And it is to be feared that many of them are, at this moment, preparing means to stimulate the barbarous tribes of Africa to war against each other; mutually to torture every human feeling; to violate the strongest ties of nature and affection; to tear the husband from the wife, and the wife from the husband; the parent from the child, and the child from the parent; and are coolly and deliberately forging irons, that they may have the infernal pleasure of coolly and deliberately riveting them on the unfortunate men, women, and children, who may fall into their hands. Such an enterprise, such a traffic as this, must affect our national character; it is self-evidently wrong, and, at first view, must receive the disapprobation of every disinterested man. The genius of our constitution, the mildness of its administration, and the prevailing sentiment of the nation, must sanction every measure to discourage the further admission of a people whose numbers already excite most painful sensations. In a word, the tax is constitutional; no article can bear a tax better than the one here proposed; it is a uniform tax, and justified on the ground of sound policy; and so far as it tends to discourage the slave-trade, it is supported by every principle of virtue. If I have uttered a word offensive to any member of the House, it will not be attributable to design, but to an honest solicitude to promote the honor and interest of our country.

Mr. BEDINGER said he differed widely, as to the effects of this motion, from the gentleman who had just spoken. He was as hostile to the slave-trade as any man in the Union; and if he could believe that the imposition of a tax of ten dollars upon every imported negro would check the importation, he would vote for it. But he believed the resolution would have a different effect, and would rather sanction than discourage the trade. In point of revenue, the tax was of little consideration. Suppose a thousand slaves to be imported monthly, the amount of the tax would be about \$100,000 a year; which in four years, at the expiration of which Congress would have power to prohibit the trade altogether, would amount to \$400,000—a sum too trifling to be put into competition with the adoption of any measure that went to sanction such a trade.

Mr. MACON (the Speaker) believed the resolution was not founded in good policy. All the declamation and appeal to the passions urged in its behalf appeared to him unnecessary and irrelevant. The avowed object of

the proposed tax was to show the hostility of Congress to the principle of importing slaves. How could this opposition of Congress be manifested, when it would become the duty of the armed ships of the United States, as soon as the tax was imposed, to protect this trade, as well as all other trade on which taxes were laid? He asked whether vessels engaged in this trade would not, under such circumstances, possess the same right to the protection of the Government as any other vessels engaged in any other kind of trade? Can this House tax this trade, and refuse it the same protection that is extended to all other trade? The question is not whether we shall prohibit the slave trade, but simply whether we shall tax it. Gentlemen are of opinion that the State of South Carolina has done wrong in permitting the importation of slaves. Suppose that this is the case. May not this measure be wrong also? Will it not look like an attempt in the General Government to correct a State for the undisputed exercise of its constitutional powers? It appeared to him to be something like putting a State to the ban of the empire. It will operate as a censure thrown on the State. To this, said Mr. M., I can never consent. As far as the law that may be founded upon this resolution can go, it will hold forth an evidence of the opinion entertained by Congress of the act of the Legislature of South Carolina. I know that these ideas may be unpopular in some parts of the Union, but I, notwithstanding, consider them just. There does not appear to me to be any necessity for our interposition, as, since the adoption of the constitution, no slaves have, I believe, been permitted to be imported, and as only four years are yet to run before Congress will be possessed of the constitutional right of prohibiting such importation altogether. And the simple question now is, whether for a trifling revenue, we will undertake to protect this trade. My idea is, that those who at present go into the traffic, have no right to claim your protection; but once legalize it by taxing it, and they will acquire the right thereto, and will demand it. All that has been said on the circumstances connected with the slave trade either here or in England, and on its morality or immorality, are in my opinion foreign to the true point involved in this debate, which is, Is the measure contemplated by the resolution politic, or is it not? In my opinion it is impolitic, for the reasons I have assigned, and for many others which might be added. I shall therefore, on this ground, vote against it.

Mr. FINDLAY was of opinion that the policy of the measure embraced by the resolution, and nothing else, was before them. Gentlemen seemed all to

unite in their abhorrence of the slave trade; they differed only about the means of preventing it. It was well understood that a large majority of the Federal Convention were inimical to the slave trade. That convention had only acted upon it in a commercial point of view. As they considered imported slaves an article of commerce, the House possessed the same liberty of acting with regard to them, as with regard to other articles of trade. In some of these articles, Congress had the right of exercising unlimited taxation; in this case, their power was limited to a certain amount. Imported goods, on an average, were subjected to a duty of about 20 per cent. On this subject, a difference of opinion exists as to the propriety of making imported slaves an article of revenue. This is the true question, and not whether we shall cast a censure upon any particular State. It does not follow, that, because we lay a particular tax, we censure those who pay it. Considering this, then, as an article of trade, the tax might have been long since laid, had not all the States prohibited the traffic. Under those circumstances, it could not be taken up as a subject of revenue.

Mr. F. observed, that, though it might be unbecoming in the House to be influenced by resentment against the State of South Carolina, yet it was proper that they should be influenced by the policy of the case. As a profitable article of commerce, it appeared as eligible a subject of taxation as could be found, and as justly liable to taxation as any other. As to the disgrace, which some gentlemen were of opinion would arise from taxing it, that arose from the existence of the slave trade. In laying the tax, we shall do all we can to discourage it; and if we do not like to use the money derived from taxing it in the common way, we may apply it to special objects—to ameliorate the state of slavery, or to any other object.

Mr. F. concluded his remarks by observing, that this question being brought forward, he could not justify himself in neglecting to embrace the opportunity it presented of discountenancing the importation of slaves. He considered it proper that Congress should take up the subject as the constitution presented it to them. At a certain period they would possess the right of prohibiting it altogether, and until then they enjoyed the power of taxation. This being the only constitutional power they did possess, he trusted they would exert it.

Mr. S. L. MITCHILL declared his wish that the proposition of the gentleman from Pennsylvania (Mr. BARD) should be considered merely as a

subject of political economy. In the remarks which he proposed to offer upon it, he should, therefore, confine himself to that object. He would, therefore, say nothing on the immorality of a trade which deprived a large portion of the human species of their rights. He should pass over, in silence, every thing that might be urged to exhibit it as impious and irreligious; and he would not utter a word on its repugnance to the principles of our equal jurisprudence, and the spirit of our free Government. The slavery of a portion of our species was a copious theme, when viewed in either of these aspects; but, on the present occasion, he was willing to waive them all. The proposition was to be considered only in its commercial, economical, and fiscal relations; and on each of these it would be proper to make a few observations.

It was much to be regretted that the severe and pointed statute against the slave trade had been so little regarded. In defiance of its forbiddance and its penalties, it was well known that citizens and vessels of the United States were still engaged in that traffic. During the present session, memorials had been presented to Congress praying for exoneration from the exportation bonds, which had been given to one of the collectors of the customs, to ensure the landing of a cargo of New England rum in Africa, which it was not pretended to be denied was bartered away for slaves. These voyages were said to be carried on under the flag of a foreign nation; and the common practice, as was alleged, was, to go to the island of St. Croix and procure Danish papers and colors. Under this cover, the voyages were performed. To prevent the confiscation of the vessels under the law, on conviction of being engaged in the slave trade, it had been customary to sell that article of property in a foreign port.

Mr. M. observed that the extent of this shocking commerce was very considerable at this time. Some time ago, he had seen a list of the American vessels then known to be hovering on the coast of Guinea in quest of captive negroes. They were numerous and active, and so fatally busy as to excite the apprehensions of the benevolent Sierra Leone Company. In various parts of the nation, outfits were made for slave-voyages, without secrecy, shame, or apprehension. The construction of the ships, the shackles for confining the wretched passengers, and all the dismal apparatus of cruelty, were attended to with the systematic coolness of an ordinary adventure. Regardless of legal prohibitions, these merciless men, as greedy

as the sharks of the element on which they sailed, collected their slaves along the shores, and at the factories of Negroland, from the river Senegal to the countries of Congo and Angola. Countenanced by their fellow-citizens at home, who were as ready to buy as they themselves were to collect and to bring to market, they approached our Southern harbors and inlets, and clandestinely disembarked the sooty offspring of the Eastern, upon the ill-fated soil of the Western hemisphere. In this way, it had been computed that, during the last twelve months, twenty thousand enslaved negroes had been transported from Guinea, and, by smuggling, added to the plantation stock of Georgia and South Carolina.

So little respect seems to have been paid to the existing prohibitory statute, that it may almost be considered as disregarded by common consent. And, therefore, as was observed by a gentleman from South Carolina, (Mr. HUGER,) the Legislature of that State had lately repealed their restrictive law, and legitimated a trade which neither that regulation of their common wealth, nor the concurrent authority of the nation, could prevent. And it may be received as a correct general idea on this subject, that the citizens of the navigating States bring negroes from Africa, and sell them to the inhabitants of those States which are more distinguished for their plantations.

Thus in spite of the spirit of our republican institutions, and the letter of our laws, a commerce in slaves is carried on to an alarming extent—a species of slavery peculiar in its form and character, and unlike that which was practised in ancient or modern Europe—a kind of servitude unheard of by the civilized world, until it was made known among the discoveries of the Portuguese along the western coast of that continent which reaches from Ceuta to the Cape of Good Hope. There it seems to have been extant from time immemorial, among the barbarous powers of a country who have eradicated all the tender relations of society, and established in their place the forceful and ferocious distinctions of MASTER and SLAVE. From those rude and uncivilized tribes, did Christian people learn the lessons of negro slavery. Under such instructors, and with such examples before them, have the Europeans and their descendants carried those savage customs of Africans into the New World, and most unfortunately tainted with them the manners and ordinances of a more refined race of men. For a delineation of this peculiar state of society, in its native regions, the world is much

indebted to the undaunted enterprise of Mr. Parke; as, for its baneful effects upon the white nations who have adopted it, they will long remember the disclosures of Mr. Wilberforce, and the researches of Mr. Clarkson.

This doleful traffic it was not in the power of Congress to prevent by any present regulations. By the 9th section of the first article of the constitution the power of admitting such persons as they please is reserved to the States, until the year 1808. South Carolina has authorized the importation of negro slaves from Africa. This Congress can neither prohibit nor punish. But the National Legislature can exercise the authority granted by the same paragraph of the constitution, “of imposing on such importation a tax or duty not exceeding ten dollars for each person.”

There could be no doubt of the power of Congress to declare and levy such an impost on imported slaves for four years to come. The only question therefore was, whether it would be good policy to do so? Mr. MITCHILL contended that it would. On this point he replied to a gentleman from South Carolina, (Mr. LOWNDES,) who had argued that such a tax would discourage agriculture. He contrasted the cultivation of lands by the labor of freemen, with the more expensive management of them by slaves. He compared the husbandry of the Northern and Middle States, with the rural economy of the South. He examined in detail the moderate profits of a plantation on which bread, corn, grass, and live stock, were raised, and the enormous income derived to the proprietor of an estate employed in the culture of tobacco, rice, cotton, and sugar. He examined the smaller expense of feeding, clothing, and housing laborers in warm than in cold climates. It has been computed by men of observation, that a working slave on a cotton plantation would, besides supporting himself, clear for his master a net sum of two hundred dollars a year. On the average course of crops, where the plants were not attacked by the cherille, this estimate was considerably below the mark. And on this conviction he believed there was no important article whatever that would bear an impost so well.

Mr. M. then replied to an argument of the gentleman from North Carolina, (Mr. MACON,) that the imposition of the tax would be a recognition of the right to trade in slaves, and bind the nation to protect it with the force of the navy. He considered slavery already recognized in many of the States, and permitted by the constitution. It was a fact that it did exist, and Congress could not put an end to it. But this body might

interpose its authority, and discountenance it as far as possible; and by laying the duty as high as the constitution permitted, a very desirable addition would be made to the revenue. Two hundred thousand dollars might be computed to be derived from this sort of merchandise imported into the country. Nor would Congress be bound to protect the African commerce on the high seas; the existing statute would be in force against it; the trade would still be unlawful as far as the power of Congress extended. And under the proposition now under debate, this species of traffic would be so far from receiving encouragement, that it would be punished in cases where Congress could punish it, and taxed in the cases to which the power to punish it did not extend.

He then delineated the wretched condition of a man subdued by fraud or force, deprived of the exercise of his will and judgment, subjected to the dominion and caprice of another, robbed of his rights and privileges, divested of moral power and agency, degraded from the rank of a human being, and brutalized into a *chattel*—a *thing*—and divested of the character of a *person*. In this point of view, such articles, bought and sold publicly in the market, were to be considered as mere merchandise, as working machines, or animals of labor? Distressing as the recollection was to every sympathizing or patriotic heart, it was useless to dwell upon it, as it was beyond our reach to grant relief. He would therefore treat it strictly as a case of foreign merchandise heretofore admitted free, but upon which it was now intended to impose a duty. For his own part, he should be glad if it could be laid, *ad valorem*, upon the price of the article. But, as the matter was circumstanced, there was no other method that could be adopted than to impose it, *per capita*, upon the individual persons imported. By laying the tax, he would imitate the ways of Divine Providence, and endeavor to extract good out of evil.

Concluding thus that the tax was constitutional, that the subject would bear it, and that it would be a seasonable and proper expression of the Congressional sentiment on the subject. Mr. M. proceeded to show what an abundance of excellent purposes could be answered by \$200,000 collected annually for four years.

In the course of his remarks, Mr. M. said, he had endeavored to avoid all harshness of expression on a topic of a peculiarly delicate nature, and prone to excite much sensibility in debate, but considered it strictly as a matter of

political economy. In his attempt to state his reasoning to the committee, not as an abstract speculator, but as a man of business, he hoped he had given no offence to any gentleman by any severity of animadversion. He looked upon negro slavery as a dark spot on some of the members of the national body, which was spreading wider, turning blacker, and threatening a gangrene all around—and he felt a confidence that all friends to the health of this body would take warning by its fatal progress in a neighboring island—which had so mortified in St. Domingo, as to make that extreme part rot and drop off from the system to which it once belonged.

Mr. SLOAN said he rose to observe, in a few words, that however afflicting it might be to contemplate a certain part of the creation used as articles of traffic, imported and exported the same as cattle, he did not consider the morality or immorality of the practice before the House. We must take the constitution as we find it, and as it is not in our power to prohibit the importation, the only question to be considered is, whether we shall most encourage the traffic, by letting the articles imported remain free of duty or by imposing a tax upon them. This view, he believed, presented to the mind the true question, and believing himself that a tax would, in some degree, discourage the importation, he should vote for the resolution.

Mr. T. MOORE.—I am astonished to hear gentlemen, who advocate the resolution now under consideration, reprobate a traffic as horrid and infamous, and yet wish to draw a revenue from infamy, if it is an infamy.

I differ very widely in opinion from the honorable gentleman from Pennsylvania, who thinks that a tax of ten dollars per head will operate as a check to the growth of this horrid traffic. If I thought it would have that effect I would cheerfully vote for the resolution. I believe a tax of ten dollars will not prevent the importation of a single person of this description.

The gentleman told us that he hoped the General Government were disposed to discourage this traffic as far as they are authorized by the constitution. I hope this House will discourage this impolitic act of the Legislature of one of the Southern States—not by imposing a tax on those unfortunate people imported into the United States, but by passing a resolution expressive of its disapprobation of all acts permitting the importation of certain people into the United States. As the General

Government cannot prohibit this traffic before the year 1808, I hope this House will reject the resolution under consideration, and totally disapprove every measure which attempts to draw revenue from an act that rivets the chains of slavery on any of the human race.

Mr. HUGER regretted that he could not see the subject in the same light with other gentlemen who had taken a part in the debate. He had no hesitation in saying that he had always been hostile to the importation of slaves. Nor had he any hesitation in saying that if he had the power he would prohibit the importation. But the situation in which they were now placed was very different from that in which they would find themselves in the year 1808, when they would possess the constitutional power to prohibit the introduction of slaves. The constitution was known to be the offspring of concession and compromise, and in no part of it was this feature more apparent than in that which related to this subject. When the Southern States were admitted into the Union, they were in the habit of carrying on this species of trade, and they, by the express language of the constitution, retained the right of continuing it until the year 1808. Under this constitution the State of South Carolina enjoyed the exclusive right of judging of the propriety of allowing the trade or of prohibiting it. Had he had the honor of a seat in the Legislature of that State, Mr. H. certainly would have opposed the passage of this law. But he was only one of that community, standing here as their Representative, and after the State had exercised their undoubted right, however he might dislike the measure, it was his duty to defend the right which they had to adopt it. That State had in truth done no more than she possessed a constitutional right to do, and he believed there was in that State as much true compassion as in any other in the Union. He said he could not therefore but feel sensibly the attempt to single out this particular State to censure her for doing that which she had an undisputed right to do.

This was not, as contended by some gentlemen, a mere question of revenue; but it was a question whether the Government of the Union should come forward and condemn the act of a State, which she was fully authorized to pass. If it is necessary to increase the revenue, let us meet that subject fairly and fully, and not single out a particular resource of a particular State. It is on this ground that I principally object to this measure. The gentleman from New York (Mr. MITCHILL) has endeavored to prove

that because in the Southern States the article of slaves produces a great profit, it is therefore proper to make it the subject of taxation. I ask if there should be a profitable species of trade carried on in any other part of the Union, would it be deemed politic or just on that account to lay an additional tax upon it? The fair principle of taxation is, that every part of the Union should contribute equally. When any branch of trade is profitable in New York, I, though a Southern man, rejoice at it. When the fisheries of the Eastern States prosper, I feel highly gratified—not because those whom I represent are particularly interested in them, but because I consider myself as a part of the whole, and that whatever advances the interests of any part of this Union must promote the interests of every part of it.

With regard to the moral principle involved in the slave trade, we have nothing to do with it. On this point the Union ought to be silent. On this subject can any thing be more pointed than the provisions of the constitution, which, contrary to most of the other provisions, cannot be altered but with the consent of every State in the Union. Why then shall we cry over what we cannot prevent, like a school boy? Each State, so long as she confines herself within the limits of her constitutional powers, must be the exclusive judge of her own conduct; and it becomes not one State, influenced by different feelings, habits, and interests, to pronounce upon the conduct of another. All, so far as regards themselves, are judges of right and wrong. We, too, have as strong a conviction of the propriety of our measures as those who differ from us in sentiment on this subject. We may perhaps think it more blamable to make slaves of white people than of the blacks.

I confess I have not been able clearly to understand the ideas of the gentleman from New York (Mr. MITCHILL.) A few days since that gentleman offered a report, the object of which was to free raw materials from duty. Will the State of South Carolina profit by this? No. It will conduce to the benefit of other parts of the Union; but we shall bear the burden: and still, on this occasion, because we derive a certain profit from a particular description of trade, the gentleman contends for taxing it.

Let gentlemen also consider that we are not to be hurried away by our feelings or passions. We are sent here to attend to the business of the nation, and, to do that as it ought to be done, we must yield to a spirit of mutual deference and compromise, we must act fairly and impartially. All we ask in

the present case is, to do as we would be done by. We permit the Eastern States to import German redemptioners and others. Let them then permit us to enjoy our constitutional right of importing slaves, especially when that right will exist but for a short time.

We do not pretend to advocate the act, but the right of our State to pass this law. It is not to be inferred that we are friendly to the importation. I believe, on the contrary, every Representative of the State on this floor is hostile to it. But how can gentlemen expect that we will disregard the voice of our own State, and especially when the measure may have been dictated by good and substantial reasons. One good reason may be that the importation could not be prevented, and that the restraining law was extensively broken. This we know was the fact. If so, may it not have been sound policy in the State to repeal it? There may have been another reason for the measure. It may have been conceived to have been better to import slaves directly from Africa than to be indebted for them to New York and other States, in which they may have been surreptitiously introduced.

The gentleman from New York (Mr. MITCHILL) observes that it is demonstrable that, even in a pecuniary point of view, slaves are an evil; and that they impoverish those who hold them. What does this show, but that in the North they kept slaves as long as their interest dictated, and then got rid of them; and that because it is a misfortune to have them, we must be punished for our poverty. Though young, I am happy to state that I have seen the evil decreasing in the State I have the honor to represent. Let us alone, and we will pursue the best means the nature of the case admits of. Interfere and you will only increase the evil; for, whenever the Government of the Union interferes in the peculiar concerns of a State, it must excite jealousy and a spirit of resistance.

I beg gentlemen to lay aside, on this occasion, the prejudices to which local circumstances and peculiar State interests and feelings expose them. When I see the lowest of the animal tribe tortured, I feel for them; but does it follow that my interference will mitigate their pain? Do we not all know, that by interfering between a man and his wife, we only aggravate the difference; and do we not likewise know that any interference between a master and his slave induces the former to be more severe. I believe the State of South Carolina has as great an inclination as any State similarly circumstanced, to do away this evil. But they must, and ought to take their

own course. It is a circumstance well known, that the people to the North, who make the most noise on this subject, are those, who, when they go to the South, first hire, then buy, and last of all turn out the severest masters among us.

Mr. LUCAS observed that, though much had been said on the merits of the resolution, he would take the liberty of adding a few remarks. It was a maxim that, to justify the raising of a revenue, a Government ought previously to stand in need of money. The pecuniary wants of a Government were absolute and relative. The fit objects of taxation were likewise various. Some objects bore taxation better than others. When Governments want money to satisfy indispensable demands, taxes must be laid; and even when they are not in immediate want of money for pressing emergencies, there are frequently important purposes that might be answered in case they possessed resources. On this occasion it is said that the Government is not in want of money, that the existing revenue meets the wants of the nation, and that, consequently, a new tax ought not to be laid. This may possibly, strictly speaking, be correct. But to say absolutely that we do not want money, he must deny; for he believed if they had money in the Treasury, not required for pressing exigencies, they could find abundant occasions for spending it to good effect. It was known that there were many claims preferred against the Government, of a meritorious kind, and which had been disallowed, not so much on their intrinsic merits, as from the operation of the statute of limitations. This limitation, said Mr. L., it is my wish should be removed, and one way of effecting that end will be to increase our revenue, as we shall thereby be enabled to discharge all just demands exhibited. The laying out, likewise, of roads was an important object. One is contemplated from this place to New Orleans. Without going further into a view of the various demands on the Government, we shall see the occasion that exists for more money being drawn into our Treasury.

As to the nature of the slave trade, we must, in my opinion, consider slaves imported as so much produce or merchandise. This article ought, in my opinion, likewise to be taxed, because the trade is odious; also, because it affords a great profit to those who carry it on. It was yesterday stated by a gentlemen from New York that a slave employed in the Southern States would pay for himself in two years; that is, that a slave that costs four hundred dollars will give a profit to the owner of two hundred dollars a

year. As, therefore, no article imported into the United States gives a greater profit, so no article can better bear a tax. It ought also to be taxed, because the importation of slaves into the United States operates injuriously on the poor whites who draw their subsistence from labor. Their comparative situation in relation to the rich, is reduced; for if you increase the black laborers, so as to make them work for a lower compensation, you virtually reduce the value of the labor of the whites, and proportionally lessen the chance of a poor white man getting employment on favorable terms. It is well understood that competition always reduces the price of an article in the market; and although the blacks may not, in all respects, enter into a competition with the whites, yet, so far as respects labor, the competition will be complete. The rich part of the community will not employ a white man who feels the spirit of a freeman, and who will not submit to be subservient to the caprices of his employer, so long as they can employ a slave whom they can control as they please, and at a smaller expense. The indisputable effect, therefore, of the introduction of additional slaves will be the reduction of the value of labor, and the augmented severity of the lot of the poor white man, who is entirely dependent on his labor for the support of himself and family.

Gentlemen tell us we ought not so closely to scrutinize the conduct of the Legislature of South Carolina. I am, said Mr. L., far from scrutinizing in this instance the conduct of that State. I respect the people of South Carolina. Their situation may, perhaps, be such as in a great measure to justify their conduct, though I am far from saying that I approve it. But when we lay a tax on the importation of slaves, it is a sufficient reply to such remarks to say that the tax is not laid exclusively on slaves admitted into South Carolina. It does not therefore apply to South Carolina alone. That State has an undoubted right to admit the importation; but Congress have also an undoubted right of taxing them. The resolution, therefore, does not encroach on the rights of that State. The United States and South Carolina form two bodies politic, both of which are possessed of constitutional rights. To the one belongs the right of importing, to the other, the right of taxation; and this last right may be exercised without involving any censure of the State of South Carolina. The only necessary inquiry is, whether the proposed tax will be oppressive or unjust. I believe it will be universally agreed that an imported article worth four hundred dollars will not be taxed high compared with other articles, when it pays a duty of ten

dollars. As to the constitutionality of the tax not a word need be said; that has not and cannot be disputed.

WEDNESDAY, February 15.

Importation of Slaves.

The House again resolved itself into a Committee of the Whole, on Mr. BARD's resolution to impose a tax of ten dollars on every slave imported into the United States; the debate on which occupied the remainder of the sitting.

Mr. LUCAS supported, and Mr. HOLLAND opposed the resolution.

Mr. EARLE moved that the committee rise and report progress. His reason for this motion was, that, from information received from South Carolina, on which he placed much reliance, it was expected that the Legislature would meet in April, and would then repeal the act admitting the importation of slaves. Should the committee rise, he would move a postponement of the consideration of the resolution to the first Monday in May.

Mr. GREGG.—I hope the motion for the committee to rise will prevail; and that any further proceeding on this subject will be postponed for the present. It has been said by the gentleman from South Carolina who made the motion, and I have heard it mentioned by others, that a considerable ferment has been excited in that State by the passage of the law authorizing the importation of slaves, and that it is highly probable the Legislature, at its next session, will repeal that law. That session, it is expected, will be held in April, the Governor having it in contemplation to convene the Legislature at that time for the purpose of submitting to their consideration the proposed amendment to the constitution.

Let it not, Mr. Chairman, be inferred, from what I have said, that I am in principle opposed to the effect which I am confident the mover of the resolution expected it would produce. No member of this House is, or can be, more decidedly opposed to slavery than I am. In the State from which I come slavery is scarcely, if at all, known. I do not know whether, at this moment, it has any existence there. However the inhabitants of that State

may differ on other points, on the subject of slavery we are all united. All parties have joined in abolishing it. I sincerely wish that Congress possessed a constitutional power to abolish it, or at least to check its further progress in the United States. If they did possess such power, I would most cordially concur in putting it into operation. Instead of ten dollars, I wish the constitution would warrant us in imposing a tax of one hundred, or of five hundred dollars on each imported slave. I would willingly vote for that sum, because it would amount to an entire prohibition of such importation, and effectually destroy the traffic which I consider highly impolitic, as well as contrary to the principles of justice.

When the present constitution was adopted, there were no laws in several States to prohibit the importation of slaves. It is but a few years since such a law was passed by the State of Georgia. During all that period money was much wanted. The revenue was not adequate to the demand. Government was compelled to have recourse to loans, and in some instances had to submit to a heavy interest; yet in all that time the idea, I believe, was never suggested in Congress of supplying the deficiency by imposing a tax on slaves, although numbers were then imported. From this it may be inferred, that at that time the power vested in Congress by the constitution of imposing a tax of ten dollars on each person imported into any of the then existing States, agreeably to its laws, was not considered as given for the purpose of raising revenue. It was given, it may be presumed, for the purpose of being used as a check to the trade, and at the time the constitution was adopted, the exercise of that power might have contributed to produce such effect. The price of slaves was then low; their labor was not so productive to their owners, and, of course, ten dollars in addition to the then current price might, in some measure, have checked the spirit of purchasing. But soon after that period, by the introduction of the cultivation of cotton, the labor of slaves became more valuable, and their price enhanced in proportion. Ten dollars then bore some proportion to the price of a slave, but at this time it is comparatively as a cipher. A planter who can find his advantage in giving four hundred dollars, which is said to be the present current price of a good negro, will think but little of ten additional dollars. In the present state of things, therefore, I take it the proposed tax cannot effect the object contemplated by the mover of the resolution—it can neither prevent nor remedy the evil; and as it has the appearance of giving legal sanction to the trade, and may have an influence on the Legislature of

South Carolina, inasmuch as it is an implied attack on their sovereignty, and a censure on them for passing an act which, however important it may be in our view, the constitution certainly did authorize them to pass, I think the further consideration of the subject had better be postponed for the present; perhaps always, until Government may have it in its power to adopt measures calculated to produce an entire prohibition of the trade.

Mr. HUGER said the arguments urged by the friends of the motion were two-fold. One class of gentlemen say they are not in favor of this tax for purposes of revenue, but to manifest the opinion of the National Legislature; while another class declares their only reason for laying it is the revenue it will bring into the Treasury. A decision, therefore, by the House, will settle no principle; for supposing that a majority of the members shall be found in favor of the tax, one-half of them will vote for it on one principle and one-half on another. Under these circumstances, he appealed to gentlemen inclined to favor the resolution, whether it would not be the best policy to wait until the Legislature of South Carolina had an opportunity of repealing the obnoxious law. Is it a pleasant thing to any gentleman on this floor to throw a stigma upon a State? And will not gentlemen from the Middle and Eastern States recollect that the situation of South Carolina is very different from that of their States? Let them, then, do as much good as they can at home; but let them, in God's name, permit us to act for ourselves. It is a very easy thing to make some harsh remarks on the conduct of particular States, even of the State of Pennsylvania, much as that State is deservedly respected. Mr. H. said he did not believe that State stood one iota higher than other States in the Union. For he believed that peculiar interest operated there as well as in other States.

Mr. H. said, from what had been expressed to-day, he did not believe the people of South Carolina friendly to the act admitting the importation of slaves. Every Representative of that State on this floor wished, he believed, that it had never been passed. But as it had passed, they conceived it to be their duty to resist a measure which went to censure the State for the exercise of an undoubted right.

Mr. STANTON.—Mr. Speaker: I am highly gratified to find honorable members in every part of the House who reprobate the infamous traffic of buying and selling the human species. On this occasion but a few remarks are necessary, if morality, humanity, and justice, are conducive to the

happiness of society. It is not my duty nor intention to criminate the State of South Carolina, whose late conduct has created serious and well founded alarm. It is a duty I owe to my constituents and myself not to connive at a measure that, in my humble opinion, goes to shake the pillars of public security, and threatens corruption to the morals of our citizens, and tarnishes the American character. Sir, while I deprecate the repeal of the non-importation act of South Carolina, I console myself with the pleasing expectation that the State will retract the error they have recently and unguardedly fallen into, and I cannot doubt but the honorable members from that State, on this floor, will lend their aid to effect so desirable a measure—to enact again the prohibitory statute. We are told if the House adopt the resolution, it will irritate South Carolina, notwithstanding the opposers of the resolution confess the impolitic conduct of South Carolina. I wish not to offend any of our sister States, much less, that important State whose wisdom, virtue, and patriotism, have been conspicuous on every other occasion. The opposers of the resolution inform us its adoption will both encourage and sanction the importation, and that they have a constitutional right to import until 1808. I grant it, but I hope better things of that State; and things that accompany reformation. She has recently, with other States, emancipated herself from tyranny and oppression, and will she sully her fair fame by commencing tyrant herself? Sir, the speakers from the State of South Carolina, and particularly the honorable member who offered a resolution as a substitute for the one under consideration, delivered himself in sentiments of the most admirable humanity, and constitutional love and zeal for his country; and, if he were a member from any other State in the Union, I should have the honor, I make no doubt, of voting with him for the resolution on your table. Sir, I am sensible the General Government cannot prohibit the traffic previous to the year 1808. This is one of the most humiliating concessions made by that venerable convention which framed the constitution, and we are bound by it. I ask, is the policy of the measure embraced by the resolution sound? I believe it is. I consider slaves a luxury—they are considered by the constitution, three-fifths of them, to give a Representative, and I ask why not tax them? It is a sound maxim that representation and taxation should go hand in hand. To lay a tax being the only constitutional power the General Government possesses, I think it good policy to exercise it.

The State of Rhode Island, from whence I came, passed a law declaring negro children born posterior to 1784, as free as white children. Mr. Speaker, I mention this statute merely to obviate the erroneous impression, that otherwise might be made with a view to mislead the public mind, that the citizens of Rhode Island are disposed to favor the villanous traffic. I wish not to egotize, but I can assure the House this traffic has been abhorrent to me upwards of forty years, and if I should live to see 1808—that auspicious period in our national compact which shall be exonerated from the tragic feature that has cast a shade on that valuable instrument—if the important acquisition of Louisiana gave ample cause for festivity, still greater cause shall we have when the glorious period shall arrive of 1808. That shall be my jubilee.

After a few further remarks, by Mr. HUGER and Mr. LUCAS, the question was taken on the rising of the Committee, and passed in the negative—yeas 58, nays 60. When the resolution was agreed to.

The committee rose and reported their agreement to the resolution, which the House immediately took into consideration.

Mr. WYNN moved to postpone the further consideration of the resolution till the first Monday in January, and required the yeas and nays.

The question was then taken on the postponement, by yeas and nays, and passed in the negative—yeas 54, nays 62, as follows:

YEAS.—Willis Alston, jun., Nathaniel Alexander, George Michael Bedinger, Silas Betton, William Blackledge, Walter Bowie, John Boyle, William Butler, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, Roger Griswold, Samuel Hammond, Wade Hampton, Seth Hastings, Joseph Heister, James Holland, Benjamin Huger, Michael Leib, Thomas Lowndes, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, Joseph H. Nicholson, Thomas Plater, John Randolph, John Rhea of Tennessee, Thomas Sanford, Tompson J. Skinner, John Cotton Smith, James Stephenson, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Daniel C. Verplanck, Lemuel Williams, Richard Wynn, and Thomas Wynns.

NAYS.—Isaac Anderson, John Archer, Simeon Baldwin, David Bard, Adam Boyd, Robert Brown, Joseph Bryan, William Chamberlin, Clifton Claggett, Matthew Clay, Frederick Conrad, Ebenezer Elmer, John W. Eppes, William Findlay, James Gillespie, Peterson Goodwyn, Gaylord Griswold, John A. Hanna, William Helms, William Hoge, David Holmes, David Hough, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lewis, jr., Henry W. Livingston, John B. C. Lucas, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Gideon Olin, Beriah Palmer, Thomas M. Randolph, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Samuel Taggart, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Hornee, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Marmaduke Williams, and Joseph Winston.

And then the main question being taken that the House do agree to the said resolution, as amended to read as follows:

Resolved, That a tax of ten dollars be imposed on every slave imported into any part of the United States:

It was resolved in the affirmative—yeas 71.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Ways and Means do prepare and bring in the same.

FRIDAY, February 17.

Importation of Slaves.

The House resumed the consideration of the unfinished business of yesterday, viz: “What day should be made the order to the Committee of the Whole to consider the bill laying a tax of ten dollars upon every slave imported into the United States.”

Mr. LOWNDES moved that the further consideration of the bill should be postponed till the first Monday in December.

Mr. LOWNDES.—In moving a postponement of the bill to the first Monday in December next, my object is to get rid of it altogether. Gentlemen have supported the resolution upon which this bill is founded, upon such a variety of, and contradictory grounds, that their arguments are not very susceptible of a reply. I am, however, very glad that it has been conceded by every gentleman who has spoken upon the subject, that this tax, if laid, would not have the effect of diminishing the number of Africans imported into the country. When it was admitted that the object for which the resolution was avowedly brought forward, would not be obtained, I did hope that the resolution itself would not have been persevered in. The gentleman from Pennsylvania, (Mr. GREGG,) to whose arguments I generally listen with pleasure, has told us that he would not for the world give his vote for this tax, for the purpose of raising revenue; but that he would be obliged to vote for the resolution, to show his disapprobation of the trade. The gentleman did, however, manifest a disposition to get rid of the question, without taking a direct vote upon it. Another gentleman from Pennsylvania (Mr. SMILIE) has told us, that he too is averse to this tax with a

view to revenue, but that he must vote for it, for if he does not, it will be an admission, on his part, that Congress is favorable to the trade. What am I to infer from this observation? Am I to infer that Congress until this time has been favorable to the trade; and am I to infer that the gentleman himself, who has for so long a time been an active member of Congress, has also been favorable to it? This trade has from the adoption of the constitution until a few years ago, when it was first prohibited by Georgia, been carried on; and yet Congress have never exercised their power of imposing any tax, nor have I heard that the gentleman did ever bring forward a resolution for the purpose. There is another description of persons imported into the United States—I mean those bound to serve for a term of years. The comparison I admit is not analogous throughout, but it is to a certain extent. These persons are chiefly introduced into the States of Pennsylvania and New York; none, or at least very few of them, into New England. Were it proposed to embrace them by this tax, would the Representatives from those States be satisfied with the arguments that it was a tax upon merchandise, and a general one, and therefore fair? Their discernment would quickly point out to them, that whatever was the appearance, it was a tax principally falling upon those States, and they would resist.

Entertaining the opinions which I have expressed against the principle of the bill, and wishing to get rid of it in a manner most agreeable to those gentlemen who feel a difficulty of voting directly upon it, I move that the further consideration of the bill be postponed until December next.

Mr. BEDINGER said he felt the greatest veneration for the honorable mover of the resolution, as he thought it proceeded from the purest motives. But as he thought the slave trade was but little better than murder, he felt a difficulty in his mind as to the propriety of admitting one shilling of it into the treasury of the United States, lest those traders should think themselves entitled to protection; but as the mover and many others declare their assent towards the appropriation of said tax hereafter to humane purposes, he believed he should vote for a bill, if drawn in correspondence with such principles.

Mr. FINDLAY observed that it was not his wish to go into a lengthy argument on this subject; but merely to observe that this was the first instance of a law prohibiting the importation of slaves being repealed, and that it might not be the last; and that, therefore, if the argument advanced by

gentlemen was good against taking it up in the first instance, it would be equally good against taking it up in case all the States should repeal their prohibitory laws. He also wished gentlemen to consider that the friends of the motion were conscience-bound as well as they, and that they considered it a moral duty to restrain, as far as they could, the continuance of the slave trade. As, however, a question of expediency was involved in this measure, he entertained no desire to hasten its decision; on the contrary, his wish was to allow ample time for considering its merits. He should therefore vote against the postponement to December; but would move a postponement to the 2d Monday of March, not with the view of getting rid of the subject altogether, but to allow an opportunity of considering it fully.

Mr. HUGER did not rise with the view of going into the merits of the bill, but to impress the propriety of agreeing to the postponement. It was a painful subject, which necessarily excited unpleasant feelings. He thought, if gentlemen suffered it to lie over to the next session, there was a probability that by giving the Representatives of South Carolina an opportunity of returning home and expressing the sentiments of Congress, the Legislature of that State would repeal the law; whereas, should the tax be laid, it would prevent this desirable effect. Where we differ, said Mr. H., it is proper for us to accommodate—to meet each other half way.

Mr. EPPES, believing that either motion of postponement would defeat the main measure, said he should vote against both. It was not his wish to erect the Government of the United States into a national tribunal to censure the proceedings of the Legislature of South Carolina, or to wound their feelings; but he was not prepared to say that Congress, in exercising a constitutional right, erected such a tribunal. It was in some respects immaterial whether they interfered or not, so long as the world knew that a Legislature of a respectable State, in the eighteenth century, passed an act allowing the importation of slaves. That Legislature ought not to complain if the United States availed themselves of the measure to raise revenue from it. According to the estimate of some gentlemen, there would probably be an importation of one hundred thousand in four years, which if this tax shall be laid, will produce a revenue of a million of dollars. And yet we are entreated by the gentleman from South Carolina not to molest the trade. Mr. E. said he was not surprised at this anxiety, as, by gaining a delay of one

year, that State might be saved from the payment of above one hundred thousand dollars.

Mr. E. said he came from a Southern country, where slaves were as much a subject of taxation as lands; and he did not know that the statute books of Virginia or South Carolina were stained by imposing taxes upon them. He believed them as fair a subject of taxation as any other species of property. He believed it as fair to lay taxes upon them as to make the poor pay a tax upon brown sugar and other articles of the first necessity. For these reasons he was against the postponement either to December or March.

Mr. R. GRISWOLD considered a postponement till December as destructive to the bill. He said he would as soon meet it on its merits, but being prepared, as far as his vote went, to reject the bill, he should vote for what he considered equivalent, a postponement to December. He did not think it proper for the House to go into the measure contemplated by the bill. There were but two principles that would justify the laying a duty on imported articles: the one to discourage the importation of particular articles, and the other with a view to revenue. As to the first principle, under the constitution as it at present stood, Congress had no right to interfere; as the States had an undoubted right to admit the importation of slaves until the year 1808. The constitution, on this point, had gone so far as to restrict the right of the General Government to a tax not exceeding ten dollars upon each slave imported. This would not amount to a prohibition or prevention of the importation. Congress was, therefore, precluded the right of taxing, with this view, until the year 1808. This part of the argument, on which gentlemen support the measure, must be laid, therefore, out of view. The question then recurs, whether we shall lay this tax for purposes of revenue? For one, (said Mr. G.,) I am unwilling to do this. I abhor the slave trade as much as any member on this floor, and therefore I will not consent to give it a legislative sanction. For this measure will certainly be viewed in that light by the people of this country and by the civilized world. It will appear to the world that Congress are raising a revenue from a commerce in slaves. I am not for introducing such a law, calculated to have this impression, on our statute book. Were it in our power to prohibit the trade, there is not, I trust, a member on this floor that would not unite in the prohibition. But on this point our hands are tied.

Mr. GREGG observed, that when this subject was on a former day before the House, he assigned his reasons at some length, in favor of a postponement. The same reasons would influence his vote this day, and he should not trouble the House with a repetition of them. He only rose to suggest to his colleague that, by attending to one consideration, he would be induced, he thought, to change his opinion, and to vote for the most distant day to which it was proposed to postpone this subject. It had been stated by a gentleman from South Carolina, and he believed correctly stated, that by the law lately passed in South Carolina, a considerable ferment had been excited in that State, and that it was probable that the Legislature would, at their next session, repeal it. If it were probable that they would repeal this law in April, it appeared to him improper to pass an act that would operate as a censure upon the conduct of that State.

Mr. ALSTON was surprised how it was that he and his worthy friend from Virginia (Mr. EPPES) differed so widely upon the present occasion, living, as it were, in the same country, and owning property of the same kind, and pursuing the same means of obtaining a living. My friend advocates the resolution for laying a tax of ten dollars on each slave imported into the United States, because a considerable revenue will be derived from such a tax; it is for that very reason that he opposed it, because he would not consent to pass a law which had for its operation a partial effect. Can it be right to pass a law which will impose a heavy tax upon one part of the community, and not a cent upon the other? No State in the Union would be affected except South Carolina. Gentlemen ought to take care how they acted towards a sister State, and a respectable one too.

Mr. RODNEY said, he should not have troubled the House with any remarks on the present occasion, had he not made up his mind to vote differently from the vote which he had before given. He said he had before voted against the postponement of the consideration of this subject; he should now vote in favor of a postponement; and he would, in a few words, assign his reasons. When the resolution for imposing a tax on imported slaves was first laid on the table, he was of opinion that he could not vote for it without sanctioning the practice it was meant to censure. Reflecting further, he afterwards got his own consent to vote for it. First thoughts were frequently best; we sometimes miss the mark by taking sight too long. In

this instance, after a more mature consideration, his mind inclined to his original opinions, for reasons which he would assign.

It was agreed, on all hands, that the conduct of the Legislature of South Carolina was such as to merit the disapprobation of the members of that House. On many occasions there were political dissensions within these walls. But he rejoiced that, when questions of this kind presented themselves, they were sure to find us unanimous. Inhumanity was considered as a common enemy, and so inhuman a practice was justly reprobated by all. Every gentleman from the South, as well as the East, deprecated the act and lamented its existence.

After a few additional remarks from several gentlemen, the question was taken by yeas and nays on a postponement to the first Monday in December, and passed in the negative—yeas 55, nays 62.

Mr. FINDLAY moved a postponement to the second Monday in March; which, after some debate, prevailed—ayes 56, noes 50.

[To prevent an erroneous impression being made on the public by the above proceedings, it is proper to remark that, during the whole discussion, not a single voice was raised in defence of the act of the Legislature of South Carolina, allowing the importation of slaves; but that, on the contrary, while by some of the speakers its immorality and impolicy were severely censured, by all its existence was deprecated. A large number of those who voted for the postponement, advocated it on the express and sole ground that it would give the Legislature of South Carolina an opportunity, which they believed would be embraced, to repeal the act.]

MONDAY, February 20.

Georgia Claims.

Mr. J. RANDOLPH said, the House would recollect that he had, on a former day, offered a resolution barring any claims derived under any act of the State of Georgia passed in the year 1795, in relation to lands ceded to the United States. It was not his purpose in rising at this time to trespass on the patience of the House; nor did he know that he should in future offer any remarks additional to those he had already made. But he conceived it

his duty to place the subject in such a point of light that every eye, however dim, might distinctly see its true merits. For this purpose he withdrew the resolution which he had before offered, and moved the following resolutions:

Resolved, That the Legislature of the State of Georgia were, at no time, invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same, but in a rightful manner, and for the public good:

That, when the governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been clothed for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people, so circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them:

That it is in evidence to this House, that the act of the Legislature of Georgia, passed on the seventh of January, one thousand seven hundred and ninety-five, entitled “An act for appropriating a part of the unlocated territory of this State, for the payment of the late State troops, and for other purposes,” was passed by persons under the influence of gross and palpable corruption, practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest:

That the good people of Georgia, impressed with general indignation at this act of atrocious perfidy and unparalleled corruption, with a promptitude of decision highly honorable to their character, did, by the act of a subsequent Legislature, passed on the thirteenth of February, one thousand seven hundred and ninety-six, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their constitution, declare the preceding act, and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State, and publicly burnt; which was accordingly done; provision at the same time being made for restoring the pretended purchase-money to the grantees, by whom, or by persons claiming under them, the

greater part of the said purchase-money has been withdrawn from the treasury of Georgia:

That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature, provided such repeal be not forbidden by the constitution of such State, or of the United States:

That the aforesaid act of the State of Georgia, passed on the thirteenth of February, one thousand seven hundred and ninety-six, was forbidden neither by the constitution of that State, nor by that of the United States:

That the claims of persons derived under the aforesaid act of the seventh of January, one thousand seven hundred and ninety-five, are recognized neither by any compact between the United States and the State of Georgia, nor by any act of the Federal Government: Therefore,

Resolved, That no part of the five millions of acres reserved for satisfying and quieting claims to the lands ceded by the State of Georgia to the United States, and appropriated by the act of Congress passed at their last session, shall be appropriated to quiet or compensate any claims derived under any act, or pretended act, of the State of Georgia, passed, or alleged to be passed, during the year one thousand seven hundred and ninety-five.

On considering the resolutions, the House divided—ayes 53. Carried.

Mr. J. RANDOLPH then moved their reference to the Committee of the Whole on the bill providing for the settlement of sundry claims to public lands lying south of the State of Tennessee. Carried—yeas 50, nays 30.

WEDNESDAY, February 22.

Naval Peace Establishment.

The House went into Committee of the Whole on the bill supplementary to an act providing for a Naval Peace Establishment.

[This is the bill introduced at the instance of Mr. NICHOLSON, with a view to a more economical and beneficial arrangement in relation to the national ships laid up in ordinary.]

Mr. LEIB moved an additional section, virtually abolishing the office of Lieutenant Colonel Commandant of the Marine Corps, and authorizing the President to make such other reductions of the subordinate officers as he may think fit. The object of the bill being a reform of the expenses attending the Naval Establishment, the measure contemplated in the amendment was, in his opinion, a very proper one to be answered by it. The bill, he said, contemplated an annual saving, in the single article of provisions, of \$7,000. By abolishing the office of Lieutenant Colonel Commandant, a saving of sixty thousand dollars in addition might be made. This officer made, it appeared, all the contracts, and it would be seen by documents before the House, that while the price of the ration in the War Department was fifteen cents, that fixed by this officer was twenty cents—the difference made the sum of \$3,750 a year. It would also be seen that exorbitant sums were expended in postage and fuel. In the single article of postage, \$150 had been expended within three months. The amendment was then agreed to—yeas 62.

Mr. EUSTIS moved a new section, for the allowance to captains, holding themselves in readiness to enter the service, of the same rations they are entitled by law to receive when in actual service. Disagreed to—yeas 37, nays 45.

The committee rose, and the House agreed to the amendment of Mr. LEIB without a division.

Mr. JACKSON moved a new section, for the allowance to captains, required to hold themselves in readiness for service, of the same rations they are entitled to receive when in actual service.

Mr. NICHOLSON supported the amendment, to which the House agreed—yeas 44, nays 40; when the bill was ordered to a third reading to-morrow.

On motion, the House adjourned.

FRIDAY, February 24.

Contested Election.

Mr. FINDLAY, from the Committee of Elections, to whom was referred a memorial of Andrew Moore, of Virginia, respecting the election of THOMAS LEWIS, a sitting member, made a report, which, after stating the bad votes given for each of the candidates, concludes with the opinion that THOMAS LEWIS is not, and that ANDREW MOORE is entitled to a seat in the House. The report is as follows:

“That, at an election held on three several days, in the month of April, in the year one thousand eight hundred and three, directed by the law of the State of Virginia, for a member of the House of Representatives of the United States for the district composed of the counties of Botetourt, Rockbridge, Kenawha, Greenbriar, and Monroe, in the western district of Virginia, it appears—

“That, of the polls taken in the county of Botetourt, Thomas Lewis had one hundred and fifty-five votes, and Andrew Moore had three hundred and five votes; that, out of the persons who voted for Thomas Lewis, twenty-three were unqualified to vote; and that out of the persons who voted for Andrew Moore, twenty-eight were unqualified to vote.

“That, of the polls taken in Rockbridge, Thomas Lewis had sixty-five votes, and Andrew Moore had three hundred and twenty-one votes; that out of the persons who voted for Thomas Lewis, there were four persons unqualified to vote; and out of the persons who voted for Andrew Moore, there were twenty persons unqualified to vote.

“That, of the polls taken in Kenawha county, Thomas Lewis had one hundred and sixty-one votes, and Andrew Moore had one vote; that out of the persons who voted for Thomas Lewis there were ninety persons unqualified to vote.

“That, of the polls taken in Greenbriar, Thomas Lewis had five hundred and thirty-nine votes, and Andrew Moore had one hundred and three votes; that out of the persons who voted for Thomas Lewis two hundred and two were unqualified to vote; and out of the persons who voted for Andrew Moore thirty-two were unqualified to vote.

“That, of the polls taken in Monroe county, Thomas Lewis had eighty-four votes, and Andrew Moore had one hundred and two votes; that out of the persons who voted for Thomas Lewis thirty-six were unqualified to

vote; and out of the persons who voted for Andrew Moore, forty-four were unqualified to vote. Hence it appears—

“That all the persons who voted for Thomas Lewis in the several counties aforesaid, which compose the western district of the State of Virginia, were one thousand and four; and that all the persons who voted for Andrew Moore in the said counties were eight hundred and thirty-two.

“It further appears, on a deliberate scrutiny, that, of the above votes, three hundred and fifty-five persons voted for Thomas Lewis who were unqualified to vote, and that one hundred and twenty-four voted for Andrew Moore who were unqualified to vote; and that, by deducting the unqualified votes from the votes given for each of the parties at the elections, Thomas Lewis has six hundred and forty-nine good votes, and Andrew Moore has seven hundred and eight good votes, being fifty-nine more than Thomas Lewis. Whereupon,

“Your committee are of opinion that Thomas Lewis, not being duly elected, is not entitled to a seat in this House; and they are further of opinion that Andrew Moore, who has the highest number of votes, after deducting the before-mentioned unqualified votes from the respective polls, is duly elected and entitled to a seat in this House.”

Ordered, That the report be committed to a Committee of the whole House on Wednesday next.

TUESDAY, February 28.

Louisiana Territory.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled “An act erecting Louisiana into two Territories, and providing for the temporary government thereof.”

The fourth section being under consideration, as follows:

“SEC. 4. The Legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the

Legislative Council, who shall be appointed annually by the President of the United States, from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory or the United States. The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful powers of legislation: but no law shall be valid which is inconsistent with the constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall from time to time report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene and prorogue the Legislative Council, whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States.”

Mr. LEIB observed that he did not like the provisions of this section, and least of all that which gave the Governor the right of proroguing the Legislative Council. It appeared to him that that body was the most dependent thing of its nature in the United States; and when the power of prorogation vested in the Governor was considered, it seemed to him that the people would do much better without any such body. This was a royal appendage which he did not like. He, therefore, moved to strike out the words “and prorogue.”

Mr. GREGG said he was not only in favor of the motion of his colleague, but against the section generally. It would require much further amendment to induce him to vote for it. He was opposed to the power it gave the President to appoint the members of the Legislative Council. It appeared to

him a mere burlesque to say they shall be appointed by the President. How is the President to get information of the qualifications for office? This could only be obtained from the officers appointed by him, and principally from the Governor, who will not fail to recommend to the President the appointment of persons favorable to his own views. Mr. G. said that they would, therefore, rather vest the appointment of the members of the Legislative Council in the Governor; the mode pointed out in the bill was only calculated to rescue the Governor from the responsibility attached to his office, by dividing it among others.

Mr. LEIB said his amendment did not in the least interfere with that of his colleague, with whom he fully accorded in sentiment.

Mr. VARNUM was of opinion that the section in the bill provided such a kind of Government as had never been known in the United States. He thought sound policy, no less than justice, dictated the propriety of making provision for the election of a legislative body by the people. There was not only the common obligation of justice imposed upon Congress to do this, but they were bound by treaty. The treaty with France expressly says:

“The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.”

The treaty makes it obligatory on the United States to admit the inhabitants of Louisiana, as soon as possible, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. In order to decide the principle of this section of the bill by an expression of the sense of the committee, he would move that the committee should rise, report progress, and ask leave to sit again, with the view of refusing them leave, and afterwards referring the bill to a select committee to receive a modification in conformity to the opinions of the House.

Mr. HUGER trusted the committee would not rise. He knew not the impressions on this subject on the minds of other gentlemen; but the information lately received from Louisiana convinced him of the propriety of proceeding with the bill immediately. In addition to the principles

contained in the section under consideration, there were others of great importance. He thought it would be most advisable, in a future stage of discussion, to commit the bill to a select committee, if any material alterations should be made in it. It was best, at present, to deliberate fully on the several provisions of the bill, and for gentlemen to make an interchange of opinions. Were the bill now committed, the report of the committee would not advance the business in the least, as that report might be as objectionable to the House as the bill from the Senate.

Mr. ELLIOT, for like reasons assigned by the gentleman from South Carolina, and for other reasons, hoped the committee would not rise. He did not believe the section under consideration was, in its present form, consistent either with the spirit of the constitution or the treaty; but he believed that, by the introduction of a small amendment, the section might be rendered perfectly consistent with them, and the passage of the bill be greatly accelerated. He preferred a middle course between the existing section and the amendment offered by the gentleman from Pennsylvania. Whatever amendments were necessary would be easily offered and discussed at present; whereas no desirable object could be effected by a reference.

Mr. GREGG said it also appeared to him that no valuable purpose would be answered by referring the bill to a select committee. What can such a committee do? There exists no diversity of sentiment in the House on principle. Some are for giving to the people of the Territory, instead of the President, the power of electing members of the Legislative Council. Here, then, are two distinct principles, and unless the House determine which of them it will adopt, a select committee can do nothing. Let us settle the principle of the bill first, and then refer it to a select committee, to modify it in correspondence with them.

Mr. EUSTIS said this subject was, in his opinion, inferior to no other discussed this session. With regard to the provisions of the section under consideration, it was to be expected that there would be a diversity of opinion. Gentlemen inimical to them had taken different grounds. One gentleman desires the power of the Governor to prorogue the Council to be rescinded; another gentleman wishes an entire change in the formation of the Council; and a third is in favor of the committee rising, that the bill may go to a select committee to report different provisions for the government of

the people of Louisiana from those contained in the bill before us. This motion necessarily brings the principle on which the Council is organized by the bill before us.

According to this bill, the Governor and Council are to make the laws. Suppose the Council is in session, and the Governor possess no power to prorogue them. Suppose they should engage in acts subversive of their relation to the United States. Would not this power be of essential utility? It appears to me indispensably necessary that a vein of authority should ascend to the Government of the United States, until the people of the Territory are admitted to the full enjoyment of State rights. From that knowledge of this people which I have been able to acquire, I have formed an opinion that authority should be constantly exercised over them, without severity, but in such a manner as to secure the rights of the United States and the peace of the country.

The government laid down in this bill is certainly a new thing in the United States; but the people of this country differ materially from the citizens of the United States. I speak of the character of the people at the present time. When they shall be better acquainted with the principles of our Government, and shall have become desirous of participating in our privileges, it will be full time to extend to them the elective franchise. Have not the House been informed from an authentic source, since the cession, that the provisions of our institutions are inapplicable to them? If so, why attempt, in pursuit of a vain theory, to extend political institutions to them for which they are not prepared? I am one of those who believe that the principles of civil liberty cannot suddenly be ingrafted on a people accustomed to a regimen of a directly opposite hue. The approach of such a people to liberty must be gradual. I believe them at present totally unqualified to exercise it. If this opinion be erroneous, then the principles of the bill are unfounded. If, on the contrary, this opinion is sound, it results that neither the power given to the President to appoint the members of the Council, nor of the Governor to prorogue them, are unsafe or unnecessary.

Mr. LUCAS was against the rising of the committee, inasmuch as the bill under consideration offered the widest field of discussing the subject before them, and inasmuch as it was proper, that the principles of it should be settled by a majority, to enable a select committee to collect the sense of the House. When this decision should have taken place, he should have no

objections to a recommitment for the purpose of modifying the bill in consonance with it.

It was known, by the treaty, that the United States are bound to secure to the people of Louisiana as large a portion of liberty and security of rights, as though they remained under the Government of France and Spain; and he trusted the bill as it stood secured to them much more. As an instance, it might be mentioned that the privilege of habeas corpus had never been enjoyed by them while they were connected with either Spain or France. An argument was drawn from the treaty, that these people are to be admitted to the absolute enjoyment of the rights of citizens; but gentlemen would not deny, that the time when, and the circumstances under which this provision of the treaty was to be carried into effect, were submitted to the decision of Congress. It has been remarked, that this bill establishes elementary principles of government never previously introduced in the government of any Territory of the United States. Granting the truth of this observation, it must be allowed that the United States had never before devolved upon them the making provision for the government of people under such circumstances. Governors must not rest on theory, but must raise their political structures on the state of the people for whom they are made. Mr. LUCAS said, that without wishing to reflect on the inhabitants of Louisiana, he would say that they are not prepared for a government like that of the United States. Governed by Spanish officers, exercising authority according to their whim, supported by a military force, it could not be said that a people thus inured to despotism, were prepared on a sudden to receive the principles of our Government. It was questionable whether there was a nation in Europe whom these principles would be so advantageous to as they are to us. It would be recollected by gentlemen, who so strenuously advocated the abstract principle of right, that the people of Louisiana have not been consulted in the act of cession to this country, but had been transferred by a bargain made over their heads. It was a proof this act had not been received with approbation by them, that when they saw the American flag hoisted in the room of the French, they shed tears; this was a proof that they were not so friendly to our Government as some gentlemen imagined. He was persuaded the people of the Mississippi Territory would not have acted in this manner. There is no doubt but that after they shall have experienced the blessings of a free Government, they will wonder at

their having shed tears on this occasion; but they must, in the first instance, feel these blessings.

Mr. L. said he was fully of opinion with the gentleman from Massachusetts (Mr. EUSTIS) in the sentiments he had expressed. The United States had it eminently in their power to make these people happy without an extension to them of all our privileges. They will not be gratified from knowing that the theory of liberty is extended to them, but from its practical effects. The people of Louisiana know but little of political theories, but they will feel the just operation of equal laws; and if they can obtain practical justice, though it may not arise from an extension of our elementary political principles, they will not find fault with it.

Mr. L. said he was not among those who considered the bill, in all its provisions, perfect. He considered it susceptible of much amendment; though not in the principle now under review. In this provision, by declaring that the inhabitants of the Territory shall compose the Legislative Council, a great point is gained by the people. For it cannot be supposed that the inhabitants, thus called upon to discharge high duties to society, will so far lose sight of their own permanent interests as to sacrifice them, together with the good of the country, to whim or corruption.

Their election by the President is another important security. Suppose the Governor shall wish to render the Council his puppets. The President will not feel an interest in gratifying his improper views. It is, however, said that his information will be derived from the Governor. But the fact is, he will receive it in part from the Governor, and in part from others; and he will be sagacious enough to judge, not from a part, but from the whole that reaches him.

A valuable effect will flow from composing the Council of the inhabitants of the country; its members will thereby be initiated in the theory of our Government and laws, and this knowledge will hereafter qualify them for higher political trusts; they will acquire much political knowledge; they will return home, and their conversation with their friends will naturally turn on political topics, and on the laws they have passed; thus will a spirit of inquiry and of political discussion spring up in the country. When this effect shall be produced, it will be time, and only then,

to give them a government as liberal and free as that contemplated by the amendment.

Mr. MACON (Speaker) observed that he coincided in opinion with the gentleman from Massachusetts, (Mr. VARNUM,) whose object would, he thought, be better tried by a motion to strike out the section. This motion would bring the principle before the House. If the section should be stricken out, the bill would be recommitted for new modification to a select committee. Mr. M. accordingly moved to strike out the fourth section.

This motion having been stated from the Chair,

Mr. MACON again rose. I will endeavor, said he, to compress my ideas on this point in a few words. My first objection to the principle contained in the section is, that it establishes a species of government unknown to the laws of the United States. We have three descriptions of Government; that of the Union, that of the States, and Territorial governments. I believe the Territorial government, as established by the ordinance of the Old Congress, the best adapted to the circumstances of the people of Louisiana; and that it may be so modified as best to promote their convenience. The people residing in the Mississippi Territory, are now under this kind of government.^[8] Is it not likely that the people of Louisiana will expect the same form of government and laws with their neighbors; and is it not desirable for the general peace and happiness that there should be a correspondence between them? If they are as ignorant as some gentlemen represent them, (and of this I know nothing,) will they not expect the same grade of government with the inhabitants of the Mississippi Territory, with whom they will have a constant intercourse? Although they lived previously under the Spanish Government, and although their number did not entitle them, when formed into a Territory, to the second grade of government, no inconvenience resulted. It is said, in reply to this observation, that a large number of inhabitants of that Territory were Americans. It is true that many of them were native Americans, but some also were Spanish.

The simple question is, what kind of government is most fitted to this people? It is extremely difficult to legislate for a people with whose habits and customs we are unacquainted. I, for one, declare myself unacquainted with them; nor would I in fixing the government, unless for the safety of the Union, do an act capable of disgusting the people for whom it is adopted. It

will be a wise policy to avoid whatever is calculated to disgust them. My opinion is that they will be better satisfied with an old-established form of government, than with a new one. Why? Because they have seen it established in the adjacent Territory of Mississippi, and know the manner in which it operates. If there are bad men in Louisiana, will any thing be more easy than to disgust the people against the General Government by showing that they have given one kind of government to the people of the Mississippi Territory, and a different kind to them? In my mind, it is sound policy to give them no cause of complaint. We ought to show them that we consider them one people.

I will not pretend to say that the people of Louisiana are prepared for a State government, which differs most materially from a Territorial government. The best way to prepare them for such a government, is to take the system already known to our laws; one grade or the other of the Territorial government. For myself, I would prefer the adoption of the second grade, but I would prefer the first to any new system. For these reasons, I hope the section will be struck out, and the bill referred to a select committee.

WEDNESDAY, February 29.

Government of Louisiana.

The House went again into a Committee of the Whole on the bill for the government of Louisiana.

The fourth section of the bill being under consideration—

Mr. JACKSON said: As this section is the corner stone on which the whole superstructure rests, and involves the most important principle of the bill, I will ask the indulgence of the committee to make a few remarks upon it. It presents two important questions; first, whether it is proper on the broad principle of political justice to adopt it? And secondly, whether it is consistent with our treaty with France? Two questions arise out of the first proposition; first, Is the system consonant to the habits of a free people? And, secondly, if not, is it the best calculated to advance the happiness of those who have never tasted the blessings of liberty? The first question

requires no discussion; it will be answered in the negative by every section of this Union. Every section has been engaged in forming a constitution, and both the State and Federal constitutions have decided this point in the negative, because neither partake of the aristocratical or monarchical features contained in this section.

It is urged by gentlemen, that we ought to give to this people liberty by degrees. I believe, however, there is no danger of giving them too much of it; and I am unwilling to tarnish the national character by sanctioning the detestable calumny that man is not fitted for freedom. What will the world say if we sanction this principle? They will say we possess the principle of despotism under the garb of Republicans; and that we are insincere, with whatever solemnity we may declare it, in pronouncing all men equal. They will tell us that we have emphatically declared to the American people and to the world, in our first act evincive of emancipation from the tyranny of England, that all men are equal; and that all governments derive their rightful power from the consent of the governed; and that notwithstanding, when the occasion offers, we exercise despotic power, under the pretext that the people are unable to govern themselves.

Mr. HOLLAND.—As my ideas are very different from those of the gentleman who has preceded me, and as I do not believe that either policy or moral obligation recommends the adoption of a system such as he has avowed to be proper, I will, in a few words, state the sentiments I entertain.

Can gentlemen conceive the people of Louisiana, who have just thrown off their chains, qualified to make laws? Under the late system the people had no concern in the government, and it was even criminal for them to concern themselves with it; they were set at a distance from the government, and all required from their hands was, to be passive and obedient. Can it be supposed such a people made the subject of government their study, or can it be presumed they know any thing about the principles of the Constitution of the United States? Would persons thus elected be of any service to the Government? So far from being an assistance, they would be an encumbrance. Why then impose this burden upon them? The object of this bill is to extend the laws of the United States over Louisiana, not to enable the people of Louisiana to make laws. This extension, so far from being an act of despotism, will be an important privilege. If the laws of the United States were founded in injustice they might have some right to

complain, but we only apply to them laws by which we ourselves consent to be governed.

The provisions of this section are said to be worse than those of the first grade of Territorial governments; but this is incorrect. This plan is not equal to the second grade, but it is certainly superior to the first grade. The first grade gives the Governor and judges all the powers granted by this section; and this section, in addition to the Governor and judges, contemplates the appointment of thirteen councillors. Is not this preferable to giving the whole power to the Governor and judges?

Mr. BOYLE said he should not have risen on this occasion but for the impression that some arguments of weight had been omitted, or had not been sufficiently dwelt on. In the few remarks he purposed to make, he should endeavor to avoid a repetition of ideas already expressed. It was not so much to the novelty, as to the nature of the plan of government contained in the fourth section, that he was opposed. He did not consider the Territorial government proposed to be substituted as perfect, but he believed it infinitely preferable to that contemplated in the bill. Preferring, therefore, either grade to this, said Mr. B., I shall concur in supporting the substitution of the second grade as most fitted to the circumstances of the people of Louisiana. I feel peculiarly hostile to the mode of appointing the Legislative Council. The power of appointing them is unnecessarily vested in the President. Waiving all objection arising from the distance of the President from the men to be appointed; from the necessity of his relying on the representations of others as to their qualifications, and his liability to be deceived by misrepresentations; still one objection remains, which, to my mind, is most important. I am, said Mr. B., unwilling to extend executive patronage beyond the line of irresistible necessity. For, I believe, if ever this country is to follow the destiny of other nations, this destiny will be accelerated by the overwhelming torrent of executive patronage. I feel as high a veneration for the present Chief Magistrate as any man on this floor. Early attached to him, I have retained the full force of my regard for him. But, were he an angel, instead of a man, I would not clothe him with this power; because, in my estimation, the investiture of such high powers is unnecessary. My opinion is, that they will be more properly exercised by the people. To give them to the President is to furnish a dangerous precedent for extending executive power and patronage; and as he has

himself said, one precedent in favor of power is stronger than a hundred against it. I am in favor of giving to the people all that portion of self-government and independence which is compatible with the constitution.

WEDNESDAY, March 7.

Georgia Claims.

The House resolved itself into a Committee of the Whole on the bill providing for the settlement of sundry claims to public lands lying south of the State of Tennessee; to which Committee of the Whole were also referred, on the twentieth ultimo, a motion containing sundry resolutions “respecting claimants to the said lands under an act of the Legislature of the State of Georgia, passed in the year one thousand seven hundred and ninety-five.”

Mr. J. RANDOLPH called for the reading of sundry resolutions lately offered by him on this subject. The resolutions having been read, Mr. R. said, when he had submitted them, it was with the view of trying the question then before the committee as he thought fairly. It was no part of his intention to embarrass the operations of the friends of the bill, further than to take the sense of the committee and of the House on each specific proposition embraced by the resolutions. His wish, therefore, was, that the sense of the committee, in the first instance, should be taken on the resolutions. If they should be rejected, the vote of rejection would be a virtual admission of the claims of 1795; and gentlemen might then modify the bill in such manner as might best please them to do.

Mr. MITCHILL.—These resolutions tend to involve Congress in the proceedings of the State of Georgia. I consider myself as one of those who, by assenting to certain acts heretofore passed by Congress, have consented to a hearing and compromise with the grantees. If this construction be correct, the Committee are precluded from adopting these resolutions; nor is it proper, in my opinion, for Congress to go into a view of the proceedings of Georgia on this occasion. That State is sovereign to a certain extent, and this Government possesses no right to interfere with her sovereignty. Attached to this sovereignty is the right of granting land belonging to her. But it is alleged that Georgia was, in the year 1795, in a disorderly state,

and that a certain Legislature in that year did a certain act which a subsequent Legislature declared to be totally unauthorized. This may be so. It is certain the second Legislature declared the act of the first null, under circumstances of a very extraordinary nature. I do not, however, see that it is our duty to give an opinion whether the Legislature of Georgia acted wickedly or uprightly. Whichever course they may have pursued, I do not believe this body to be a constitutional board of censors. We find frequent occasions enough on which, without going out of our way, our duty calls upon us to give our opinions. Believing this to be an occasion on which no opinion is required from us, and one which it is most prudent to pass by without giving such opinion, I wish not to vote for or against the resolutions. I am, therefore, for the committee's rising and reporting the bill.

Mr. J. RANDOLPH.—I had hoped that when these resolutions were sent from the House to the committee, they would have received the respectful attention to which every such reference is entitled; and that the committee would at least have deemed them worthy of some expression of opinion on them; that they would have deigned to say whether the reasoning or facts contained in them are or are not erroneous and unfounded. The gentleman from New York tells the committee that, by an act passed at a previous session of Congress, a pledge has been given to a certain description of claimants under the act of 1795, to do something in relation to their claims. If so, is this a reason for not acting on the resolutions? No; it is a reason for taking them up and rejecting them. One of those resolutions says, and I am prepared to prove it true, and I call on gentlemen to show its falsehood, "that the claims of persons derived under the act of January first, 1795, are recognized neither by any compact between the United States and the State of Georgia, nor by any act of the Federal Government." I deny that they are so recognized. If they are, what can be easier than for the learned gentleman to refer to the compact under which they are recognized? This he cannot show, and hence his unwillingness to express an opinion. At an antecedent session we passed a law on this subject. The gentleman may have given his vote for this law under the impression he states, but it does not follow that the Legislature acted under the same impression; on the contrary, I know several gentlemen who voted for it, though hostile to the claims under the act of 1795, because it contained a general provision for claims, and did not particularly recognize those arising under the act of 1795; and now, because Congress have passed an act of a general nature, when it was notorious

there are a variety of claims besides those under the act of 1795, and none of which are mentioned either in the compact or treaty with the State of Georgia, it is said we have given a pledge, and we are called upon to fulfil it. And this language is held by gentlemen who, in the same breath, have expressed a disposition to reject another description of claims. Could absurdity speak in stronger language? A general appropriation has been made by Congress for claims; the claims preferred are of two classes—those under the acts of 1789 and 1795. There might have been claims of a hundred other descriptions—for all these Congress have made a general appropriation—and yet we are told by gentlemen hostile to the claims of 1789 that we are pledged to provide for those of 1795. If we are pledged to satisfy one description, are we not equally pledged to the other? But the truth is, we have given no pledge. If we have, nothing is so easy as to refer to the statute book, and to point it out. No such pledge is recognized by our compact with Georgia. While I am up, permit me to say, if the compact with Georgia be construed according to its letter, the appropriation of \$5,000,000 ought to be considered as not embracing claims under the act of 1795, for the best reason in the world: the statute book of Georgia shows the reason. But, say gentlemen, we possess the power to satisfy these claims, though such satisfaction may not have been contemplated by our compact with Georgia. There must, say they, have been an understanding between the Commissioners of Georgia and our Commissioners in favor of compromising them, and therefore it is inferred that we ought to be governed more by the *quo animo* with which the compact was formed than by its strict letter; it is accordingly attempted to be proved, that there was an understanding between our Commissioners and those of Georgia, that relief should be extended to claimants under the act of 1795. I am authorized by the Commissioners to say that this was not the case. Whether, therefore, we are governed by the strict letter of the contract, or by the *quo animo*, we cannot discover the grounds for this opinion. I have been told, in a way which removes all doubts, by the Commissioners on both sides, at least by a Commissioner of the United States having a great participation in the business, and by the Georgia Commissioners, that the stipulation in the compact was not inserted at the instance of Georgia, but reluctantly inserted by them at the instance of the Commissioners of the United States.

Mr. MACON (Speaker) remarked that this question, like many others which presented themselves, had taken up a long time in discussing the

preliminary point that might have been required on the resolutions. To rise and report the bill, without acting on the resolutions, would be a virtual rejection of them; especially as the House had determined to rise on the 19th. For one, Mr. M. said, he was ready to vote on the resolutions. If it were wrong to vote on them, it was certainly proper to vote against their reference. But why not vote on them? We may not all agree; but have we not a right to think for ourselves? Let us then meet them, and vote as we see best. Mr. M. said he was more desirous of meeting the question, as he differed from those with whom he generally coincided in opinion. It may be said the resolutions embrace an abstract question. If so, gentlemen ought not to have allowed their reference. In the present stage of the business, no question could be taken unless in the committee, or on a motion to discharge the committee from their further consideration. Mr. M. said, he thought it the right of every member of a deliberative body to express his sentiments and record his opinion on any subject before it. This had always been the practice. He trusted, therefore, the committee would not rise, but proceed to the discussion of the resolutions.

Mr. J. RANDOLPH.—I little expected to stand on this floor, in the list of persons hostile to State rights—to be charged, as the gentleman before me has expressed himself, with having brought forward propositions subversive of the rights of the States. The sovereignty of the States has ever been the cardinal principle of my political opinions, and in the outset, I enlisted under the banner of State rights in opposition to federal usurpation. The doctrine of exalting the General Government on the ruin of the authority of the States, is at length exploded, and those who have heretofore been most conspicuous in encroaching upon the rights of the States, generally, and upon those of Georgia in particular, are now foremost in displaying their zeal for both. I cannot but rejoice at the acquisition which this cause has made. But to those of its friends who are too new to it to understand its interests as yet, I would recommend, that they would take the conduct of the Georgia delegation as an evidence of the rights and interests of that State. They surely are not so destitute of information or fidelity, as to misunderstand or abandon the rights of the people whom they represent.—So long, however, as I have the honor of concurring with them in opinion, I shall be very easy under any clamor which the new friends of Georgia and of the rights of States may endeavor to excite. If, however, gentlemen are unwilling to rely on the opinions of so few, however respectable men, I

refer them to the act of the Legislature of Georgia herself, generally called the rescinding act, passed under circumstances of unparalleled unanimity, and confirmed by the general voice of the people, who subsequently recognized it in, and ingrafted it upon their constitution. If still they remain dissatisfied, I would ask them if the recognition of the claims against Georgia, in the bill which they are so eager to pass, be not equally a violation of the rights of that State, with the rejection of those claims. Does not the bill before you, in pronouncing upon the validity of the act of Georgia, equally involve the principle against which gentlemen protest so loudly, with the resolutions themselves? They have their choice either to pronounce the corrupt act of 1795, or the rescinding act of 1796, invalid. Are not the rights of Georgia as much affected by the one as by the other? and even more, by annulling the act of 1796, since she alone recognizes that to be her own.

Here Mr. R. read the first and second resolutions:

“Resolved, That the State of Georgia was at no time invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same, but in a rightful manner and for the general good.”

Who will deny it? If Georgia has made a valid contract we must execute it. If invalid, there is no obligation on us to perform it.

“That when the governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been invested for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people, thus circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them.”

I am afraid if we deny this position we have no title to show for our own existence as a nation.

Mr. R. here read the third resolution:

“That it is in evidence to this House that the act of the Legislature of Georgia passed on the 7th of January, 1795, entitled an act &c., was passed by persons under the influence of gross and palpable corruption, practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest.”

If there be any objection in my mind to this resolution, it is that it does not sufficiently detail what it contains in substance; that the vendors of this iniquitous bargain being at the same time the vendees, the contract was therefore void. On a former occasion, when this position was advanced, we were told that, on the same principle, the sale of our western lands might be set aside, since members of the Legislature speculated in them to a vast amount. However indecorous and reprehensible this may have been in persons in their situation; there was a wide and material difference between the sales made by the United States and a pretended sale like this—not of a few acres, but of millions; not of sections and half sections, but of thousands of square miles; not measured by chains and perches, but by circles of latitude and longitude; not made in the face of day, on public notice, for a reasonable equivalent, and with the general participation of the citizens, but bartered away in the dark by wholesale for the emolument of the partners in the job, for a pretended consideration too paltry to give an air of validity to the contract; and even this sum, pitiful as it was, had since been drawn from the treasury of Georgia by those who had paid it, or others claiming under them by an act yet more infamous and disgraceful if possible than that by which it was deposited there. But it is not my intention at this time to enter into the particulars of this transaction. In the former stages of this bill I have endeavored to give a faithful history of it. Weak and vain, however, must be every effort to do justice to this enormous and atrocious procedure. Some gentlemen indeed will tell you that we have no proof of these facts. The depositions are *ex parte*, say they, and therefore in strictness of law cannot be considered as evidence. But when was it known that men could not legislate on less than legal evidence? Have we not the same evidence of the fraud that we have of the existence of the claims? Are not the evidences of both in the same report? the same proof of the corruption as of the claims? They both hang together. Do not gentlemen themselves admit the existence of the corruption? On what other principle

could they justify their proposition to withhold from these harpies the whole of their glorious booty, and put them off with a comparative pittance? Set aside the evidence of the corruption, and it cannot be denied, that instead of five, they are entitled to fifty millions of acres. I repeat they are entitled to all or nothing. We at least are consistent, we deny their title to anything, and we propose to give them nothing. Gentlemen on the other side can support the claim to the five millions, which they propose to give, only by arguments which justify a claim to ten times that amount.

Mr. R. here read the fourth resolution:

“That the good people of Georgia, impressed with general indignation at the act of atrocious perfidy and unparalleled corruption, with a promptitude of decision highly honorable to them, did, by the act of a subsequent Legislature, passed on the 13th day of February, 1796, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their constitution, declare the preceding act and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State and publicly burnt—which was accordingly done—provision at the same time being made for restoring the pretended purchase money to the grantees, by whom, or by persons claiming under them, the greater part of the said purchase money has been withdrawn from the treasury of Georgia.”

This is another of the resolutions not even substantially embraced in the proffered amendment, which has been rejected by the committee. The evidence of the facts contained in the former part of it is to be found in the act of Georgia, which I hold in my hand, commonly called the rescinding act. The report of our Commissioners furnishes the proof of the withdrawal of the money, with a detailed statement of that nefarious business, which in the former stages of this bill has been amply explained. In the rescinding act the Legislature of Georgia take other objections to the usurpation of 1795, besides those founded on its corruption. They deny the constitutional right of their predecessors to have made such an alienation of the public domain, even with honorable views and for a fair equivalent. They declare that their constitution prescribes a certain mode whereby vacant lands shall be sold and granted, and that the pretended act of 1795 is void, not only from its

corruption, but from its contravening those provisions. This is a weighty and vital objection. The slow yet equitable method known to the Constitution of Georgia of laying off new counties, granting out the lands, when they were appropriated and settled, laying off and settling others, was ill-suited to the gigantic rapacity of the Assembly of 1795, and their ravenous accomplices, who grasped at every acre within the nominal limits of the State, whether covered by Indian titles, or whether those claims were extinguished.

I must beg leave, in answer to the objection of some gentlemen here, to repeat what was advanced by me in a former discussion of the subject. Georgia ceded this territory to us subject to certain specified claims, arising under Great Britain, under Spain, and under her Bourbon act, as it is commonly called, which has no relation to any of the Yazoo acts, as they are termed. For these claims we have stipulated to provide, moreover paying her a certain sum out of the first proceeds of the lands, as a consideration for the grant. Besides the above-mentioned claims there were others not recognized by, or provided for, in our compact. In relation to these, Georgia gives a reluctant assent, (which is to be inferred as well from the expressions which are used in the treaty, as from the declaration of the Commissioners on both sides,) that we may apply, not exceeding five millions of acres to quiet other claims, generally, without specifying what they are—the appropriation not to exceed the amount above, and to be made within six months from the ratification of the compact, or to revert back to Georgia. Among the claims of this vague description may be ranked those of the Virginia and South Carolina Yazoo Companies (under the act of Georgia of 1789, and those arising under the corrupt act of 1795.) We are at liberty, therefore, to give these reserved five millions of acres to either, or to both, of those descriptions of conflicting claimants, but we are certainly not bound to bestow an acre on one of them, either by compact with Georgia or by our own act of appropriation. When that act passed it was at the close of our session; there was not time to investigate any of these claims. It was then understood that some of them were equitable, and not founded in corruption. If we had not then made the appropriation, the term within which we were permitted to make it, would have elapsed before the next session of Congress. We therefore made the appropriation in the same general terms of our compact with Georgia, pledging ourselves to none, while we thereby reserved the right of examining and recompensing all, in

case they should thereafter be found to deserve it. The day of investigation having arrived, you are invited to decline it altogether, and hold that the reservation of the right to give, is converted by some political magic into a duty, and that too by those who propose to give nothing to the companies of 1789, although their claim is embraced by the general provision of our compact with Georgia, and by the terms of our act of appropriation as much as the claims of the companies of 1795.

FRIDAY, March 9.

Government of Louisiana.

The House went into a Committee of the Whole on the bill for the government of Louisiana. The fifth section being read, as follows:

“SEC. 5. The judicial power shall be vested in a superior court, and in such inferior courts, and justices of the peace, as the Legislature of the Territory may, from time to time, establish. The judges of the superior court, and the justices of the peace, shall hold their offices for the term of four years. The superior court shall consist of three judges, any one of whom shall constitute a court. They shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all those which are capital, and original and appellate jurisdiction in all civil cases of the value of one hundred dollars. Its sessions shall commence on the first Monday of every month, and continue till all the business depending before them shall be disposed of. They shall appoint their own clerk. In all criminal prosecutions which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the parties require it. The inhabitants of the said Territory shall be entitled to the benefits of the writ of *habeas corpus*; they shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great; and no cruel and unusual punishment shall be inflicted:”

Mr. G. W. CAMPBELL moved to strike out “which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all

cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the parties require it,” and to insert “the trial shall be by jury, and in all civil cases above the value of twenty dollars.”

Mr. C. said he conceived that in legislating for the people of Louisiana, they were bound by the Constitution of the United States, and that they had not a right to establish courts in that Territory on any other terms than they could in any of the States. Wherever courts were established in a Territory, they must be considered as courts of the United States, and of consequence cannot be otherwise constituted than as courts in the States. The constitution expressly declares that, in criminal cases the trial shall be by jury, and in all civil cases where the sum in controversy exceeds the value of twenty dollars, the trial shall be likewise by jury. In the ninth article of the amendments to the constitution, we find the following words: “In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” The eighth article says: “In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury.”

I will observe that the right of trial given by this section, to wit: “if either of the parties require it,” is a dangerous mode of proceeding, and may tend unwarily to entrap them. The person brought before the court for a misdemeanor, asked if he requires a jury trial, may be ignorant of the evidence, and may not know the benefits of a trial by jury; he must at all events show a want of confidence in the court, or waive a jury trial. If he does the first, he may sour the minds of the court. The party is thus put in a situation which may be worse than if he was deprived altogether of the right of a trial, by the necessity of making a choice which may operate more against him. The bill therefore does not secure the right of a jury trial, as contemplated by the constitution.

Mr. SLOAN said a few words in support of the motion, which was lost—yeas 20.

[At this stage of the business we attended the trial of impeachment in the Senate, and cannot with perfect correctness state the further proceedings of the House on the bill. We understand, however, that the new section, sometime since offered by Mr. G. W. CAMPBELL, providing for the election of a Legislature by the people of Louisiana, instead of their being governed

according to the bill from the Senate by a council appointed by the President, was disagreed to—yeas 37, nays 43.—*Reporter.*]^[9]

SATURDAY, March 10.

Georgia Claims.

Mr. J. RANDOLPH moved the taking up for consideration the resolution offered by him on the claims under the act of Georgia of 1795.

Mr. ELLIOT moved the order of the day on the bill for the compromise of those and other claims.

Mr. GREGG moved to postpone the further consideration of the resolutions till the first day of December next. He was, he said, perfectly prepared to act on the bill for the settlement of the claims, and to give it his decided negative; and should have no objections, but for the lateness of the session, and the great mass of important business that demanded attention.

The SPEAKER said, the motion to consider the resolutions, being first made, must be first put.

It accordingly was put, and carried—yeas 58.

Mr. JACKSON then moved a postponement of the resolutions until the 1st Monday in December.

Mr. STANFORD inquired whether the motion of postponement was not susceptible of a division, so as to apply to each resolution separately.

Mr. J. RANDOLPH hoped the question would be so taken.

Mr. RODNEY expressed the same wish, and that the yeas and nays might be taken on each division of the question. He was opposed to a postponement. He should not have risen at this late period but for the warm opposition the resolutions had received from various quarters, and but for his desire to avail himself of the opportunity to state his reasons for giving them a firm support.

It is objected to these resolutions that they are abstract propositions. By abstract principles, I understand axioms unapplied. But when they are applied to facts, they cease to be considered in the abstract. In geometry

there are certain elementary principles which are the basis of all reasoning on any proposition in that department of science. So in law there are principles in the abstract while they remain unapplied, and which bear in every case where facts admit of their application. So in politics certain principles are held sacred, either in the view of right, or in relation to the constitution of a State. But when these principles are applied to a given state of things, they cease to be abstract. In the Declaration of Independence there are several abstract principles, such as “that all men are free,” &c. But when applied to a certain state of things, they are no longer abstract. I apprehend, therefore, that my worthy friend from Pennsylvania will, on more mature reflection, perceive that the principles contained in the resolutions bearing on facts cease to be abstract; on facts which it is necessary for us to decide, and against examining the consequences of which no reason can be urged. But, says another gentleman, we have no jurisdiction in the case; we have nothing to do with the act of Georgia of 1795; we have no authority over it. I confess myself really surprised to be assured, over and over again, that the act of 1795 which gives the House all this trouble, is the corner stone of the present claims, and without which there would not be a shadow of claim, is not to be considered as blended with our proceedings. What! when we are called upon to compromise claims, are we not to go to the cause, to the fountain source, and decide whether they have, or have not, a foundation in justice? Put the act of 1795 out of the way, and would we have ever heard of this compromise? Remove it, and would we have a single claimant before us soliciting a compromise? I consider the act, to Georgia, as involving the all-important point; as intimately and indissolubly blended with the question before us. That question is whether we will consent to give five millions to effect a compromise of claims, directly emanating from the act of 1795; and then, as an incidental question, we are obliged to look at the act of 1795. If the House have authority over the main question, *ex vi termini*, they have authority over every question incidental to it; and common sense teaches us that it is absolutely necessary to determine on the validity of the act of 1795, in order to decide the justice or policy of compromising claims arising out of it.

Having settled, as I conceive, these preliminary points, I will call the attention of the House to the great point on which their decision must turn. Either the act of 1795 or of 1796 is in force. If that of 1795 is in force the

claimants have a legal title to unascertained millions. If that act is not binding, they have no claim at all. If that act is of no authority, there is an end of their title. The tree is cut up by the roots, and all its branches fall. They have either then a title to fifty millions, or they have no title at all. Their case cannot be compared to a common saying, which declares half a loaf better than no bread.

Now let us compare these facts and reasonings with the resolutions. When I rose I intended to have taken them up in order, but as I have been diverted by the course of the argument, I shall pursue the track I have taken. One of the resolutions states “that a subsequent legislature of an individual State has an undoubted right to repeal any act of a preceding legislature, provided such repeal be not forbidden by the constitution of such State, or of the United States.”

This is, I think, a plain and clear axiom. Both legislatures flow from the same source, and are armed with equal powers. What one legislature can do, another may undo, if the interest of the public prescribes it. I know an ingenious distinction is taken, as to the power of a legislative body, between municipal acts and those constituting contracts. The distinction holds to a certain degree as to expediency, but not as to power. When a legislative body forms a contract, it is a solemn thing, and it ought not to be touched, except when the private evil arising from its being annulled should rather be endured than the public calamity arising from its continuance. But still the position of the resolution is perfectly tenable. What one legislature has done another may undo; what one has enacted, a subsequent one may repeal.

Let us examine whether there is any thing in the rescinding act of Georgia at variance with the constitution of that State, or the Constitution of the United States. The whole course of the business shows the previous act to have been a violation of the Constitution of Georgia. The Constitution of the United States declares that no State “shall pass any *ex post facto* law, or law impairing the obligation of contracts.” That no contract has been impaired, is evident from attending to the sense of the word. I know of no contract formed, either in a legal or equitable sense. Did the Constitution of Georgia authorize her Representatives to rob the people of their property? Or did it authorize them only to dispose of it for their welfare? If they had a right to dispose of it in a wrongful manner, it knocks up the argument at once. If they were vested with a right to rob and plunder their constituents, I

give up the point. But until this is shown I shall remain of opinion that they only had the right of disposing of it for the general good. I am not about to travel through the fruitful wilderness of inquiry disclosed in the progress of this affair. But gentlemen say that we have no evidence of corruption. What do they want more than we possess? The whole business has been referred to a set of Commissioners, whose comprehensive powers embraced an investigation of every claim. They have fully examined the claims under the act of 1795, and they have reported that—

“A comparison of the schedule annexed to the articles, and which is declared to be a part of the agreement, with the yeas and nays on the passage of the act authorizing the sale, (E.) shows that all the members, both in the Senate and House, who voted in favor of the law, were, with one single exception, (Robert Watkins, whose name does not appear,) interested in, and parties to, the purchase.

“The articles of agreement, and list of associates of the Tennessee company, which have been voluntarily furnished by one of the trustees, show that a number of the members of the Legislature were also interested in that company.”

This stubborn fact appears on the face of a report made by persons duly authorized to investigate the whole transaction. The fact is indisputable, and ought to satisfy the most reluctant and unwilling mind of the enormity of the corruption attending this business. It is fully satisfactory to my mind. But it is said that this statement is founded on *ex parte* depositions, and that no opportunity has been allowed to cross-examine the witnesses. But where were they taken? In Georgia; in probably the same House that witnessed the scene of disgrace; by a tribunal competent to take them and to inquire into facts.

Upon the whole, it appears to me most evident, on referring to the acts of Georgia, the articles of cession, and the laws of Congress, that the claims under the acts of Georgia have no validity. If, therefore, we give any thing, it must be from compassion, and not from the obligations of justice. Let the House, ere it do this, reflect whether there are not objects in the country equally worthy of their compassion. Let them visit the straw shed of the war-worn soldier who bled in the defence of our rights; the comfortless hut

of the widow who lost her husband in battle. With but little search we shall find a mountain of claims that overhangs the justice of the country. If, after this view, we shall consider any unfortunate victims of injustice in this transaction entitled to compassion, I will agree to go as far as any man in affording them relief. But were we as rich as Cræsus, I would first administer relief to the Belisariuses of our country. Let us be just to these before we are generous to other descriptions of claimants.

Mr. T. M. RANDOLPH.—Mr. Speaker: I hope the House will not consent to postpone these resolutions. I hope it will, on the contrary, immediately proceed to consider them, and conclude by adopting them, for, taken generally, they meet my warm approbation as to the principles they lay down, and I am anxious to see the last one, which is the fair corollary of the other, incorporated into the bill now before us.

My opinion is, that it will cast a broad stain on the American character, as it must be exhibited in future history, for this body which represents it to grant compensation for their pretended losses, under whatever form ingenuity may invent to disguise it, to any of those adventurers who made the spurious contract with Georgia in the year 1795, for the purchase of her western territory, upon the ground that the fictitious bargain gave the least shadow of title to any part of that territory. This opinion is a conviction irresistibly given to my mind by an impartial investigation, that what were at that time called companies of land adventurers, were, with the exception of one or two misled individuals, whose delusion and consequent implication I lament, no other, in their conduct on this occasion, than shameless bands of sharpers; what was impudently called a contract, was, in reality, a fraud of unprecedented enormity, and what has since been declared an unjust interposition of the primary sovereign authority of the State, to cancel a fair bargain, was no more than the regular and proper application of the only sufficient means which could be used to redress a cheat upon the people of Georgia of unparalleled audacity and magnitude. I am sorry, by entertaining this opinion, to differ with so many on this floor, with whom it is my pride to think; but I am not much surprised at that difference. Very rarely, indeed, have I heard of important questions which did not divide opinions; never have I been at a criminal trial where numbers did not doubt the reality of the crime. Such is the difference in the impression made by the same testimony upon different minds. Were it not

for this extraordinary circumstance in our nature, which almost precludes unanimity, and which completely defies explanation upon any general principles of the moral structure of man, there would be but one sentiment in this House upon the question now before it. The information which has satisfied my mind, I have derived from the declarations of the counties of Georgia, in their petitions and remonstrances presented to the convention of that State, which assembled in the month of May, 1795; from the acknowledgment made by that convention of the dignity of those applications, and the respect due to them, in the resolve which referred the matter they contained to the consideration of the succeeding Legislature; from the proceedings of the General Assembly of 1796, upon that matter, and the evidence it collected and recorded relative thereto; and, lastly, from certain declarations and provisions confirming those proceedings, and thereby establishing that evidence, which were made by the convention of 1798, and which exist now in the body of the present Constitution of Georgia. The same means of information are within the reach of all; I ought to say, should be possessed by all; I might say, should be satisfactory to all; since the witnesses are the great body of the people of one of our respectable States, and the testimony is authenticated, confirmed, and preserved, as well by the constitutional as the ordinary code of that State.

It has not been my object in making this inquiry, to learn in what deep sharper's brain this scheme was first engendered, which of the associates stood most prominent in the development and execution of it, how the price paid for the flagrant treason against posterity was apportioned, or how the spoil obtained by such a stupendous larceny, committed upon the inheritance of the unborn, was divided. I have not desired to know, and it would be unimportant to the House to be informed, which of the associates had no moral sense at all, whose conscience was subdued by his avarice, or who, unthinkingly, gave the control of it into the hands of his friend. I desire not to see any name consigned to infamy; of those which have come to my knowledge, one or two I yet respect; the remainder have not more distinct images annexed to them, in my mind, than those of the men who conceived and executed the South Sea cheat in England, or the Mississippi fraud in France. But, from the investigation I have made, I have learned, as certainly as the actions of men can be known to others than the actual beholders of them, that the Legislature of Georgia, which commenced its session in the autumn of 1794, was assailed by every possible artifice of

seduction, to procure from it the act of 7th January, 1795, which constituted what has since been impudently called the Yazoo contract. That it yielded to those artifices, and a considerable majority of its members became treacherous to their constituents, and deaf to the voice of their honor. That bribes were daringly offered and unblushingly received for votes in favor of the land. That the property of the State of Georgia, to the amount of forty millions of dollars, at the most reasonable estimate, was sold by those trustees of the people of Georgia for one half million, and purchased by the sellers themselves in combination with certain abject worshippers of gold, who had artfully infused into them their blind fanaticism. That another offer of four-fifths of a million, made by other men at the same time, was rejected, because the Legislature itself was concerned in the first. That the Chief Magistrate of the State, after one feeble effort of resistance, and a declaration which ought to have bound him to an obstinate opposition, with a conduct which, to my mind, manifests a thorough knowledge of the corrupt views of the Legislature, as well as a want of energy to defeat them, yielded to the impulse, and ratified the fraudulent sale. That the moment his irresolute hand gave the illusive sanction to the vain and ineffectual deed, this ravenous pack of speculators, keen with the hunger of avarice, unkennelled and scoured the whole peopled territory of the Union in quest of their appropriate game—the simple, the credulous, and those who are hoodwinked by the excess of their own cupidity. The most voracious of them sought the great cities, where numbers of the thirsty sons of gain became their prey, while numbers more joined in the promising chase, led the way to the victims, and fattened on their spoil. Many, more fell in their nature, though less keen in their appetites for gold, traversed the tranquil country of New England, scenting the homely purses which hung in the smoky corner of peaceful cottages, into which the solitary dollar had been dropped with religious punctuality every week, perhaps every month only, by the hand of the provident father, from the time when the first birth under his roof gladdened his heart. Great numbers of these receptacles of hard-earned gain, with all their rusty treasure, the fruit of long continued industry and frugality, destined to ensure to many of the rising race the innocent joys of a life of wholesome exertion in their own fields, were devoured by them, and that happy destiny in a moment changed for a short period of certain pain, and, too probable, vice, in the moving prisons of the ocean.

The promulgation of the law produced one general murmur of indignation throughout the State of Georgia. The crime committed by the Representatives of the people was strongly denounced by the grand juries of all the succeeding courts. An assembly of special Representatives, which had been summoned for constitutional purposes, meeting in the succeeding spring, was addressed by all the counties of the State, and by nearly the whole people of it, with memorials, remonstrances, and petitions, according to the different degrees of excitement, all setting forth in strong terms the nefarious act; complaining with bitterness of the perfidy of the Legislature, requiring, urging, and imploring the convention to proclaim the fact, and annul the fraudulent sale. No laborious investigation into the huge and naked scheme of speculation, no troublesome search after testimony to expose the framer of it was necessary. Nothing was requisite but to receive, condense, and record the decisive evidence voluntarily offered from all quarters. But this legitimate and easy task the convention, naturally enough, thought fit to decline, as many of its members were themselves openly concerned, and many more secretly interested in the purchase. The pack of speculators were then in full cry, the game were falling abundantly into their jaws; it could scarcely be expected that those who had contributed so much to set this chase on foot, who expected to share so largely in its profits, should sound the horn of alarm to the objects of it. It quickly occurred to a majority of this body, that a reference of these addresses to the Legislature of the next year, would not only give time for the continuance of the chase, but might be productive of something like safety in the after possession of the spoils of it; while it promised to afford some shield against the popular discontent and indignation which a total neglect, so desirable to themselves, must inevitably have brought on them. Notwithstanding, before midsummer of the same year, the fraudulency and consequently invalidity of the sale must have been unequivocally known throughout the Union, by the ferment in the State of Georgia. Early in the succeeding year all the records of State relative to this transaction were burned, and all recorded evidences of private contracts which had arisen out of the land were cancelled, destroyed, and forbidden to be renewed or afterwards admitted in the courts by the Legislature acting under the authority to consider the matter, and of course the power to redress the complaint of the petitions, which had been given to it by the convention, and also under the express injunction of the people themselves, laid on the

individual members of that body at the elections. But the speed of the sharpers had outstripped the slow step of the State. They had, in a great measure, executed their swindling scheme; a number of their dupes were already, instead of amusing their own credulity, insincerely, and I will say, insolently, accusing the perfidy of Georgia.

The question was then taken by yeas and nays on the postponement, until the first Monday of December, of the following resolution:

“Resolved, That the Legislature of the State of Georgia were, at no time, invested with the power of alienating the right of soil possessed by the good people of that State, in and to the vacant territory of the same, but in a rightful manner, and for the public good:”

And passed in the negative—yeas 51, nays 52.

So much of the said original motion as is contained in the second clause thereof, being again read, in the words following, to wit:

“That, when the Governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been clothed for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people, so circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them:”

The question was taken that the House do agree to the motion for postponement of the said second clause of the original motion; and resolved in the affirmative—yeas 52, nays 50.

So much of the said original motion as is contained in the third clause thereof, being twice read, in the words following, to wit:

“That it is in evidence to this House, that the act of the Legislature of Georgia, passed on the seventh of January, 1795, entitled ‘An act for appropriating a part of the unlocated territory of this State, for the payment of the State troops, and for other purposes,’ was passed by persons under the influence of gross and palpable corruption practised by the grantees of

the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest.”

The question was taken that the House do agree to the motion for postponement of the said third clause of the original motion; and resolved in the affirmative—yeas 54, nays 49.

So much of the said original motion as is contained in the fourth, fifth, sixth, and seventh clauses thereof, being again read, in the words following, to wit:

“That the good people of Georgia, impressed with general indignation at this act of atrocious perfidy and of unparalleled corruption, with a promptitude of decision highly honorable to their character, did, by the act of a subsequent Legislature, passed on the thirteenth of February, 1796, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their constitution, declare the preceding act, and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State, and be publicly burnt, which was accordingly done; provision at the same time being made for restoring the pretended purchase-money to the grantees, by whom, or by persons claiming under them, the greater part of the said purchase-money has been withdrawn from the treasury of Georgia.”

“That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature; provided such repeal be not forbidden by the constitution of such State, or of the United States.”

“That the aforesaid act of the State of Georgia, passed on the thirteenth of February, 1796, was forbidden neither by the constitution of that State, nor by that of the United States.”

“That the claims of persons derived under the aforesaid act of the seventh of January, 1795, are recognized neither by any compact between the United States and the State of Georgia, nor any act of the Federal Government.”

The question was taken that the House do agree to the motion for postponement of the said fourth, fifth, sixth, and seventh clauses of the original motion; and resolved in the affirmative—yeas 53, nays 50.

And then the residue of the said original motion, contained in the eighth and last clause thereof, being twice read, in the following words, to wit:

“Therefore, Resolved. That no part of the five millions of acres reserved for satisfying and quieting claims to lands ceded by the State of Georgia to the United States, and appropriated by the act of Congress passed at their last session, shall be appropriated to quiet or compensate any claims derived under any act, or pretended act of the State of Georgia, passed, or alleged to be passed, during the year 1795:”

The question was taken that the House do agree to the motion for postponement of the said residue of the original motion; and resolved in the affirmative—yeas 54, nays 51, as follows:

YEAS.—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phaniel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findlay, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Joseph H. Nicholson, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

NAYS.—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland,

William Kennedy, Michael Leib, Joseph Lewis, jun., Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smith of Virginia, Henry Southard, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Wynn, and Joseph Winston.^[10]

WEDNESDAY, March 14.

Government of Louisiana.

The House went into a Committee of the Whole on the bill from the Senate, providing for the government of Louisiana.

Mr. SLOAN moved an amendment, inhibiting the admission of slaves into Louisiana, as well from the United States as from foreign places.

Mr. S. concisely stated his reasons in favor of this provision, when the question was taken, and the amendment agreed to—ayes 40, noes 36. Mr. G. W. CAMPBELL proposed an amendment, withholding from the parties to a civil suit the right of waiving a jury trial. The bill provides a jury trial in all cases in which either party shall require it.

This amendment, after being supported by Mr. G. W. CAMPBELL, and opposed by Messrs. HOLLAND, SOUTHARD, and DANA, was negatived—ayes 12.

Mr. G. W. CAMPBELL moved to strike out that part of the bill which renders every person settling on lands of the United States liable to a fine of one thousand dollars, and to one year's imprisonment.

This produced a debate of some length and more animation, in which the motion to strike out was urged by Messrs. G. W. CAMPBELL, LYON, and CLAIBORNE; and opposed by Messrs. GREGG, NICHOLSON, BOYD, SMILIE, MACON, SLOAN, and HOLLAND.

The question was taken, and the amendment was negatived—ayes 23.

SATURDAY, March 17.

Government of Louisiana.

The bill erecting Louisiana into two Territories, and providing for the temporary government thereof, was read the third time.

Mr. DAWSON moved a recommitment of the bill for amendment.

Mr. ALSTON was against a general recommitment of the bill, but friendly to a recommitment for the purpose of limiting its duration.

Messrs. NICHOLSON, SMILIE, EARLY, and S. N. MITCHILL, opposed the recommitment.

Mr. BEDINGER advocated the recommitment.

The motion to recommit was then negatived—ayes 39, noes 43.

Mr. ALSTON said, if there was no objection, he would move the insertion of a clause to limit the period of the bill, on account principally of the great powers conferred on the Executive.

This motion being objected to, by Mr. LYON, was declared out of order.

The question was then put on the passage of the bill.

Messrs. LYON, SLOAN, JACKSON, and BEDINGER opposed, and Mr. SMILIE supported its passage.

Mr. VARNUM moved to recommit, for amendment, that part of the bill that vests equity powers in the courts of Louisiana.

Motion negatived—ayes 39, noes 44.

A motion was made to recommit the fourth section, which was lost—ayes 15.

Mr. BEDINGER moved to recommit the last section for the purpose of obtaining a limitation to the act.

Motion carried—ayes 52.

The House went into a Committee of the Whole on the last section,

When Mr. NICHOLSON moved an amendment limiting the act to two years, and to the end of the next session thereafter.

Mr. BEDINGER said, he would like its limitation to one year better, but would, if it were the sense of the House, be satisfied with two years.

Mr. NICHOLSON's motion was agreed to without a division.

The House agreed to the amendment; when the final question was put on the passage of the bill, and carried in the affirmative by yeas and nays—yeas 66, nays 21, as follows:

YEAS.—Willis Alston, junior, Isaac Anderson, David Bard, George Michael Bedinger, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Levi Casey, Thomas Claiborne, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, William Eustis, William Findlay, James Gillespie, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of Virginia, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Marmaduke Williams, Richard Wynn, and Joseph Winston.

NAYS.—John Archer, Silas Betton, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Samuel W. Dana, John Davenport, John Dawson, James Elliot, Gaylord Griswold, Roger Griswold, Seth Hastings, John G. Jackson, Henry W. Livingston, Matthew Lyon, Thomas Plater, James Sloan, John C. Smith, Samuel Tenney, and Lemuel Williams.^[11]

WEDNESDAY, March 21.

Tripolitan War and Mediterranean Fund.

Mr. NICHOLSON, from the Committee of Ways and Means, presented a bill further to protect the commerce and seamen of the United States against the Barbary Powers.

[The bill provides that an additional duty of two and a half per centum be laid upon all imported goods at present charged with a duty ad valorem, and an additional duty of ten per cent. on all such duties payable on goods imported in foreign vessels. The proceeds of these duties are to constitute a fund to be called the Mediterranean fund. The duties to cease within three months after a peace with Tripoli, in case the United States are not engaged in war with some other of the Barbary Powers, in which case they are to cease within three months after a peace with such powers. The President is authorized to cause to be purchased or built two vessels of war, to carry sixteen guns each, and as many gunboats as he may think proper. One million of dollars, additional to the sum heretofore appropriated, is placed under the direction of the President for the naval service, which sum he is authorized to borrow at a rate of interest not exceeding six per cent.]

Mr. NICHOLSON moved that this bill should be made the order for this day.

Mr. R. GRISWOLD moved to-morrow.

The question on “to-morrow” was lost—yeas 33, nays 50, when Mr. NICHOLSON’s motion prevailed.

Duties on Imports.

The bill laying more specific duties on certain articles, and imposing light-money on foreign vessels entering the ports of the United States, was read the third time.

Mr. HUGER moved its postponement to the first Monday of December, under the impression that its merits, and the principles it contained, had not received that full and deliberate examination to which they were entitled.

Mr. J. CLAY observed that a postponement would be virtually a rejection of the bill.

Mr. MITCHILL concisely advocated the principles of the bill.

Mr. BLACKLEDGE also defended it.

Mr. R. GRISWOLD opposed it, principally on the ground that it increased the existing rate of duties.

Mr. J. CLAY replied, and allowed that the duties imposed by the bill would produce more revenue than that heretofore received, but contended that this would arise from the fraudulent practice heretofore in use of making out invoices of articles subject at present to ad valorem duties. In removing this evil, the necessary effect would be an increase of revenue, not exceeding, however, the probable receipt in case the invoices were fairly made out.

Mr. HUGER followed, in a speech of considerable length, in which he contended that the operation of the bill would be to promote the manufactures of the Eastern and Middle States, to the great detriment of the Southern States. Principally, though not entirely on this ground, he declared himself hostile to the bill.

After a few remarks from Mr. BOYD in defence, and of Mr. CLAIBORNE against the bill, the question of postponement was taken by yeas and nays, and lost—yeas 40, nays 68.

Mr. KENNEDY moved a recommitment of the motion imposing a specific duty on printed calicoes and lime.

Motion rejected—yeas 34.

The question was then taken on the passage of the bill, and carried in the affirmative by yeas and nays—yeas 65, nays 41.^[12]

THURSDAY, March 22.

Protection against the Barbary Powers.

The House resolved itself into a Committee of the Whole on the bill further to protect the commerce and seamen of the United States against the Barbary Powers.

Mr. GRISWOLD moved to strike out the first section, which is as follows:

“Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of defraying the expenses of equipping, officering, manning, and employing such of the armed vessels of the United States, as may be deemed requisite by the President of the United States, for protecting the commerce and seamen thereof, and for carrying on warlike operations against the Regency of Tripoli, or any other of the Barbary Powers, which may commit hostilities against the United States, and for the purpose also of defraying any other expenses incidental to the intercourse with the Barbary Powers, or which are authorized by this act, a duty of two and a half per centum ad valorem, in addition to the duties now imposed by law, shall be laid, levied, and collected upon all goods, wares, and merchandise, paying a duty ad valorem, which shall, after the thirtieth day of June next, be imported into the United States from any foreign port or place; and an addition of ten per centum shall be made to the said additional duty in respect to all goods, wares, and merchandise, imported in ships or vessels not of the United States, and the duties imposed by this act shall be levied and collected in the same manner, and under the same regulations and allowances, as to drawbacks, mode of security, and time of payment, respectively, as are already prescribed by law, in relation to the duties now in force on the articles on which the said additional duty is laid by this act.”

Mr. G. said, that it was much to be regretted that gentlemen had thought proper, upon this occasion, to connect with the great and ostensible object of the bill, any provisions which should produce a disunion in the House. The unfortunate event in the Mediterranean called loudly for vigorous and decisive measures, and he trusted there would not exist on the floor a difference of opinion on that point. For himself, he was disposed to clothe the President with all the power, and to furnish him with all the means which were necessary to bring the war with Tripoli to a successful and speedy termination. And when this was done, to make him, as he ought to be, responsible for the event.

It is always improper, said Mr. G., to connect in the same bill two subjects which are in their natures distinct; and much more improper upon this occasion, to tack to the provisions for the Mediterranean service, upon

which there could be no difference of opinion, a new tax, in respect to which gentlemen could not agree.

The first section of the bill, which he had moved to strike out, imposed a new tax of two and a half per centum ad valorem on all goods now liable by law to an ad valorem duty. Goods paying at this time an ad valorem duty were divided into three classes—the first class was liable to a duty of twelve and a half per cent.; the second, to a duty of fifteen per cent.; and the third, to a duty of twenty per cent.

The addition of two and a half per cent. now proposed, would increase the duties to fifteen, seventeen and a half, and twenty-two and a half per cent., when the goods were imported in American bottoms; and if they were imported in foreign bottoms, the duties would be further increased by the addition of ten per cent.

This view of the import, said Mr. G., will satisfy gentlemen that the duties are already high, and that the proposed addition will render them enormous. This step, therefore, ought not to be hazarded, unless the necessities of the Government are absolutely imperious, and no other means can be resorted to for obtaining the money.

The proposed tax, if fairly collected, would produce at least \$750,000 per annum. This result might be seen from a view of the imports into the United States of goods now liable to an ad valorem duty. From the last official report, it appeared that the importation of goods of that description, amounted in that year to about forty millions of dollars—the two and a half per cent. on the whole sum would, of course, produce one million, but, allowing for the drawback of duties on goods exported, the net revenue could not be less than \$750,000. Why, then, impose a tax of seven hundred and fifty thousand dollars to meet an expenditure which will not probably exceed four or five hundred thousand dollars?

Mr. NICHOLSON.—We are now about to authorize a greater expense than usual, and the Legislature are called upon to provide means for its discharge. For one, said Mr. N., I can never consent to add to the public debt, while the resources of the country are adequate to its wants. These are my ideas; and I feel somewhat surprised at the calculation of the gentleman from Connecticut, on the expense about to be incurred. He estimates this expense at \$388,000; though yesterday when this subject was laid before

the Committee of Ways and Means, and it was contemplated to provide \$750,000, he moved to strike out \$750,000, and insert \$1,000,000. And yet he now tells us that only \$388,000 are required. As to the specie in the Treasury, the gentleman states that on the 1st of October there were \$5,000,000. But with what disbursements is this chargeable? Out of it there are to be paid American citizens for French spoliation the sum of \$3,750,000 in cash, which must remain in the Treasury, that just claims may be paid as soon as presented. Under the British Convention there is to be paid \$800,000; and there is likewise to be paid the interest on Louisiana stock, amounting to \$685,000; the aggregate of which sums is \$5,235,000. Not having made this calculation until the gentleman made his observation, it is possible it may not be perfectly correct.

When the loss of the Philadelphia was announced, my first inquiry of the Secretary of the Treasury was what money could be spared from the Treasury for the prosecution of vigorous measures. His answer was, that the greatest sum which could be spared would not exceed \$150,000. I did not, like the gentleman, go to the clerks or to the navy yard; but I got the best information I could.

The gentleman from Connecticut, who appears willing to incur an expense of a million of dollars, while he is unwilling to provide the means of meeting it, objects to the mode of raising revenue proposed by the Committee of Ways and Means, without proposing any other. He objects to the laying additional duties on imported goods. In his remarks he has made an erroneous statement of the quantity of goods on which ad valorem duties are paid. His error has arisen from not deducting the amount of drawbacks. By an official statement made this session, it will be found that during the year 1802, goods paying ad valorem duties were as follows:

<i>Rate.</i>	<i>Amount.</i>	<i>Duty.</i>
12½ per cent.	\$23,377,717	\$2,922,214
15 "	7,888,614	1,183,292
20 "	439,830	87,966
Amounting to	<u>\$34,706,161</u>	<u>\$4,193,472</u>

The average duty on goods charged ad valorem is about thirteen and a half per cent. Let us consider the duties paid by other articles. The

gentleman says in laying duties there is a point beyond which we cannot go in safety on account of the temptation to smuggling. This is true. But of all goods imported those chargeable with ad valorem duties are the most difficult to smuggle. The invoices are made out in the country from which they are imported. These must be authenticated, and presented at the custom-house and sworn to. If the collector has any reason to suspect that there are goods on board of a vessel, not in the entry, he is to make a thorough examination of the vessel. If he sees a bale in which he suspects there are goods not stated in the invoice, it is in his power to have it examined. I believe there is but little smuggling at this time; but that the articles on which there is most smuggling are rum and coffee. If the gentleman allows that the duty on articles charged specifically is not so high as to encourage smuggling to any great or dangerous extent, he will allow the same in the case of articles charged ad valorem. The great articles from which revenue is obtained, are

Spirits, which pay an average duty of twenty-nine and two-tenth cents, and which produce \$2,253,496, and cost the importer from twenty-five to fifty cents per gallon. Spirits which pay twenty-five cents a gallon do not cost the importer more than fifty cents, and consequently pay a duty of fifty per cent. on the price of the article. Spirits of the third proof pay twenty-eight cents, and do not cost more than fifty-six cents a gallon, which is equal to a duty of fifty per cent. So with spirits of higher proof. From this article is derived more than a fifth of our revenue, and yet I never heard the amount of the duty complained of, until a few days since a petition was presented from the merchants of Connecticut. It is certain that Congress have never considered it so high as to encourage smuggling.

Of imported sugars 39,443,814 lbs. are consumed within the United States, which pay, on an average, a duty of two and a half cents per pound. The price of brown sugar to the importer is about five or six dollars the hundred. The duty is therefore between forty-five and fifty per cent. Is this duty considered so high as to encourage smuggling? If not, shall gentlemen complain when we are about to lay an additional duty of two and a half per cent. upon articles now chargeable with duties of from twelve and a half to twenty per cent.?

Of salt there is consumed 3,244,309 bushels in the United States. It pays a duty of twenty cents a bushel. In many instances this is equal to the first

cost; and amounts therefore to one hundred per cent.

The consumption of wines amounts to 1,912,274 gallons, and the average duty is thirty-three cents. The duty on Madeira wine is fifty-eight cents, and it costs the importer one dollar and twenty-five cents. The duty therefore amounts to near fifty per cent. If the cost be taken at one dollar and fifty cents, the duty will be thirty-three and a third per cent. And yet it is not complained that it encourages smuggling.

The greater part of goods charged *ad valorem* are woollens, linens, manufactures of steel, brass, and articles of a similar kind, and muslins. In a muslin gown the additional duty will make a difference of about five cents. India muslins cost about fifteen cents a yard, and English about twenty-five cents. The additional duty will therefore be about three-eighths of a cent on India, and about three-fourths of a cent on English muslins. This I consider a burden which no one can feel. The additional duty on linens will be equally unfelt. In a bale of osnaburgs, which costs twenty cents, the additional duty on a hundred yards will not exceed fifty cents. So as to Irish linens and woollens. The difference in a coarse suit of clothes for a common man will not be more than twenty-five cents, and that of a better kind will not exceed one dollar and twenty-five cents. I am surprised, after taking this view of the operation of the proposed duty, that gentlemen should dwell upon the great burden it will impose, when it can, in truth, scarcely be felt by the poorest man in the country. It is indeed of no consideration but on account of the money raised by it, which I have estimated at about \$750,000.

The gentleman from Connecticut thinks he has discovered in the second section a design that is not avowed, to wit: to liberate the present resources from their application to the support of the Navy. I wonder, however, that the gentleman, before he made this unguarded remark, did not read the section through. He would then have seen that the fund established by this act is to exist no longer than three months after the discontinuance of war in the Mediterranean. Nor is it true that the whole expenses of the Navy are in the Mediterranean. It is true, that at this time they are principally there. But there is likewise considerable expense incurred here in the navy yard on the ships, and on the half-pay of officers not in actual service. Whence the gentleman deduces the inference, when the bill itself declares that the new duties shall cease three months after the end of the war, I am altogether at a

loss to comprehend. The duties are to cease with the occasion which produced them. When we shall no longer be at war, the war duties will be at an end.

Mr. DANA.—The gentleman from Maryland must surely have committed a mistake, when he said that there is no measure proposed on his side of the House which does not meet with opposition. When the President considered vigorous measures necessary against the Emperor of Morocco, the Journal will show that we entered into them unanimously. Nor is the objection now urged in any way an objection to the general measure contemplated. The only objection is to the imposition of unnecessary taxes. If the force necessary to be sent into the Mediterranean will not exceed an expense of \$380,000, the necessity of the imposition of the proposed taxes surely does not exist. I admit that, after the force is raised, the President, in virtue of his authority as commander-in-chief, is to have its whole direction; but it is perfectly novel to me to learn that we are not previously to be informed of the extent to which it is proposed to carry it. If to the present number of vessels in service we add two frigates and five smaller vessels, they will require only an additional appropriation of \$354,000. This, I believe, is the full extent of the additional force contemplated. As to raising money to that amount, I make no objection. Though I dislike laying duties thus in gross, yet I do not know that there can be any great objection to it. The sum proposed to be raised will give \$750,000, which is more than double the sum necessary.

Is it proper thus to raise these duties, and hold forth to the nation that the commerce of the Mediterranean is so expensive? The late disaster in the Mediterranean is not of itself an adequate cause for the measure. I object to this measure, because it goes to give an improper impression of the causes of the bill.

Mr. NICHOLSON said, the gentleman from Connecticut seemed to consider the object too general; he would, in case the committee refused to strike out the first section, move to limit the application of the fund “to protect the commerce and seamen of the United States in the Mediterranean.”

The question was then taken on striking out the first section, and passed in the negative—ayes 26.

Mr. N. then offered the amendment just stated.

Mr. EUSTIS hoped the gentleman from Maryland would withdraw his amendment, as in a subsequent part of the bill the object is distinctly specified. It is altogether unnecessary; and if agreed to, it will be necessary to add, “or adjacent seas.”

Mr. NICHOLSON said, he considered the amendment as unnecessary; but as he had promised to make it, he could not withdraw it.

Mr. J. RANDOLPH said he would suggest one reason why it ought not to obtain. One of the Barbary Powers possessed a coast out of the Mediterranean. If the misfortune of the United States should dispose this power, (Morocco,) already predisposed to hostility, to war upon the United States, it would not be in our power to block up the port of Sallee, and several other ports out of the Mediterranean.

The question was taken on the amendment, which was lost without a division.

The committee then rose and reported the bill without amendment.

The House immediately took it up—when Mr. R. GRISWOLD renewed his motion to strike out the first section.

The question on striking out the first section was taken by yeas and nays—yeas 28, nays 77.

FRIDAY, March 23.

District of Columbia.

Mr. DAWSON moved that the House should resolve itself into a Committee of the Whole on the resolutions offered by him, for the recession of the District of Columbia.

Mr. HUGER said this point had been fully and ably investigated the last session. He did not expect, after the decision then made, that the House would have been again called upon to discuss it. He believed the mind of every member was made up respecting it. He hoped, therefore, the House would not agree to go into committee.

Mr. J. LEWIS said he should vote against the House resolving itself into a Committee of the Whole, and should that motion be negatived, he would move to discharge the Committee of the Whole from all further consideration of the resolutions. The question was taken on going into committee, and lost—yeas 20.

Mr. J. LEWIS then moved to discharge the committee. This motion was carried without debate—yeas 53, embracing a great majority of the members present.

MONDAY, March 26.

Impeachment of Judge Chase.

Mr. JOHN RANDOLPH, from the committee appointed on the thirteenth instant, to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, made a report thereon, which was read.

Ordered, That the said report be printed for the use of the members of both Houses; and that the Clerk of this House be directed to transmit to each of the members of the two Houses of Congress, a copy of the said report, as soon as the same shall be printed.

Ordered, That there be a call of the House to-morrow morning at eleven o'clock.

The House adjourned until four o'clock, post meridian.

Four o'clock, p. m.

A message from the Senate informed the House that the Senate have passed a resolution, that the resolution of the two Houses authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on this day, be rescinded; and that the said President and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on Tuesday, the 27th of this month; to which they desire the concurrence of this House. The Senate adhere to their amendment, disagreed to by this House, to the

bill, entitled “An act supplementary to the act, entitled ‘An act providing for a Naval Peace Establishment, and for other purposes.’”

The House proceeded to consider the resolution of the Senate to rescind the resolution of both Houses, of the thirteenth instant, for an adjournment of the two Houses of Congress, on this day; and authorizing the President of the Senate and Speaker of the House of Representatives, to close the present session, by adjourning their respective Houses on Tuesday the 27th of the present month: whereupon,

Resolved, That this House doth agree to the said resolution of the Senate—yeas 49, nays 44.

The House proceeded to reconsider the amendment disagreed to by this House, and adhered to by the Senate, to the bill, entitled “An act supplementary to the act, entitled ‘An act providing for a Naval Peace Establishment, and for other purposes,’” whereupon,

Resolved, That this House doth recede from their disagreement to the said amendment.

TUESDAY, March 27.

Specific Duties.

A message from the Senate informed the House that the Senate have passed the bill, entitled “An act for imposing more specific duties on the importation of certain articles, with amendments, and also for levying and collecting light-money on foreign ships or vessels.”

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled “An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels,” whereupon,

Resolved, That this House doth agree to the said amendments.

Half-past four o’clock, p. m.

Mr. JOHN RANDOLPH, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn until the first Monday in November next; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that the Senate, having completed the Legislative business before them, are now ready to adjourn. Whereupon the SPEAKER adjourned the House until the first Monday in November next.

EIGHTH CONGRESS.—SECOND SESSION.

BEGUN AT THE CITY OF WASHINGTON, NOVEMBER 5, 1804.

PROCEEDINGS IN THE SENATE.

MONDAY, November 5, 1804.

The second session of the Eighth Congress, conformably to the act passed at the last session, entitled, “An act altering the time for the next meeting of Congress,” commenced this day; and the Senate assembled at the City of Washington.

PRESENT:

AARON BURR, Vice President of the United States and President of the Senate.

SIMEON OLCOTT and WILLIAM PLUMER, from New Hampshire.

JOHN QUINCY ADAMS, from Massachusetts.

URIAH TRACY, from Connecticut.

CHRISTOPHER ELLERY, from Rhode Island.

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont.

JOHN CONDIT, from New Jersey.

SAMUEL WHITE, from Delaware.

SAMUEL SMITH, from Maryland.

ABRAHAM BALDWIN, from Georgia; and

THOMAS WORTHINGTON, from Ohio.

WILLIAM B. GILES, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Abraham B. Venable, resigned, took his seat, and his credentials were read.

The VICE PRESIDENT gave notice that he had received a letter from WILLIAM HILL WELLS, a Senator from the State of Delaware, resigning his seat in the Senate.

The number of Senators present not being sufficient to constitute a quorum, the Senate adjourned.

TUESDAY, November 6.

JESSE FRANKLIN, from the State of North Carolina, GEORGE LOGAN, from the State of Pennsylvania, and TIMOTHY PICKERING, from the State of Massachusetts, severally attended.

ANDREW MOORE, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Wilson C. Nicholas, resigned, took his seat, and his credentials were read.

The PRESIDENT administered the oath to Mr. GILES and Mr. MOORE, as the law prescribes.

Ordered—That the PRESIDENT be requested to notify the Executive of the State of Delaware of the resignation of Mr. Wells.

No quorum being present, the Senate adjourned.

WEDNESDAY, November 7.

ROBERT WRIGHT, from the State of Maryland, attended.

Ordered, That the Secretary notify the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled and ready to proceed to business. The House of Representatives have appointed a committee on their part, jointly, with such committee as the Senate may appoint, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled and ready to receive any communications that he may be pleased to make to them. The House of Representatives have also passed a resolution that two chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who

shall interchange weekly; in which several resolutions they desire the concurrence of the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled; and concurred therein, and Messrs. SAMUEL SMITH and BALDWIN were appointed the committee on the part of the Senate.

The Senate took into consideration the Resolution of the House of Representatives for the appointment of two chaplains to Congress during the present session, and, having agreed thereto, proceeded to the choice of a chaplain on their part; and the Rev. Mr. McCORMICK was duly elected.

Mr. SAMUEL SMITH reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of this day, and that the President of the United States had informed the committee that he would make a communication to the two Houses tomorrow at 12 o'clock.

THURSDAY, November 8.

JONATHAN DAYTON, from the State of New Jersey, and JAMES HILLHOUSE, from the State of Connecticut, severally attended.

The following message was received from the PRESIDENT OF THE UNITED STATES:—

To the Senate and House of Representatives of the United States:

To a people, fellow-citizens, who sincerely desire the happiness and prosperity of other nations, to those who justly calculate that their own well-being is advanced by that of the nations with which they have intercourse, it will be a satisfaction to observe, that the war which was lighted up in Europe a little before our last meeting, has not yet extended its flames to other nations, nor been marked by the calamities which sometimes stain the footsteps of war. The irregularities, too, on the ocean, which generally harass the commerce of neutral nations, have, in distant parts, disturbed ours less than on former occasions. But, in the American seas, they have been greater from peculiar causes; and even within our harbors and jurisdiction, infringements on the authority of the laws have been committed, which have called for serious attention.

While noticing the irregularities committed on the ocean by others, those on our own part should not be omitted, nor left unprovided for. Complaints have been received that persons residing within the United States have taken on themselves to arm merchant vessels, and to force a commerce into certain ports and countries in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be permitted in a well-ordered society. Its tendency to produce aggression on the laws and rights of other nations, and to endanger the peace of our own, is so obvious that I doubt not you will adopt measures for restraining it effectually in future.

With the nations of Europe, in general, our friendship and intercourse are undisturbed, and from the governments of the belligerent powers especially, we continue to receive those friendly manifestations which are justly due to an honest neutrality, and to such good offices consistent with that as we have opportunities of rendering.

The activity and success of the small force employed in the Mediterranean in the early part of the present year, the reinforcements sent into that sea, and the energy of the officers having command in the several vessels, will, I trust, by the sufferings of war, reduce the barbarians of Tripoli to the desire of peace on proper terms.

The Bey of Tunis having made requisitions unauthorized by our treaty, their rejection has produced from him some expressions of discontent. But to those who expect us to calculate whether a compliance with unjust demands will not cost us less than a war, we must leave as a question of calculation for them; also, whether to retire from unjust demands will not cost them less than a war. We can do to each other very sensible injuries by war; but the mutual advantages of peace make that the best interest of both.

In pursuance of the act providing for the temporary government of Louisiana, the necessary officers for the Territory of Orleans were appointed in due time, to commence the exercise of their functions on the first day of October. The distance, however, of some of them, and indispensable previous arrangements, may have retarded its commencement in some of its parts; the form of government thus provided having been considered but as temporary, and open to such future improvements as further information of the circumstances of our brethren there might suggest, it will of course be subject to your consideration.

The act of Congress of February 28, 1803, for building and employing a number of gunboats, is now in a course of execution to the extent there provided for. The obstacle to naval enterprise which vessels of this construction offer for our seaport towns; their utility towards supporting, within our waters, the authority of the laws; the promptness with which they will be manned by the seamen and militia of the place in the moment they are wanting; the facility of their assembling from different parts of the coast to any point where they are required in greater force than ordinary; the economy of their maintenance and preservation from decay when not in actual service; and the competence of our finances to this defensive provision, without any new burden, are considerations which will have due weight with Congress in deciding on the expediency of adding to their number from year to year, as experience shall test their utility, until all our important harbors, by these and auxiliary means, shall be secured against insult and opposition to the laws.

The state of our finances continues to fulfil our expectations. Eleven millions and a half of dollars, received in the course of the year ending the 30th of September last, have enabled us, after meeting all the ordinary expenses of the year, to pay upwards of three million six hundred thousand dollars of the public debt, exclusive of interest. This payment, with those of

the two preceding years, has extinguished upwards of twelve millions of the principal and a greater sum of interest within that period; and, by a proportionate diminution of interest, renders already sensible the effect of the growing sum yearly applicable to the discharge of the principal.

These, fellow-citizens, are the principal matters which I have thought it necessary, at this time, to communicate for your consideration and attention. Some others will be laid before you in the course of the session; but, in the discharge of the great duties confided to you by our country, you will take a broader view of the field of legislation. Whether the great interests of agriculture, manufactures, commerce, or navigation, can, within the pale of your constitutional powers, be aided in any of their relations; whether laws are provided in all cases, where they are wanting; whether those provided are exactly what they should be; whether any abuses take place in their administration, or in that of the public revenues; whether the organization of the public agents, or of the public force, is perfect in all its parts: in fine, whether any thing can be done to advance the general good, or questions within the limits of your functions, which will necessarily occupy your attention. In these and all other matters which you in your wisdom may propose for the good of our country, you may count with assurance on my hearty co-operation and faithful execution.

TH. JEFFERSON.

NOVEMBER 8, 1804.

The message was read, and with the documents therein referred to, ordered to be printed for the use of the Senate.

FRIDAY, November 9.

THOMAS SUMTER, from the State of South Carolina, attended.

A message from the House of Representatives informed the Senate that the House have appointed the Rev. WILLIAM BENTLEY a chaplain to Congress on their part during the present session.

MONDAY, November 12.

WILLIAM COCKE, from the State of Tennessee, and DAVID STONE, from the State of North Carolina, severally attended.

THURSDAY, November 15.

SAMUEL MACLAY, from the State of Pennsylvania, and JOHN SMITH, from the State of New York, severally attended.

TUESDAY, November 20.

A message from the House of Representatives informed the Senate that the House have passed a “resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns,” in which they desire the concurrence of the Senate.

The resolution last mentioned was read and passed to the second reading.

THURSDAY, November 22.

The resolution of the House of Representatives expressive of the sense of Congress of the gallant conduct of Capt. Stephen Decatur, the officers and crew of the United States ketch Intrepid, was read the second time, and referred to Messrs. BRADLEY, BALDWIN, and GILES, to consider and report thereon to the Senate.

FRIDAY, November 23.

The PRESIDENT laid before the Senate the credentials of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, in place of WILLIAM HILL WELLS, resigned, and the credentials were read.

SAMUEL L. MITCHILL, appointed a Senator by the Legislature of New York, in place of John Armstrong, whose seat has become vacant by his mission to France, took his seat in the Senate, and produced his credentials, which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

FRIDAY, November 30.

JOHN SMITH, from the State of Ohio, and JOHN BRECKENRIDGE, from the State of Kentucky, severally attended.

MONDAY, December 3.

BENJAMIN HOWLAND, appointed a Senator by the Legislature of the State of Rhode Island, in the place of Samuel J. Potter, deceased, took his seat and produced his credentials; which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

TUESDAY, December 4.

JAMES JACKSON, from the State of Georgia, attended.

THURSDAY, December 6.

JOSEPH ANDERSON, from the State of Tennessee, attended.

MONDAY, December 17.

The credentials of WILLIAM B. GILES, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Wilson C. Nicholas, resigned, and the credentials of ANDREW MOORE, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Abraham B. Venable, resigned, were severally read, and the oath was administered to them, respectively, as the law prescribes.

WEDNESDAY, December 26.

JOHN BROWN, from the State of Kentucky, attended.

MONDAY, January 7, 1805.

The letter of PIERCE BUTLER, Esq., announcing the resignation of his seat in the Senate, was read.

MONDAY, January 14.

Mourning for the Honorable Mr. Potter.

On motion, it was

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect to the Honorable SAMUEL J. POTTER, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.^[13]

TUESDAY, January 15.

The VICE PRESIDENT being absent, the Senate proceeded to the choice of a President *pro tempore*, as the constitution provides, and the Honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States and acquaint him that, the VICE-PRESIDENT being absent, the Senate have elected the Honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

JAMES A. BAYARD, from the State of Delaware, attended. His credentials having been presented and read on the 23d of November last, the oath was administered to him by the President, as the law prescribes, and he took his seat in the Senate.

THURSDAY, January 17.

General Moses Hazen.

The bill entitled “An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen,” was read the third time, further amended, and the blank filled with the words “two hundred;” and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 20, nays 8, as follows:

Yeas.—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Sumter, Worthington, and Wright.

Nays.—Messrs. Adams, Baldwin, Dayton, Hillhouse, Olcott, Plumer, and Tracy.

So it was *Resolved*, That this bill do pass as amended.

MONDAY, January 21.

African Slavery.

Mr. LOGAN presented a petition signed Thomas Morris, clerk, on behalf of the meeting of the representatives of the people called Quakers, in Pennsylvania, New Jersey, &c., stating that the petitioners, from a sense of religious duty, had again come forward, to plead the cause of their oppressed and degraded fellow-men of the African race; and on the question, Shall this petition be received? it passed in the affirmative—yeas 19, nays 9, as follows:

Yeas.—Messrs. Adams, Bayard, Brown, Condit, Franklin, Hillhouse, Howland, Logan, Maclay, Mitchill, Olcott, Pickering, Plumer, Smith of Ohio, Smith of Vermont, Stone, Sumter, White, and Worthington.

Nays.—Messrs. Anderson, Baldwin, Bradley, Cocke, Jackson, Moore, Smith of Maryland, Smith of New York, and Wright.

So the petition was read.

TUESDAY, January 29.

Government of the Territory of Orleans.

Mr. GILES, from the committee to whom was referred, on the 4th instant, the petition of the merchants, planters, and other inhabitants of Louisiana, reported a bill further providing for the government of the Territory of Orleans; and the bill was read, and ordered to the second reading.

The bill is as follows:

A Bill further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be and he is hereby authorized to establish within the Territory of Orleans, a government in all respects similar (except as is herein otherwise provided) to that now exercised in the Mississippi Territory, and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the 20th day of July, 1787, and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans shall be entitled to and enjoy all the rights, privileges, and advantages, secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

Sec. 2. *And be it further enacted,* That so much of the said ordinance of Congress as relates to the organization of a General Assembly, and prescribes the power thereof, shall, from and after the —— day of —— next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the —— day of —— next, and give due notice thereof throughout the same and first appoint the most convenient place, within each of the said districts, for holding the elections; and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be

determined, and the apportionment made in the manner prescribed by the said ordinance.

Sec. 3. *And be it further enacted*, That the representatives to be chosen as aforesaid, shall be convened by the Governor, in the city of Orleans, on the —— day of —— next. The General Assembly shall meet at least once in every year, and such meeting shall be on the —— Monday in —— annually, unless they shall by law appoint a different day. Neither House, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

Sec. 4. *And be it further enacted*, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

Sec. 5. *And be it further enacted*, That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

Sec. 6. *And be it further enacted*, That the Governor, Secretary, and Judges, to be appointed by virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, Secretary, and Judges, of the Territory of Orleans. And all the additional officers authorized by this act shall respectively receive the same compensations for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarterly out of the revenues of import and tonnage, accruing within the said Territory of Orleans.

Sec. 7. *And be it further enacted*, That whenever it shall be ascertained by an actual census or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of inhabitants included therein shall amount to at least —— thousand souls, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons, the inhabitants of the said Territory, upon application to Congress for that purpose, and upon producing satisfactory

proof that the number of souls included therein, ascertained as aforesaid, does actually amount to at least —— thousand, shall thereupon be authorized to form for themselves a constitution and State government, and be admitted into the Union upon the footing of the original States, in all respects whatever, conformably to the provisions of the third article of the Treaty concluded at Paris, on the 30th of April, 1803, between the United States and the French Republic: *Provided*, That the constitution so to be established, shall be republican, and not inconsistent with the Constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the 13th day of July, 1787, so far as the same is made applicable to the Territorial government hereby authorized to be established: *Provided, however*, That Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the rights of a separate State, to alter the boundaries thereof as they may judge proper: except only, that no alteration shall be made which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State Government, according to the provision of this act.

Sec. 8. *And be it further enacted*, That so much of an act entitled, “An act erecting Louisiana into two Territories, and providing for the temporary government thereof,” as is repugnant with this act, shall, from and after the —— day of —— next, be repealed.

WEDNESDAY, January 30.

Army Uniform.

The PRESIDENT laid before the Senate the petition of Andrew Jackson, Major General, and sundry other militia officers and other citizens of the State of Tennessee, praying Congress to amend the articles and rules for the future government of the army, in respect to certain parts of their dress and uniform; and, on the question, Shall this petition be referred to the committee appointed on the 25th instant, who have under consideration the bill, entitled “An act for establishing rules and articles for the government of the armies of the United States?” it passed in the affirmative—yeas 16, nays 15, as follows:

Yeas.—Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Cocke, Condit, Franklin, Hillhouse, Maclay, Mitchill, Olcott, Pickering, Plumer, Stone, and Worthington.

Nays.—Messrs. Breckenridge, Brown, Dayton, Giles, Howland, Jackson, Logan, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, White, and Wright.

THURSDAY, January 31.

JOHN GAILLARD, appointed a Senator by the Legislature of the State of South Carolina, in the room of Pierce Butler, resigned, took his seat in the Senate, and the oath prescribed was administered to him by the PRESIDENT.
[\[14\]](#)

TUESDAY, February 12.

Opening and Counting Votes for President and Vice President.

Resolved, That the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday the 13th instant, February, at noon, for the purpose of being present at the opening and counting the votes for PRESIDENT and VICE PRESIDENT OF THE UNITED STATES. That one person be appointed a teller on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and, if it shall appear that a choice hath been made agreeably to the constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Ordered, That the Secretary do carry this resolution to the House of Representatives.

WEDNESDAY, February 13.

Counting of Electoral Votes for President and Vice President.

About twelve o'clock the Senators took their seats; and immediately after the SPEAKER and members of the House of Representatives entered; the SPEAKER and Clerk occupying seats on the floor on the right side of the PRESIDENT of the Senate, and the members of the House being seated in front.

Mr. SAMUEL SMITH, teller on the part of the Senate, and Mr. JOSEPH CLAY, and Mr. ROGER GRISWOLD, tellers on the part of the House, took seats at a table placed in front of the Chair, in the area between the Senate and House.

The Secretary of the Senate read the resolutions of the two Houses, previously agreed to.

The PRESIDENT (Mr. BURR) stated that, pursuant to law, there had been transmitted to him several packets, which, from the endorsements upon them, appeared to be the votes of the Electors of a President and Vice President; that the returns forwarded by the mail, as well as the duplicates sent by special messengers, had been received by him in due time. You will now proceed, gentlemen, said he, to count the votes as the constitution and laws direct; adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement, beginning with the Northern States.

The PRESIDENT then proceeded to break the seals of the respective returns, handing each return, and its accompanying duplicate, as the seals of each were broken, to the tellers through, the Secretary; Mr. S. SMITH reading aloud the returns, and the attestations of the appointment of the Electors, and Mr. J. CLAY and Mr. R. GRISWOLD comparing them with the duplicate return lying before them.

According to which enumeration, the following appeared to be the result.

STATES.	President.		V. Pres'dt	
	Th. Jefferson.	C. C. Pinckney.	Geo. Clinton.	Rufus King.
New Hampshire	7	-	7	
Massachusetts	19	-	19	
[A]Rhode Island	4	-	4	
Connecticut	-	-	-	9

Vermont	6	-	6	
New York	19	-	19	
New Jersey	8	-	8	
Pennsylvania	20	-	20	
Delaware	-	3	-	3
Maryland	9	2	9	2
Virginia	24	-	24	
North Carolina	14	-	14	
South Carolina	10	-	10	
[B]Georgia	6	-	6	
Tennessee	5	-	5	
Kentucky	8	-	8	
[C]Ohio	3	-	3	
Total	162	14	162	14

[A] In this return, after stating the whole number of votes given for Thomas Jefferson and George Clinton, each Elector certifies distinctly his vote for Thomas Jefferson as President, and for George Clinton, as Vice President.

[B] The return certifies the votes to have been given as stated in an enclosed paper.

[C] In this return, the votes are not certified to have been given by ballot, but agreeably to law.

After the returns had been all examined, without any objection having been made to receiving any of the votes, Mr. S. SMITH, on behalf of the tellers, communicated to the PRESIDENT the foregoing result, which was read from the Chair; when, the VICE PRESIDENT said, upon this report it becomes my duty to declare, agreeably to the constitution, that THOMAS JEFFERSON is elected President of the United States, for the term of four years from the third day of March next, and that GEORGE CLINTON is elected Vice President of the United States, for the term of four years from the third day of March next.

[Previous to the above proceedings, a short debate arose in the Senate on the keeping of the doors open or shut during the counting of the votes. Mr. WRIGHT submitted a motion for their being kept open, which, after some opposition, was agreed to.]

SATURDAY, February 16.

Absent Members.

A motion was made,

“That a call of the Senate take place every morning at the hour to which the Senate is adjourned, and that absent members be not permitted to take their seats until a satisfactory excuse be made, or the opinion of the Senate be had thereon.”

WEDNESDAY, February 20.

Tripolitan War.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter of September 18th, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and valor of his officers and men, in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON.

FEBRUARY 20, 1805.

FRIDAY, February 22.

The bill freeing from postage all letters and packets to and from AARON BURR, was read the second time.

SATURDAY, February 23.

Mr. LOGAN gave notice that he should, on Monday next, ask leave to bring in a bill to prohibit the granting clearances to vessels bound to St. Domingo.

MONDAY, February 25.

Commodore Preble.

Mr. JACKSON laid on the table a motion expressive of the high sense Congress entertain of the gallant and meritorious services of Commodore Edward Preble, and the officers, seamen, and marines, under his command; and the motion was read; and it was agreed that it be referred to a select committee.

WEDNESDAY, February 27.

Franking Privilege to Aaron Burr.

The Senate resumed the second reading of the bill freeing from postage all letters and packets to and from AARON BURR; and, on the question, Shall this bill pass to the third reading? it was determined in the affirmative—yeas 18, nays 9, as follows:

YEAS.—Messrs. Adams, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Franklin, Gaillard, Giles, Jackson, Mitchill, Moore, Smith of Maryland, Smith of Ohio, Smith of Vermont, and Wright.

NAYS.—Messrs. Ellery, Hillhouse, Howland, Logan, Olcott, Pickering, Plumer, Sumter, and Worthington.^[15]

THURSDAY, February 28.

The VICE PRESIDENT being indisposed, the Senate proceeded to the choice of a President *pro tempore* as the constitution provides, and the Hon. JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the Hon. JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before Congress a statement of the militia of the United States, according to the returns last received from the several States. It will be perceived that some of these are not recent dates, and that from the States of Maryland, Delaware, and Tennessee, no returns are stated. As far as appears from our records, none were ever rendered from either of these States.

TH. JEFFERSON.

FEBRUARY 28, 1805.

To the Senate and House of Representatives of the United States:

I now render to Congress the account of the fund established by the act of May 1st, 1802, for defraying the contingent charges of Government. No occasion having arisen for making use of any part of the balance of \$18,560, unexpended on the 31st day of December, 1803, when the last account was rendered by Message, that balance has been carried to the credit of the surplus fund.

TH. JEFFERSON.

FEBRUARY 28, 1805.

The messages and documents therein referred to were severally read, and ordered to lie for consideration.

Franking Privilege to Col. Burr.

The bill freeing from postage all letters and packets to and from AARON BURR was read the third time; on motion to postpone the further consideration thereof until the first Monday in December next, it passed in the negative—yeas 12, nays 18, as follows:

YEAS.—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, and Sumter.

NAYS.—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Worthington, and Wright.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 18, nays 13, as follows:

YEAS.—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, White, and Wright.

NAYS.—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, Sumter, and Worthington.

So it was *Resolved*, that this bill do pass, that it be engrossed, and that the title thereof be “An act freeing from postage all letters and packets to and from Aaron Burr.”

SATURDAY, March 2.

Resignation of Vice President Burr.

BURR’S ADDRESS.

The VICE PRESIDENT took an affectionate leave of the Senate, in substance as follows:

“Mr. BURR began by saying, that he had intended to pass the day with them, but the increase of a slight indisposition (sore throat) had determined him then to take leave of them. He touched lightly on some of the rules and orders of the House, and recommended, in one or two points, alterations, of which he briefly explained the reasons and principles.

“He said he was sensible he must at times have wounded the feelings of individual members. He had ever avoided entering into explanations at the time, because a moment of irritation was not a moment for explanation; because his position (being in the chair) rendered it impossible to enter into explanations without obvious danger of consequences which might hazard the dignity of the Senate, or prove disagreeable and injurious in more than one point of view; that he had, therefore, preferred to leave to their reflections his justification; that, on his part, he had no injuries to complain of; if any had been done or attempted, he was ignorant of the authors; and if he had ever heard, he had forgotten, for, he thanked God, he had no memory for injuries.

“He doubted not but that they had found occasion to observe, that to be prompt was not therefore to be precipitate; and that to act without delay was not always to act without reflection; that error was often to be preferred to indecision; that his errors, whatever they might have been, were those of rule and principle, and not of caprice; that it could not be deemed arrogance in him to say that, in his official conduct, he had known no party, no cause, no friend; that if, in the opinion of any, the discipline which had been established approached to rigor, they would at least admit that it was uniform and indiscriminate.

“He further remarked, that the ignorant and unthinking affected to treat as unnecessary and fastidious a rigid attention to rules and decorum; but he thought nothing trivial which touched, however remotely, the dignity of that body; and he appealed to their experience for the justice of this sentiment, and urged them in language the most impressive, and in a manner the most commanding, to avoid the smallest relaxation of the habits which he had endeavored, to inculcate and establish.

“But he challenged their attention to considerations more momentous than any which regarded merely their personal honor and character—the preservation of law, of liberty, and the constitution. This House, said he, is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if any where, will resistance be made to the storms of political frenzy and the silent arts of corruption; and if the constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

“He then adverted to those affecting sentiments which attended a final separation—a dissolution, perhaps for ever, of those associations which he hoped had been mutually satisfactory. He consoled himself, however, and them, with the reflection, that, though they separated, they would be engaged in the common cause of disseminating principles of freedom and social order. He should always regard the proceedings of that body with interest and with solicitude. He should feel for their honor and the national honor so intimately connected with it, and took his leave with expressions of personal respect, and with prayers, and wishes,” &c.^[16]

Whereupon, the Senate proceeded to the choice of a President *pro tempore*, as the constitution provides; and the Honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the Honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary notify the same to the House of Representatives.

Resolved unanimously, That the thanks of the Senate be presented to AARON BURR, in testimony of the impartiality, dignity, and ability, with which he has presided over their deliberations, and of their entire approbation of his conduct in discharge of the arduous and important duties assigned him as President of the Senate.

Ordered, That Messrs. SMITH of Maryland, and WHITE, be a committee to communicate to him this resolution.

SUNDAY, March 3.

Reply of Vice President Burr to the Vote of Thanks.

Mr. SMITH of Maryland, from the committee appointed for that purpose, reported that they had waited on the VICE PRESIDENT, agreeably to the resolution of yesterday, to which he made the following reply:

To the Senate of the United States:

GENTLEMEN: Next to the satisfaction derived from the consciousness of having discharged my duty, is that which arises from the favorable opinion of those who have been the constant witnesses of my official conduct; and the value of this flattering mark of their esteem is greatly enhanced by the promptitude and unanimity with which it is offered.

I pray you to accept my respectful acknowledgments, and the assurance of my inviolable attachment to the interests and dignity of the Senate.

A. BURR.

MARCH 3, 1805.

Adjournment.

On motion,

Resolved, That Messrs. ADAMS, and SMITH of Maryland, be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary acquaint the House of Representatives therewith, and desire the appointment of a committee on their part.

Mr. ADAMS, from the committee, reported that they had waited upon the PRESIDENT OF THE UNITED STATES, who informed them that he had no further communications to make to the two Houses of Congress.

The Secretary was then directed to inform the House of Representatives that the Senate, having finished the business before them, are about to adjourn. Whereupon, the Senate adjourned.

MARCH 4, 1805.

Inaugural Speech.

On Monday, at 12 o'clock, THOMAS JEFFERSON, President of the United States, took the oath of office, and delivered the following Inaugural Speech in the Senate Chamber, in the presence of the members of the two Houses, and a large concourse of citizens:

PROCEEDING, fellow-citizens, to that qualification which the constitution requires before my entrance on the charge conferred on me, it is my duty to express the deep sense I entertain of this new proof of confidence from my fellow-citizens at large, and the zeal with which it inspires me so to conduct myself as may best satisfy their just expectations.

On taking this station, on a former occasion, I declared the principles on which I believed it my duty to administer the affairs of our commonwealth. My conscience tells me I have, on every occasion, acted up to that declaration, according to its obvious import, and to the understanding of every candid mind.

In the transaction of your foreign affairs, we have endeavored to cultivate the friendship of all nations, and especially of those with which we have the most important relations. We have done them justice on all occasions; favor, where favor was lawful, and cherished mutual interests and intercourse on fair and equal terms. We are firmly convinced, and we act on that conviction, that with nations, as with individuals, our interests, soundly calculated, will ever be found inseparable from our moral duties; and history-bears witness to the fact, that a just nation is trusted on its word, when recourse is had to armaments and wars to bridle others.

At home, fellow-citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These, covering our land with officers,^[17] and opening our doors to their intrusions, had already begun that process of domiciliary vexation, which, once entered, is scarcely to be restrained from reaching, successively, every article of property and produce. If, among these taxes, some minor ones fell, which had not been inconvenient, it was because their amount would not have paid the officers who collected them; and because, if they had any merit, the State authorities might adopt them instead of others less approved.

The remaining revenue, on the consumption of foreign articles, is paid chiefly by those who can afford to add foreign luxuries to domestic comforts. Being collected on our seaboard and frontiers only, and incorporated with the transactions of our mercantile citizens, it may be the pleasure and the pride of an American to ask, what farmer, what mechanic, what laborer, ever sees a tax-gatherer of the United States? These contributions enable us to support the current expenses of the Government; to fulfil contracts with foreign nations; to extinguish the native right of soil within our limits; to extend those limits; and to apply such a surplus to our public debts, as places, at a short day, their final redemption; and that redemption, once effected, the revenue thereby liberated may, by a just repartition of it among the States, and a corresponding amendment of the constitution, be applied, *in time of peace*, to rivers, canals, roads, arts, manufactures, education, and other great objects, within each State.^[18] *In time of war*, if injustice by ourselves, or others, must sometimes produce war, increased, as the same revenue will be, by increased population and consumption, and aided by other resources reserved for that crisis, it may meet, within the year, all the expenses of the year, without encroaching on the rights of future generations, by burdening them with the debts of the past. War will then be but a suspension of useful works; and a return to a state of peace, a return to the progress of improvement.

I have said, fellow-citizens, that the income reserved had enabled us to extend our limits; but that extension may possibly pay for itself before we are called on; and, in the mean time, may keep down the accruing interest: in all events, it will replace the advances we shall have made. I know that the acquisition of Louisiana has been disapproved by some, from a candid

apprehension that the enlargement of our territory would endanger its union. But who can limit the extent to which the federative principle may operate effectively? The larger our association, the less will it be shaken by local passions: and, in any view, is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children, than by strangers of another family? With which should we be most likely to live in harmony and friendly intercourse?

In matters of religion, I have considered that its free exercise is placed by the constitution independent of the powers of the General Government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction and discipline of the Church or State authorities acknowledged by the several religious societies.

The aboriginal inhabitants of these countries I have regarded with the commiseration their history inspires. Endowed with the faculties and the rights of men, breathing an ardent love of liberty and independence, and occupying a country which left them no desire but to be undisturbed, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been overwhelmed by the current, or driven before it. Now reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry which alone can enable them to maintain their place in existence; and to prepare them in time for that state of society which, to bodily comforts, adds the improvement of the mind and morals. We have therefore liberally furnished them with the implements of husbandry and household use; we have placed among them instructors in the arts of first necessity; and they are covered with the ægis of the law against aggressors from among ourselves.

But the endeavors to enlighten them on the fate which awaits their present course of life, to induce them to exercise their reason, follow its dictates, and change their pursuits with the change of circumstances, have powerful obstacles to encounter. They are combated by the habits of their bodies, prejudices of their minds, ignorance, pride, and the influence of interested and crafty individuals among them, who feel themselves something in the present order of things, and fear to become nothing in any other. These persons inculcate a sanctimonious reverence for the customs of

their ancestors; that whatsoever they did, must be done through all time; that reason is a false guide, and to advance under its counsel in their physical, moral, or political condition, is perilous innovation; that their duty is to remain as their Creator made them; ignorance being safety, and knowledge full of danger. In short, my friends, among them, also, is seen the action and counteraction of good sense and of bigotry. They, too, have their anti-philosophists, who find an interest in keeping things in their present state; who dread reformation, and exert all their faculties to maintain the ascendancy of habit over the duty of improving our reason, and obeying its mandates.

In giving these outlines, I do not mean, fellow-citizens, to arrogate to myself the merit of the measures—that is due, in the first place, to the reflecting character of our citizens at large, who, by the weight of public opinion, influence and strengthen the public measures. It is due to the sound discretion with which they select from among themselves those to whom they confide the legislative duties. It is due to the zeal and wisdom of the characters thus selected, who lay the foundations of public happiness in wholesome laws, the execution of which alone remains for others; and it is due to the able and faithful auxiliaries, whose patriotism has associated them with me in the executive functions.

During this course of administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution, so important to freedom and science, are deeply to be regretted, inasmuch as they tend to lessen its usefulness, and to sap its safety. They might, indeed, have been corrected by the wholesome punishments reserved to, and provided by, the laws of the several States against falsehood and defamation; but public duties, more urgent, press on the time of public servants, and the offenders have therefore been left to find their punishment in the public indignation.

Nor was it uninteresting to the world, that an experiment should be fairly and fully made, whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth; Whether a Government, conducting itself in the true spirit of its constitution, with zeal and purity, and doing no act which it would be unwilling the whole world should witness, can be written down by falsehood and defamation. The

experiment has been tried. You have witnessed the scene. Our fellow-citizens looked on cool and collected. They saw the latent source from which these outrages proceeded. They gathered around their public functionaries; and when the constitution called them to the decision by suffrage, they pronounced their verdict honorable to those who had served them, and consolatory to the friend of man, who believes that he may be trusted with the control of his own affairs.

No inference is here intended, that the laws provided by the States against false and defamatory publications, should not be enforced. He who has time, renders a service to public morals and public tranquillity, in reforming these abuses by the salutary coercions of the law. But the experiment is noted to prove, that, since truth and reason have maintained their ground against false opinions, in league with false facts, the press, confined to truth, needs no other legal restraint. The public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press, and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.

Contemplating the union of sentiment now manifested so generally, as auguring harmony and happiness to our future course, I offer to our country sincere congratulations. With those, too, not yet rallied to the same point, the disposition to do so is gaining strength. Facts are piercing through the veil drawn over them: and our doubting brethren will at length see that the mass of their fellow-citizens, with whom they cannot yet resolve to act, as to principles and measures, think as they think, and desire what they desire: that our wish, as well as theirs, is, that the public efforts may be directed honestly to the public good; that peace be cultivated; civil and religious liberty unassailed; law and order preserved; equality of rights maintained; and that state of property, equal or unequal, which results to every man from his own industry, or that of his father. When satisfied of these views, it is not in human nature that they should not approve and support them. In the mean time, let us cherish them with patient affection; let us do them justice, and more than justice, in all competitions of interest; and we need not doubt that truth, reason, and their own interests, will at length prevail; will gather them into the fold of their country, and will complete that entire

union of opinion which gives to a nation the blessing of harmony, and the benefit of all its strength.

I shall now enter on the duties to which my fellow-citizens have again called me, and shall proceed in the spirit of those principles which they have approved. I fear not that any motives of interest may lead me astray. I am sensible of no passion which could seduce me, knowingly, from the path of justice; but the weaknesses of human nature, and the limits of my own understanding, will produce errors of judgment, sometimes injurious to your interests. I shall need, therefore, all the indulgence which I have heretofore experienced from my constituents. The want of it will certainly not lessen with increasing years. I shall need, too, the favor of that Being in whose hands we are; who led our fathers, as Israel of old, from their native land, and planted them in a country flowing with all the necessities and comforts of life; who has covered our infancy with His providence, and our riper years with His wisdom and power; and to whose goodness I ask you to join in supplications with me, that He will so enlighten the minds of your servants, guide their councils, and prosper their measures, that, whatsoever they do, shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations.

After which, the Chief Justice of the United States administered to him the oath of office prescribed by the constitution; and the oath was, in like manner, administered to GEORGE CLINTON, Vice President of the United States; after which, the PRESIDENT and VICE PRESIDENT retired.

Trial of Judge Chase.

TRIAL OF SAMUEL CHASE, AN ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES, IMPEACHED BY THE
HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND
MISDEMEANORS, BEFORE THE SENATE OF THE UNITED STATES.

[TAKEN IN SHORT-HAND BY SAMUEL H. SMITH AND THOMAS
LLOYD.]

This trial was one of the events of the day, greatly exciting party passions, and taking a scope which gives it historic interest, both for the persons concerned, and the matters involved. The account of it is greatly abridged here, but it is believed all is still retained which is necessary to the full knowledge of the case, and to a just conception of the skill, learning, eloquence and ability with which the trial (both the prosecution and the defence) was conducted. The formal charges are omitted, as being sufficiently shown in the pleadings; the testimony of witnesses limited to their principal statements; and the speeches only given in their essential parts.

[The following report of the trial of SAMUEL CHASE has been drawn up with the greatest care. To guard against misconception or omission, two individuals, one of whom is a professional stenographer, were constantly engaged during the whole course of the trial; and the arguments of the managers and counsel have in most instances, and whenever it was attainable, been revised by them. It is with some satisfaction that the editor of this impression is enabled, under these circumstances, to submit to the public a tract, whose fidelity and comprehensiveness, he hopes will amply reward the interest so deeply excited by the progress and issue of this important trial.—*Editor National Intelligencer.*]

MEASURES PRELIMINARY TO THE TRIAL.

On the fifth day of January 1804, Mr. J. RANDOLPH, a member of the House of Representatives of the United States, rose and addressed that body to the following effect:

He observed “That no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the Constitution of the United States, and of many of the States also, had rendered the magistrates who decided judicially between the State and the offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement, whether of intimidation or seduction, which should cause them to swerve from the duty assigned to them, might be removed. But such was the frailty of human nature, that there was no precaution by which our integrity and honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir,” said Mr. Randolph, “of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States, who has been found wanting in his duty to himself and his country. At the last session of Congress, a gentleman from Pennsylvania did, in his place, (on a bill to amend the judicial system of the United States,) state certain facts in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as those whom I represent, to investigate the charges then made, and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

“Resolved, That a committee be appointed to inquire into the official conduct of SAMUEL CHASE, one of the Associate Judges of the Supreme Court of the United States, and to report their opinion, whether the said

SAMUEL CHASE hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House.”

A short debate immediately arose on this motion, which was advocated by Messrs. J. RANDOLPH, SMILIE, and J. CLAY; and opposed by Mr. ELLIOT. Several members supported a motion to postpone it until the ensuing day, which was superseded by an adjournment of the House.

The House, on the next day, resumed the consideration of Mr. RANDOLPH’s motion, which was supported by Mr. SMILIE, and, on the motion of Mr. LEIB, so amended as to embrace an inquiry into the official conduct of Richard Peters, district judge for the District of Pennsylvania. On the motion, thus amended, further debate arose, which occupied the greater part of this and the ensuing day. It was supported by Messrs. FINDLAY, JACKSON, NICHOLSON, HOLLAND, J. RANDOLPH, EUSTIS, EARLY, SMILIE, and EPPES; and opposed by Messrs. LOWNDES, R. GRISWOLD, ELLIOT, DENNIS, GRIFFIN, THATCHER, HUGER, and DANA. Some ineffectual attempts were made to amend the resolution, when the final question was taken on the resolution, as amended, in the following words:

“Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion, whether the said Samuel Chase and Richard Peters, or either of them, have so acted in their judicial capacity, as to require the interposition of the constitutional power of this House:”

And resolved in the affirmative—yeas 81, nays 40.

Whereupon, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, R. GRISWOLD, HUGER, and BOYLE, were appointed a committee pursuant to the foregoing resolution.

On the 10th of January, the committee were authorized by the House to send for persons, papers, and records; and on the 30th day of the same month they were authorized to cause to be printed such documents and

papers as they might deem necessary, previous to their presentation to the House.

On the 6th day of March, Mr. RANDOLPH, in the name of the committee, made a report, “That in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion, 1st. That Samuel Chase, Esq., an Associate Justice of the Supreme Court of the United States, be impeached of high crimes and misdemeanors.

“2d. That Richard Peters, district judge of the district of Pennsylvania, has not so acted in his judicial capacity as to require the interposition of the constitutional power of this House.”

This report, accompanied by a great mass of printed documents, embracing various depositions taken before the committee, as well as at a distance, was made the order of the day for the Monday following.

On that day the House took up the report, and after a short debate concurred in the first resolution by the following vote—yeas 73, nays 32, as follows:

YEAS.—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, William Findlay, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram

Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Wynn, and Joseph Winston.

NAYS.—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith of Virginia, William Stedman, James Stevenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

The second resolution was agreed to unanimously.

Whereupon, it was ordered, that Mr. JOHN RANDOLPH and Mr. EARLY be appointed a committee to go to the Senate, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors; and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same. It was also ordered, that the committee do demand, that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.

On the 13th of March, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, and BOYLE, were appointed a committee to prepare and report articles of impeachment against Samuel Chase, and invested with power to send for persons, papers, and records.

On the 14th, a message was received from the Senate, notifying the House, that they would take proper order on the impeachment, of which due notice should be given to the House.

On the 26th, Mr. RANDOLPH, from the committee appointed for that purpose, reported articles of impeachment against Samuel Chase. No order was taken on the report during the remainder of the session, which terminated the next day.

At the ensuing session of Congress, on the 6th of November, 1804, on the motion of Mr. J. RANDOLPH, the articles of impeachment were referred to Messrs. J. RANDOLPH, J. CLAY, EARLY, BOYLE, and J. RHEA of Tennessee.

On the 30th of November, Mr. RANDOLPH reported articles of impeachment against Samuel Chase, in substance not dissimilar from those reported at the last session, with the addition of two new articles.

This report was made the order for the 3d of December. On that and the ensuing day the House took the articles into consideration, to all of which they agreed, according to the following votes:

	Yeas.	Nays.
Art. 1	83	34
2	83	35
3	84	34
4	84	34
5	72	45
6	73	42
7	73	42
8 1st sec.	74	32
8 2nd sec.	78	32

On the 5th, the House proceeded to the choice, by ballot, of seven managers to conduct the impeachment; and on counting the votes, Messrs. J. RANDOLPH, RODNEY, NICHOLSON, EARLY, BOYLE, NELSON, and G. W. CAMPBELL, appeared to be elected.

On a subsequent day, Mr. NELSON having declined his appointment, on account of absence, Mr. CLARK was chosen in his place.

The following resolution was then adopted:

Resolved, That the articles agreed to by this House be exhibited in the name of themselves, and of all the people of the United States, against Samuel Chase, in maintenance of their impeachment against him, for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

The Senate having appointed the 7th of December for receiving the articles of impeachment, the managers repaired on that day, at 1 o'clock, to the Senate Chamber. Having taken seats assigned them within the bar, and the Sergeant-at-Arms having proclaimed silence, Mr. J. RANDOLPH read the foregoing articles: whereupon the President of the Senate informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives. The managers delivered the articles of impeachment at the table and withdrew.

On the 10th of December, the Senate, sitting as a High Court of Impeachments, adopted the following resolution:

Resolved, That the Secretary be directed to issue a summons to Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives on Friday last: That the said summons be returnable the 2d day of January, and he served at least fifteen days before the return day thereof.

On the 24th and 31st of December, the Senate adopted the following rules of proceeding, to be observed in cases of impeachment.

1. Whensoever the Senate shall receive notice from the House of Representatives, that managers are appointed on their part, to conduct an impeachment against any person, and are directed to carry such articles to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives, that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to the said notice.

2. When the managers of an impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against any person, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation

is exhibiting to the Senate of the United States, articles of impeachment against —— ———;” after which the articles shall be exhibited, and then the President of the Senate shall inform the managers, that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

3. A summons shall issue, directed to the person impeached, in the form following:

The United States of America, ss.

The Senate of the United States, to ——, greeting:

Whereas, the House of Representatives of the United States of America, did, on the —— day of ——, exhibit to the Senate articles of impeachment against you, the said ——, in the words following, viz: [here recite the articles] and did demand that you the said —— should be put to answer the accusations as set forth in said articles; and that such proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and justice: You, the said ——, are therefore hereby summoned, to be, and appear before the Senate of the United States of America, at their Chamber in the City of Washington, on the —— day of ——, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the United States shall make in the premises, according to the Constitution and laws of the United States. Hereof you are not to fail.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which summons shall be signed by the Secretary of the Senate, and sealed with their seal, and served by the Sergeant-at-Arms to the Senate, or by such other person as the Senate shall specially appoint for that purpose; who shall serve the same, pursuant to the directions given in the form next following:

4. A precept shall be endorsed on said writ of summons, in the form following, viz:

United States of America, ss.

The Senate of the United States, to ———, greeting:

You are hereby commanded to deliver to, and leave with ———, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept, at his usual place of residence, and in whichsoever way you perform the service, let it be done at least ——— days before the appearance day mentioned in said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness, ———, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States, the ———.

Which precept shall be signed by the Secretary of the Senate, and sealed with their seal.

5. Subpœnas shall be issued by the Secretary of the Senate, upon the application of the managers of the impeachment, or of the party impeached, or his counsel, in the following form, to wit:

To ———, greeting:

You, and each of you, are hereby commanded to appear before the Senate of the United States, on the ——— day of ———, at the Senate Chamber, in the City of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ———. Fail not.

Witness, ———, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this ——— day of

——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which shall be signed by the Secretary of the Senate, and sealed with their seal.

Which subpoenas shall be directed, in every case, to the Marshal of the district, where such witnesses respectively reside, to serve and return.

6. The form of direction to the Marshal, for the service of the subpoena, shall be as follows:

The Senate of the United States of America, to the Marshal of the district of ——:

You are hereby commanded to serve and return the within subpoena, according to law.

Dated at Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Secretary of the Senate.

7. The President of the Senate shall direct all necessary preparations in the Senate Chamber, and all the forms of proceeding, while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial, not otherwise specially provided for by the Senate.

8. He shall also be authorized to direct the employment of the Marshal of the District of Columbia, or any other person or persons, during the trial, to discharge such duties as may be prescribed by him.

9. At twelve o'clock of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended and the Secretary of the Senate shall administer an oath to the returning officer, in the form following, viz: "I, ——, do solemnly swear, that the return made and subscribed by me, upon the process issued on the —— day of ——, by the Senate of the United States, against ——, is truly made, and that I have performed said services as

therein described. So help me God.” Which oath shall be entered at large on the records.

10. The person impeached shall then be called to appear, and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly, if by himself, or if by agent or attorney; naming the person appearing, and the capacity in which he appears. If he does not appear, either personally, or by agent or attorney, the same shall be recorded.

11. At twelve o’clock of the day appointed for the trial of an impeachment, the Legislative and Executive business of the Senate shall be postponed. The Secretary shall then administer the following oath or affirmation to the President:

“You solemnly swear, or affirm, that in all things appertaining to the trial of the impeachment of ———, you will do impartial justice according to the Constitution and laws of the United States.”

12. And the President shall administer the said oath or affirmation to each Senator present.

The Secretary shall then give notice to the House of Representatives, that the Senate is ready to proceed upon the impeachment of ———, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

13. Counsel for the parties shall be admitted to appear, and be heard upon an impeachment.

14. All motions made by the parties, or their counsel, shall be addressed to the President of the Senate, and if he shall require it, shall be committed to writing, and read at the Secretary’s table; and all decisions shall be had by yeas and nays, and without debate, which shall be entered on the records.

15. Witnesses shall be sworn in the following form, to wit: “You ——— do swear, (or affirm, as the case may be,) that the evidence you shall give in the case now depending between the United States and ———, shall be the truth, the whole truth, and nothing but the truth. So help you God.” Which oath shall be administered by the Secretary.

16. Witnesses shall be examined by the party producing them, and then cross-examined in the usual form.

17. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

18. If a Senator wishes a question to be put to a witness, it shall be reduced to writing and put by the President.

19. At all times, whilst the Senate is sitting upon the trial of an impeachment, the doors of the Senate Chamber shall be kept open.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 2, 1805.

The Court having been opened by proclamation,

The return made by the Sergeant-at-Arms was read, as follows:

“I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons to me directed, did proceed to the residence of the within named Samuel Chase, on the 12th day of December, 1804, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him the said Samuel Chase.

“JAMES MATHERS.”

After which the Secretary administered to him the oath as follows:

“You, James Mathers, Sergeant-at-Arms to the Senate of the United States, do solemnly swear, that the return made and subscribed by you, upon the process issued on the 10th day of December last, by the Senate of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court, is truly made, and that you have performed said services as therein described. So help you God.”

SAMUEL CHASE, having been solemnly called, appeared.

The PRESIDENT of the Senate (Mr. BURR) informed Mr. CHASE, that having been summoned to answer to the articles of impeachment exhibited against him by the House of Representatives, the Senate were ready to receive any answer he had to make to them.

Mr. CHASE requested the indulgence of a chair,^[19] which was immediately furnished.

After being seated for a short time, Mr. CHASE rose, and commenced the following address to the Senate, which he read from a paper that he held in his hand:

“Mr. President: I appear, in obedience to a summons from this honorable Court, to answer articles of impeachment exhibited against me, by the honorable the House of Representatives of the United States.

“To these articles, a copy of which was delivered to me with the summons, I say that I have committed no crime or misdemeanor whatsoever, for which I am subject to impeachment according to the Constitution of the United States. I deny, with a few exceptions, the acts with which I am charged; I shall contend, that all acts admitted to have been done by me were *legal*; and I deny, in every instance, the *improper* intentions with which the acts charged are alleged to have been done, and in which their supposed criminality altogether consists.”

The PRESIDENT reminded Mr. CHASE that this was the day appointed to receive any answer he might make to the articles of impeachment.

Mr. CHASE said his purpose was to request the allowance of further time to put in his answer.

The PRESIDENT desired him to proceed.

Mr. CHASE proceeded in his address; and having finished it, was desired by the PRESIDENT, if he had any motion to make, to reduce it to writing, and hand it to the Secretary.

Whereupon, Mr. CHASE submitted the following motion:

“I solicit this honorable Court to allow me until the first day of the next session, to put in my answer, and to prepare for my trial.”

The PRESIDENT informed Mr. Chase, that, the Court would take time to consider his motion.^[20]

The Senate withdrew to a private apartment, where debate arose on the question, whether it was not incumbent on the Senators to take the oath required by the constitution, before they took into consideration the motion of Mr. Chase, which issued in the adoption of the following resolution:

Resolved, That, on the meeting of the Senate, to-morrow, before they proceed to any business on the articles of impeachment before them, and before any decision of any question, the oath prescribed by the rules, shall be administered to the President and members of the Senate.

On the ensuing day, previously to the entrance of the Senate into the public room, considerable debate took place on the motion of Mr. Chase, without any decision being made.

THURSDAY, January 3.

The Court was opened by proclamation about two o'clock.

The oath prescribed was administered to the President by the Secretary.

The PRESIDENT administered the oath prescribed to the following members:

Messrs. Adams, Anderson, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Giles, Hillhouse, Howland, Jackson, Mitchill, Moore, Olcott, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Tracy, White, Worthington, and Wright.

And the affirmation was administered to Messrs. Logan, Maclay, and Plumer.

The PRESIDENT stated that he had received a letter from the defendant, enclosing an affidavit that further time was necessary for him to prepare for trial; which affidavit was read, as follows:

City of Washington, ss:

Samuel Chase made oath on the Holy Evangelists of Almighty God, that it is not in his power to obtain information respecting the facts alleged in the articles of impeachment to have taken place in the city of Philadelphia in the trial of John Fries; or of the facts alleged to have taken place in the city of Richmond, in the trial of James T. Callender, in time to prepare and put in his answer, and to proceed to trial, with any probability that the same could be finished on or before the fifth day of March next. And further, that it is not in his power to procure information of the names of the witnesses, whom he thinks it may be proper and necessary for him to summon, in time to obtain their attendance, if his answer could be prepared in time sufficient for the finishing of the said trial, before the said fifth day of March next; and the said Samuel Chase further made oath, that he believes it will not be in his power to obtain the advice of counsel, to prepare his answer, and to give him their assistance on the trial, which he thinks necessary, if the said trial should take place during the present session of Congress; and that he verily believes, if he had, at this time full information of facts, and of the witnesses proper for him to summon, and if he had also the assistance of counsel, that he could not prepare the answer he thinks he ought to put in, and be ready for his trial, within the space of four or five weeks from this time. And further, that his application to the honorable the Senate, for time to obtain the information of facts, in order to prepare his answer, and for time to procure the attendance of necessary witnesses, and to prepare for his defence in the trial, and to obtain the advice and assistance of counsel, is not made for the purpose of delay, but only for the purpose of obtaining a full hearing of the articles of impeachment against him, in their real merits.

SAMUEL CHASE.

Sworn to, this third day of January, 1805, before

SAMUEL HAMILTON.

Whereupon the following motion was made by Mr. BRADLEY:

“Ordered, That Samuel Chase file his answer, with the Secretary of the Senate, to the several articles of impeachment exhibited against him, by the House of Representatives, on or before the —— day of ——.”

On motion, by Mr. BRECKENRIDGE, to fill the blank with the words “the fourth day of February next,” the yeas and nays being taken, it passed in the affirmative—yeas 22, nays 8, as follows:

YEAS.—Messrs. Adams, Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington, and Wright.

NAYS.—Messrs. Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

Ordered, That the Secretary notify the House of Representatives, and Samuel Chase, thereof.

[Between this day, and that assigned for receiving the answer of Mr. Chase, the Senate Chamber was fitted up in a style of appropriate elegance. Benches, covered with crimson, on each side, and in a line with the chair of the President, were assigned to the members of the Senate. On the right and in front of the chair, a box was assigned to the Managers, and on the left a similar box to Mr. Chase and his counsel, and chairs allotted to such friends as he might introduce. The residue of the floor was occupied with chairs for the accommodation of the members of the House of Representatives; and with boxes for the reception of the foreign Ministers, and civil and military officers of the United States. On the right and left of the chair, at the termination of the benches of the members of the Court, boxes were assigned to stenographers. The permanent gallery was allotted to the indiscriminate admission of spectators. Below this gallery, and above the floor of the House, a new gallery was raised, and fitted up with peculiar elegance, intended primarily for the exclusive accommodation of ladies. But this feature of the arrangement, made by the Vice President, was at an early period of the trial abandoned, it having been found impracticable to separate the sexes! At the termination of this gallery, on each side, boxes

were specially assigned to ladies attached to the families of public characters. The preservation of order was devolved on the Marshal of the District of Columbia, who was assisted by a number of deputies.]

TRIAL OF SAMUEL CHASE.

MONDAY, February 4, 1805.

About a quarter before ten o'clock the Court was opened by proclamation, all the members of the Senate, thirty-four, attending.

The Chamber of the Senate, which is very extensive, was soon filled with spectators, a large portion of whom consisted of ladies, who continued, with little intermission, to attend during the whole course of the trial.

The oath prescribed was administered to Mr. BAYARD, Mr. COCKE, Mr. GAILLARD, and Mr. STONE, members of the Court, who were not present when it was before administered.

Ordered, That the Secretary give notice to the House of Representatives that the Senate are in their public chamber, and are ready to proceed on the trial of Samuel Chase; and that seats are provided for the accommodation of the members.

In a few minutes the Managers, viz: Messrs. J. RANDOLPH, RODNEY, NICHOLSON, BOYLE, G. W. CAMPBELL, EARLY, and CLARK, accompanied by the House of Representatives in Committee of the Whole, entered and took their seats.

SAMUEL CHASE being called to make answer to the articles of impeachment, exhibited against him by the House of Representatives, appeared, attended by Messrs. HARPER, MARTIN, and HOPKINSON, his counsel; to whom seats were assigned.

The PRESIDENT, after stating to Mr. CHASE the indulgence of time which had been allowed, inquired if he was prepared to give in his answer?

Mr. CHASE said he had prepared it, as well as circumstances would permit; and submitted the following motion:

“Samuel Chase moves for permission to read his answer, by himself and his counsel, at the bar of this honorable Court.”

The PRESIDENT asked him if it was the answer on which he meant to rely? to which he replied in the affirmative.

The motion being agreed to by a vote of the Senate, Mr. CHASE commenced the reading of his answer, (in which he was assisted by Messrs. HARPER and HOPKINSON,) as follows:^[21]

This respondent, in his proper person, comes into the said Court, and protesting that there is no high crime or misdemeanor particularly alleged in the said articles of impeachment, to which he is, or can be bound by law to make answer; and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said articles, and each of them, and to the defects therein appearing in point of law, or otherwise; and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this his answer; he submits the following facts and observations by way of answer to the said articles.

The first article relates to his supposed misconduct in the trial of John Fries, for treason, before the circuit court of the United States at Philadelphia, in April and May, 1800; and alleges that he presided at that trial, and that, “unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them faithfully and impartially, and without respect to persons,” he did then, “in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust.”

This general accusation, too vague in itself for reply, is supported by three specific charges of misconduct:

1st. “In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended:” which opinion, it is alleged, tended to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his favor.

2d. “In restricting the counsel for the said John Fries, from recurring to such English authorities as they believed apposite; or from citing certain

statutes of the United States which they deemed illustrative of the positions, upon which they intended to rest the defence of their client.”

3d. “In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.”

This first article then concludes, that in consequence of this irregular conduct of this respondent, “the said John Fries was deprived of the right secured to him by the eighth article amendatory of the constitution, and was condemned to death, without having been heard by counsel, in his defence.”

In the year 1794, an insurrection took place in four of the western counties of Pennsylvania, with a view of resisting, and preventing by force the execution of these two statutes; and a circuit court of the United States, held at Philadelphia, for the district of Pennsylvania, in the month of April, in the year 1795, by William Patterson, Esq., then one of the Associate Justices of the Supreme Court of the United States, and the above-mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, two persons, who had been concerned in the above-named insurrection, namely, Philip Vigol and John Mitchell, were indicted for treason, of levying war against the United States, by resisting and preventing by force the execution of the two last-mentioned acts of Congress; and were, after a full and very solemn trial, convicted of the indictments and sentenced to death. They were afterwards pardoned by George Washington, then President of the United States.

In the first of these trials, that of Vigol, the defence of the prisoner was conducted by very able counsel, one of whom, William Lewis, Esq., is the same person who appeared as counsel for John Fries, in the trial now under consideration. Neither that learned gentleman, nor his able colleague, then thought proper to raise the question of law, “whether resisting and preventing by armed force the execution of a particular law of the United States, be a ‘levying of war against the United States,’” according to the true meaning of the constitution? although a decision of this question in the negative must have acquitted the prisoner. But in the next trial, that of

Mitchell, this question was asked on the part of the prisoner, and was very fully and ably discussed by his counsel; and it was solemnly determined by the Court, both the judges concurring, “that to resist, or prevent by armed force, the execution of a particular law of the United States, is a levying of war against the United States, and consequently is treason, within the true meaning of the constitution.” The decision, according to the best established principles of our jurisprudence, became a precedent for all courts of equal or inferior jurisdiction; a precedent which, although not absolutely obligatory, ought to be viewed with very great respect, especially by the court in which it was made, and ought never to be departed from, but on the fullest and clearest conviction of its incorrectness.

On the 9th of July, an act of Congress was passed, providing for a valuation of lands and dwelling-houses, and an enumeration of slaves throughout the United States; and directing the appointment of commissioners and assessors for carrying it into execution; and on the 4th day of July, in the same year, a direct tax was laid by another act of Congress of that date, on the lands, dwelling-houses, and slaves, so to be valued and enumerated.

In the months of February and March, A. D. 1799, an insurrection took place in the counties of Bucks and Northampton, in the State of Pennsylvania, for the purpose of resisting and preventing by force the execution of the two last-mentioned acts of Congress, and particularly that for the valuation of lands and dwelling-houses. John Fries, the person mentioned in the article of impeachment now under consideration, was apprehended and committed to prison, as one of the ringleaders of this insurrection; and at a circuit court of the United States, held at Philadelphia, in and for the district of Pennsylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treason, by levying war against the United States, before James Iredell, Esq., then one of the Associate Justices of the Supreme Court of the United States, who presided in the said court, according to law, and the above-mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, who sat in the said circuit court as assistant judge.

In this trial, which was conducted with great solemnity, and occupied nine days, the prisoner was assisted by William Lewis and Alexander James Dallas, Esqs., two very able and eminent counsellors; the former of whom,

William Lewis, is the person who assisted, as above mentioned, in conducting the defence of Vigol, on a similar indictment. These gentlemen, finding that the facts alleged were fully and undeniably proved, by a very minute and elaborate examination of witnesses, thought proper to rest the case of the prisoner on the question of law which had been determined in the cases of Vigol and Mitchell, above mentioned, and had then been acquiesced in, but which they thought proper again to raise. They contended, “that to resist by force of arms a particular law of the United States, does not amount to levying war against the United States, within the true meaning of the constitution, and therefore is not treason, but a riot only.” This question they argued at great length, and with all the force of their learning and genius; and after a full discussion at the bar, and the most mature deliberation by the Court, the learned and excellent judge who then presided, and who was no less distinguished by his humanity and tenderness towards persons tried before him, than by his extensive knowledge and great talents as a lawyer, pronounced the opinion of himself and his colleague, “that to resist, or prevent by force, the execution of a particular law of the United States, does amount to levying war against them, within the true meaning of the constitution, and does, therefore, constitute the crime of treason:” thereby adding the weight of another and more solemn decision to the precedent which had been established in the above-mentioned cases of Vigol and Mitchell.

Under this opinion of the Court on the question of law, the jury, having no doubt as to the facts, found the said John Fries guilty of treason on the above-mentioned indictment. But a new trial was granted by the Court, not by reason of any doubt as to the correctness of the decision on the question of law, but solely on the ground, as this respondent hath understood and believes, that one of the jurors of the petit jury, after he was summoned, but before he was sworn on the trial, had made some declaration unfavorable to the prisoner.

On the 11th day of April, 1800, and from that day until the 2d day of May in the same year, a circuit court of the United States was held at Philadelphia, in and for the district of Pennsylvania, before this respondent, then one of the Associate Justices of the Supreme Court of the United States, and the above-mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania. At this court the indictment

on which the said John Fries had been convicted as above mentioned, was quashed *ex officio* by William Rawle, Esq., then attorney of the United States for the district of Pennsylvania, and a new indictment was by him preferred against the said John Fries, for treason of levying war against the United States, by resisting and preventing by force in the manner above set forth, the execution of the above-mentioned acts of Congress, for the valuation of lands and dwelling-houses, and the enumeration of slaves, and for levying and collecting a direct tax. This indictment, of which a true copy, marked No. 1, is herewith exhibited by this respondent, who prays that it may be taken as part of this his answer, being found by the grand jury on the 16th day of April, 1800, the said John Fries was on the same day arraigned thereon, and plead not guilty. William Lewis, and Alexander James Dallas, Esqs., the same persons who had conducted his defence at his former trial, were again at his request assigned by the Court as his counsel; and his trial was appointed to be had on Tuesday the 22d day of the last-mentioned month of April.

After this indictment was found by the grand jury, this respondent considered it with great care and deliberation, and finding from the three overt acts of treason which it charged, that the question of law arising upon it was the same question which had already been decided twice in the same court, on solemn argument and deliberation, and once in that very case, he considered the law as settled by those decisions, with the correctness of which, on full consideration, he was entirely satisfied; and by the authority of which he should have deemed himself bound, even had he regarded the question as doubtful in itself. They are moreover in perfect conformity with the uniform tenor of decisions in the courts of England and Great Britain, from the Revolution in 1688 to the present time, which, in his opinion, added greatly to their weight and authority.

It was for these reasons that on the 22d day of April, 1800, when the said John Fries was brought into court, and placed in the prisoners' box for trial, but before the petit jury were impanelled to try him, this respondent informed the above-mentioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, "that the Court had deliberately considered the indictment against John Fries for treason, and the three several overt acts of treason stated, therein: that the crime of treason was defined by the Constitution of the United States. That as the

Federal Legislature had the power to make, alter, or repeal laws, so the judiciary only had the power, and it was their duty, to declare, expound and interpret the Constitution and laws of the United States. That it was the duty of the Court, in all criminal cases, to state to the petit jury their opinion of the law arising on the facts; but the petit jury, in all criminal cases, were to decide both the law and the facts, on a consideration of the whole case. That there must be some constructive exposition of the terms used in the constitution, "levying war against the United States." That the question, what acts amounted to levying war against the United States, or the Government thereof, was a question of law, and had been decided by Judges Patterson and Peters, in the cases of Vigol and Mitchell, and by Judges Iredell and Peters, in the case of John Fries, prisoner at the bar, in April 1799. That Judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of Judges Patterson, Iredell, and Peters. That to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the great number of civil causes depending for trial at that term, the Court had drawn up in writing their opinion of the law, arising on the overt acts stated in the indictment against John Fries; and had directed David Caldwell, their clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they shall have been impanelled and heard the indictment read to them by the clerk, and after the district attorney should have stated to them the law on the overt acts alleged in the indictment, as it appeared to him."

After these observations, this respondent delivered one of the above-mentioned copies to, the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him. Some observations were then made on the subject, by him and the above-mentioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

As to the second specific charge adduced in support of the first article of impeachment, which accuses this respondent "of restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they

deemed illustrative of the positions upon which they intended to rest the defence of their client," this respondent admits that he did, on the above-mentioned trial, express it as his opinion to the aforesaid counsel for the prisoner, "that the decisions in England, in cases of indictments for treason at common law, against the person of the King, ought not to be read to the jury, on trials for treason under the Constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the Revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said Revolution, to be read to the court or jury, for the purpose of showing what acts have been considered by those courts, as a constructive levying of war against the King of that country, in his legal capacity, but not against his person; because levying war against *his Government* was of the same nature as levying war against *the Government of the United States*: but that such decisions, nevertheless, were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect, as having been delivered, after full consideration, by men of great legal learning and ability."

It is only, then, for the correctness of his motives in delivering these opinions, that he can now be called to answer; and this correctness ought to be presumed, unless the contrary appear by some direct proof, or some violent presumption, arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge, so palpably erroneous, unjust, and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited either to the Court or jury on the said trial, or declared at any time that he would not permit the prisoner's counsel to read to the jury or to the Court any act of Congress whatever. Nor does he remember or believe that he expressed on the said trial any disapprobation of the conduct of the circuit court, before whom the said case was first tried, in permitting the act of Congress relating

to crimes less than treason, commonly called the *Sedition Act*, to be read to the jury. He admits indeed that he was then and still is of opinion that the said act of Congress was wholly irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them.

And this respondent further answering saith, that after the above-mentioned proceedings had taken place in the said trial, it was postponed until the next day, (Wednesday, April 23, 1800,) when, at the meeting of the Court, this respondent told both the above-mentioned counsel for the prisoner, that, “to prevent any misunderstanding of any thing that had passed the day before, he would inform them, that, although the Court retained the same opinion of the law, arising on the overt acts charged in the indictment against Fries, yet the counsel would be permitted to offer arguments to the Court, for the purpose of showing them that they were mistaken in the law; and that the Court, if satisfied that they had erred in opinion, would correct it; and also that the counsel would be permitted to argue before the petit jury that the Court were mistaken in the law.” And this respondent added, that the Court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the Court, “that they did not any longer consider themselves as the counsel for John Fries, the prisoner.” This respondent then asked the said John Fries, whether he wished the Court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and charges, by the advice of the said William Lewis and Alexander James Dallas: whereupon, the Court ordered the trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the Court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative, were withdrawn from the panel. The said John Fries was then informed by the Court, that he had a right to challenge thirty-five of the jury, without

showing any cause of challenge against them, and as many more as he could show cause of challenge against. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the Court adjourned till the next day, Friday, the 25th of April; when, after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the bench, that if he, or any person for him, could show any legal ground, or sufficient cause to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shown, sentence of death was passed on the said Fries, on Tuesday, the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And this respondent further answering saith, that if the two instances of misconduct, first stated in support of the general charge, contained in the first article of impeachment, were true as alleged, yet the inference drawn from them, viz: "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was deprived of the benefit of counsel, not by any misconduct of this respondent, but by the conduct and advice of the above-mentioned William Lewis and Alexander James Dallas, who having been, with their own consent, assigned by the Court as counsel for the prisoner, withdrew from his defence, and advised him to refuse other counsel when offered to him by the Court, under pretence that the law had been prejudged, and their liberty of conducting the defence, according to their own judgment, improperly restricted by this respondent; but in reality, because they knew the law and the facts to be against them, and the case to be desperate, and supposed that their withdrawing themselves under this pretence, might excite odium against the Court; might give rise to an opinion that the prisoner had not been fairly tried; and in the event of a conviction, which from their knowledge of the law and the facts they knew to be almost certain, might aid the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel for depriving their client

of legal assistance on his trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

Finally, this respondent, having thus laid before this honorable Court a true state of his case, so far as respects the first article of impeachment, declares, upon the strictest review of his conduct during the whole trial of John Fries for treason, that he was not on that occasion unmindful of the solemn duties of his office as judge; that he faithfully and impartially, and according to the best of his ability and understanding, discharged those duties towards the said John Fries; and that he did not in any manner, during the said trial, conduct himself arbitrarily, unjustly, or oppressively, as he is accused by the honorable the House of Representatives.

And the said Samuel Chase, for the plea to the said first article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said first article is alleged; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The second article of impeachment charges, that this respondent, at the trial of James Thompson Callender for a libel, in May 1800, did, “with intent to oppress and procure the conviction of the said Callender, overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial, because he had made up his mind as to the publication from which the words, charged to be libellous in the indictment, were extracted.”

In answer to this article, this respondent admits that he did, as one of the Associate Justices of the Supreme Court of the United States, hold the circuit court of the United States, for the district of Virginia, at Richmond, on Thursday, the 22d day of May, in the year 1800, and from that day, till the 30th of the same month; when Cyrus Griffin, then district judge of the United States for the district of Virginia, took his seat in the said court; and that during the residue of that session of the said court, which continued till the —— day of June, in the same year, this respondent and the said Cyrus Griffin held the said court together. But how far any of the other matters charged in this article, are founded in truth or law, appear from the

following statement, which he submits to this honorable Court, by way of answer to this part of the accusation.

By an act of Congress passed on the 4th day of May, A. D. 1798, it is among other things enacted, “That if any person shall write, print, utter, or publish, or shall knowingly and wittingly assist and aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the President of the United States, with intent to defame or to bring him into contempt or disrepute, such person, being thereof convicted, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment, not exceeding two years;” and “that if any person shall be prosecuted under this act, it shall be lawful for him to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury shall have a right to determine the law and the fact, under the direction of the Court, as in other cases,” as in and by the said act, commonly called the *sedition law*, to which this respondent begs leave to refer this honorable Court, will more fully appear.

At the meeting of the last above-mentioned circuit court, this respondent, as required by the duties of his office, delivered a charge to the grand jury, in which, according to his constant practice, and to his duty as a judge, he gave in charge to them several acts of Congress for the punishment of offences, and among them, the above-mentioned act, called the sedition law; and directed the jury to make particular inquiry concerning any breaches of these statutes or any of them, within the district of Virginia. On the 24th day of May, 1800, the said jury found an indictment against one James Thompson Callender, for printing and publishing, against the form of the said act of Congress, a false, scandalous, and malicious libel, called “The Prospect before Us,” against John Adams, then President of the United States, in his official conduct as President; as appears by an official copy of the said indictment, marked exhibit No. 4, which this respondent begs leave to make part of this his answer.

On Wednesday, the 28th day of the same month, May 1800, Philip Norbonne Nicholas, Esq., now attorney-general of the State of Virginia, and George Hay, Esq., now district attorney of the United States, for the district of Virginia, appeared in the said circuit court as counsel for the said Callender; and on Thursday the 3d of June following, his trial commenced, before this respondent, and the said Cyrus Griffin, who then sat as assistant

judge. The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Austin, William Richardson, Thomas Tinsley, Matthew Harvey, and John Basset, who, as they came to the book to be sworn, were severally asked on oath, by direction of the Court, “whether they had ever formed or delivered any opinion respecting the subject-matter then to be tried, or concerning the charges contained in the indictment?” They all answered in the negative, and were sworn in chief to try the issue. The counsel for the said Callender declaring that it was unnecessary to put this question to the other four jurymen, William Mayo, James Hayes, Henry S. Shore, and John Prior, they also were immediately sworn in chief. No challenge was made by the said Callender or his counsel, to any of these jurors; but the said counsel declared, that they would rely on the answer that would be given by the said jurors to the question thus put by order of the Court.

After the above-mentioned John Basset, whom this respondent supposes and admits to be the person mentioned in the article of impeachment now under consideration, had thus answered in the negative to the question put to him by order of the Court, as above mentioned, which this respondent states to be the legal and proper question to be put to jurors on such occasions, he expressed to the Court his wish to be excused from serving on the said trial, because he had made up his mind, or had formed his opinion, “that the publication, called ‘The Prospect before Us,’ from which the words charged in the indictment as libellous were said to be extracted, but which he had never seen, was, according to the representation of it, which he had received, within the Sedition law.” But the Court did not consider this declaration by the said John Basset as a sufficient reason for withdrawing him from the jury, and accordingly directed him to be sworn in chief.

In this opinion and decision, as in all the others delivered during the trial in question, this respondent concurred with his colleague, the aforementioned Cyrus Griffin, in whom none of these opinions have been considered as criminal. He contends that the opinion itself was legal and correct; and he denies that he concurred in it, under the influence of any “spirit of persecution and injustice,” or with any “intent to oppress and procure the conviction of the prisoner,” as is most untruly alleged by the second article of impeachment. His reasons were correct and legal. He will

submit them with confidence to this honorable Court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honest error in judgment, and ought not to take on itself the power of inquiring into the correctness of his decisions, but merely that of examining the purity of his motives; will, nevertheless, weigh his reasons, for the purpose of judging how far they are of sufficient force to justify a belief that they might have appeared satisfactory to him. If they might have so appeared, if the opinion which he founded on them be not so palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

The juror in the present case had expressed no opinion. He had formed no opinion as to the facts. He had never seen the "Prospect before Us," and, therefore, could have no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were such as reported, the book was within the scope and operation of a law for the punishment of "false, scandalous and malicious libels, against the President in his official capacity, written or published with intent to defame him." And who is there, that having either seen the book or heard of it, had not necessarily formed the same opinion?

But this juror had formed no opinion about the guilt or innocence of the party accused; which depended on four facts wholly distinct from the opinion which he had formed. First, whether the contents of the book were really such as had been represented to him? Secondly, whether they should, on the trial, be proved to be true? Thirdly, whether the party accused was really the author or publisher of this book? And fourthly, whether he wrote or published it "with intent to defame the President, or to bring him into contempt or disrepute, or to excite against him the hatred of the good people of the United States?" On all these questions, the mind of the juror was perfectly at large, notwithstanding the opinion which he had formed. He might, consistently with that opinion, determine them all in the negative; and it was on them that the issue between the United States and James Thompson Callender depended. Consequently, this juror, notwithstanding the opinion which he had thus formed, did stand indifferent as to the matter in issue, in the legal and proper sense, and in the only sense in which such indifference can ever exist; and therefore his having formed that opinion,

was not such an excuse as could have justified the Court in discharging him from the jury.

And the said Samuel Chase, for plea to the said second article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said second article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The third article of impeachment alleges that this respondent “with intent to oppress and procure the conviction of the prisoner, did not permit the evidence of John Taylor, a material witness in behalf of the said Callender, to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.”

In answer to this charge, this respondent begs leave to submit the following facts and observations:

The indictment against James Thompson Callender, which has been already mentioned, and of which a copy is exhibited with this answer, consisted of two distinct and separate counts, each of which contained twenty distinct and independent charges, or sets of words. Each of those sets of words was charged as a libel against John Adams, as President of the United States, and the twelfth charge embraced the following words: “He (meaning President Adams) was a professed aristocrat; he proved faithful and serviceable to the British interest.” The defence set up was confined to this charge, and was rested upon the truth of the words. To the other nineteen charges no defence of any kind was attempted or spoken of, except such as might arise from the supposed unconstitutionality of the sedition law; which, if solid, applied to the twelfth charge as well as to the other nineteen. It was to prove the truth of these words that John Taylor, the person mentioned in the article of impeachment now under consideration, was offered as a witness. It can hardly be necessary to remind this honorable Court, that when an indictment for a libel contains several distinct charges, founded on distinct sets of words, the party accused, who in such cases is called the “traverser,” must be convicted, unless he makes a sufficient defence against every charge. His innocence on one, does not prove him innocent on the others. If the sedition law should be considered

as unconstitutional, the whole indictment, including this twelfth charge, must fall to the ground, whether the words in question were proved to be true or not. If the law should be considered as constitutional, then the traverser, whether the words in the twelfth charge were proved to be true or not, must be convicted on the other nineteen charges, against which no defence was offered. This conviction on nineteen charges would put the traverser as completely in the power of the Court, by which the amount of the fine and the term of the imprisonment were to be fixed, as a conviction upon all the twenty charges. The imprisonment could not exceed two years, nor the fine be more than two thousand dollars. If, then, this respondent were desirous of procuring the conviction of the traverser, he was sure of his object without rejecting the testimony of John Taylor. If his temper towards the traverser were so vindictive as to make him feel anxious to obtain an opportunity and excuse for inflicting on him the whole extent of punishment permitted by the law, still a conviction on nineteen charges afforded this opportunity and excuse as fully as a conviction on twenty charges. One slander more or less, in such a publication as the "Prospect before Us," could surely be of no moment. To attain this object, therefore, it was not necessary to reject the testimony of John Taylor.

That the Court did not feel this vindictive spirit is clearly evinced by the moderation of the punishment, which actually was inflicted on the traverser, after he was convicted of the whole twenty charges. Instead of two thousand dollars, he was fined only two hundred, and was sentenced to only nine months' imprisonment, instead of two years. And this respondent avers that he never felt or expressed a wish to go further; but that in this decision, as well as in every other given in the course of the trial, he fully and freely concurred with his colleague, Judge Griffin.

In the case under consideration, no proof was offered as to the whole matter contained in the twelfth article. No witness except the above-mentioned John Taylor was produced or mentioned. When a witness is offered to a court and jury, it is the right and duty of the court to require a statement of the matters intended to be proved by him. This is the invariable practice of all our courts, and was done most properly by this respondent and his colleague, on the occasion in question. From the statement given by the traverser's counsel of what they expected to prove by the said witness, it appeared that his testimony could have no possible application to any part

of the indictment, except the twelfth charge above mentioned, and but a very weak and imperfect application even to that part. The Court, therefore, as it was their right and duty, requested that the questions intended to be put to the witness should be reduced to writing, and submitted to their inspection, so as to enable them to judge more accurately, how far those questions were proper and admissible. This being done, the questions were of the following tenor and effect:

1st. “Did you ever hear Mr. Adams express any sentiments favorable to monarchy, or ‘aristocracy,’ and what were they?”

2d. “Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?”

3d. “Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?”

The second question, it is manifest, had nothing to do with the charge; for Mr. Adams’ approbation or disapprobation of the funding system could not have the most remote tendency to prove that he was an aristocrat, or had proved faithful and serviceable to the British interest. The third question was in reality as far as the second from any connection with the matter in issue, although its irrelevancy is not quite so apparent. Mr. Adams’s having voted against the two measures alluded to in that question, if he did in fact vote against them, could by no means prove that he was “faithful and serviceable to the British interest,” in any sense, much less with those improper and criminal views, with which the publication in question certainly meant to charge him. The fact, if true, was *no* evidence to support such an inference, therefore the fact was immaterial; and as it is the province and duty of the Court, in such circumstances, to decide on the materiality of facts offered in evidence, it follows clearly that it was the right and duty of the Court, in this instance, to reject the third question; an affirmative answer to which could have proved nothing in support of the defence.

For these reasons this respondent did concur with his colleague, the said Cyrus Griffin, in rejecting the three above-mentioned questions; but not any other testimony that the said John Taylor might have been able to give.

And for plea to the said third article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said third article is alleged against him: this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The fourth article of impeachment alleges, that during the whole course of the trial of James Thompson Callender, above mentioned, the conduct of this respondent was marked by “manifest injustice, partiality, and intemperance;” and five particular instances of the “injustice, partiality, and intemperance,” are adduced.

The first consists, “in compelling the prisoner’s counsel to reduce to writing and submit to the inspection of the Court, for their admission or rejection, all questions which the said counsel meant to propound to the above-mentioned John Taylor, the witness.”

This respondent, in answer to this part of the article now under consideration, admits that the Court, consisting of himself and the above-mentioned Cyrus Griffin, did require the counsel for the traverser, on the trial of James Thompson Callender, above mentioned, to reduce to writing the questions which they intended to put to the said witness. But he denies that it is more his act than the act of his colleague, who fully concurred in this measure. The measure, as he apprehends and insists, was legal and proper; his reasons for adopting it, and he presumes those of his colleague, he will submit to this honorable Court, in order to show that if he, in common with his colleague, committed an error, it was an error into which the best and wisest men might have honestly fallen.

The next circumstance stated by the article now under consideration, as an instance and proof of “manifest injustice, partiality, and intemperance” in this respondent, is his refusal to postpone the trial of the said James Thompson Callender, “although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused, and although it was manifest that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.”

This respondent, in answer to this part of the charge, admits that, in the above-mentioned trial, the traverser’s counsel did move the court, while this respondent sat in it alone, for a continuance of the trial until the next term;

not merely a postponement of the trial, as the expressions used in this part of the article would seem to import; and did file, as the groundwork of their motion, an affidavit of the traverser, a true and official copy of which (marked exhibit No. 5) this respondent herewith exhibits, and begs leave to make part of this answer; but he denies that any sufficient ground for a continuance until the next term was disclosed by this affidavit, as he trusts will clearly appear from the following facts and observations:

The trial of an indictment at the term when it is found by the grand jury, is a matter of course, which the prosecutor can claim as a right, unless legal cause can be shown for a continuance. The prosecutor may consent to a continuance, but if he withholds his consent, the Court cannot grant a continuance without legal cause. Of the sufficiency and legality of this cause, as of every other question of law, the Court must judge; but it must decide on this, as on every other point, according to the fixed and known rules of law.

One of the legal grounds, and the principal one on which such a continuance may be granted, is the absence of competent and *material* witnesses, whom the party cannot produce at the present term, but has a *reasonable ground* for expecting to be able to produce at the next term. Analogous to this, is the inability to procure, at the present term, legal and *material* written testimony, which the party has a *reasonable expectation* of being able to procure at the next term.

Public justice will not permit the trial of offenders to be delayed, on light or unfounded pretences. To wait for testimony which the party really wished for, but did not expect to be able to produce within some definite period, would certainly be a very light pretence; and to make him the judge, how far there was reasonable expectation of obtaining the testimony within the proper time, would put it in his power to delay the trial on the most unfounded pretences. Hence the rule, that there must be reasonable ground of expectation, in the judgment of the Court, that the testimony may be obtained within the proper time.

It is therefore a settled and most necessary rule, that every application for a continuance, on the ground of obtaining testimony, must be supported by an affidavit, disclosing sufficient matter to satisfy the Court, that the testimony wanted “is competent and material,” and that there is “reasonable

expectation of procuring it within the time prescribed.” From a comparison of the affidavit in question with the indictment, it will soon appear how far the traverser in this case brought himself within this rule.

The absent witnesses, mentioned in the affidavit, are William Gardner, of Portsmouth in New Hampshire; Tench Coxe, of Philadelphia, in Pennsylvania; Judge Bee, of some place in South Carolina; Timothy Pickering, lately of Philadelphia, in Pennsylvania, but of what place at that time the deponent did not know; William B. Giles, of Amelia County, in the State of Virginia; Stevens Thompson Mason, whose place of residence is not mentioned in the affidavit, but was known to be in Loudon County, in the State of Virginia; and General Blackburn, of Bath County, in the said State. The affidavit also states, that the traverser wished to procure, as material to his defence, authentic copies of certain answers made by the President of the United States, Mr. Adams, to addresses from various persons; and also, a book entitled “an Essay on Canon and Feudal Law,” or entitled in words to that purport, which was ascribed to the President, and which the traverser believed to have been written by him; and also, evidence to prove that the President was in fact the author of that book.

It is not stated, that the traverser had any reasonable ground to expect, or did expect, to procure this book or evidence, or these authentic copies, or the attendance of any one of these witnesses, at the next term. Nor does he attempt to show in what manner the book, or the copies of answers to addresses, were material, so as to enable the Court to form a judgment on that point. Here, then, the affidavit was clearly defective. His believing the book and copies to be material, was of no weight, unless he showed to the Court sufficient grounds for entertaining the same opinion. Moreover, he does not state where he supposes that this book, and those authentic copies, may be found; so as to enable the Court to judge, how far a reasonable expectation of obtaining them might be entertained. On the ground of this book and these copies, therefore, there was no pretence for a continuance. As to the witnesses, it is manifest, that from their very distant and dispersed situation, there existed no ground of reasonable expectation that their attendance could be procured at the *next* term, or at any subsequent time. Indeed, the idea of postponing the trial of an indictment till witnesses could be convened at Richmond, from South Carolina, New Hampshire, and the western extremities of Virginia, is too chimerical to be seriously

entertained. Accordingly, the traverser, though in his affidavit he stated them to be material, and declared that he could not procure their attendance at that term, could not venture to declare, on oath, that he expected to procure it at the next, or at any other time; much less that he had any reasonable ground for such an expectation. On this ground, therefore, the affidavit was clearly insufficient; and it was consequently the duty of the Court to reject such application.

But the testimony of these witnesses, as stated in the affidavit, was wholly immaterial; and, therefore, their absence was no ground for a continuance, had there been reasonable ground for expecting their attendance at the next term.

William Gardner and Tench Coxe were to prove that Mr. Adams had turned them out of office, for their political opinions or conduct. This applied to that part of the publication which constituted the matter of the third charge in the indictment, in these words, “the same system of persecution extended all over the continent. Every person holding an office, must either quit it, or think and vote exactly with Mr. Adams.” Judge Bee was to prove, that Mr. Adams had advised and requested him by letter, in the year 1799, to deliver Thomas Nash, otherwise called Jonathan Robbins, to the British Consul, in Charleston. This might have had some application to the matter of the seventh charge; which alleged that “the hands of Mr. Adams were reeking with the blood of the poor, friendless Connecticut sailor.” Timothy Pickering was to prove that Mr. Adams, while President, and Congress was in session, was many weeks in possession of important despatches from the American Minister in France, without communicating them to Congress. This testimony was utterly immaterial; because, admitting the fact to be so, Mr. Adams was not bound, in any respect, to communicate those despatches to Congress, unless, in his discretion, he should think it necessary; and also, because the fact, if true, had no relation to any part of the indictment. There are, indeed, three charges, on which it might at first sight seem to have some slight bearing. These are the eighth, the words furnishing the matter of which are, “every feature in the administration of Mr. Adams forms a distinct and additional evidence that he was determined, at all events, to embroil this country with France;” the fourteenth, the words stated in which allege, that “by sending these Ambassadors to Paris, Mr. Adams and his British faction designed to do

nothing but mischief;" and the eighteenth, the matter of which states, "that in the midst of such a scene of profligacy and usury, the President persisted as long as he durst, in making his utmost efforts for provoking a French war." To no other charge in the indictment had the evidence of Timothy Pickering, as stated in the affidavit, the remotest affinity. And surely, it will not be pretended by any man, who shall compare this evidence with the three charges above mentioned, that the fact intended to be proved by it, furnished any evidence proper to go to a jury, in support of either of those charges; that "every feature of his administration formed a distinct and additional evidence of a determination, at all events, to embroil this country with France," that "in sending Ambassadors to Paris, he intended nothing but mischief," that "in the midst of a scene of profligacy and usury, he persisted, as long as he durst, in making his utmost effort for provoking a French war," are charges, which surely cannot be supported or justified, by the circumstance of his "keeping in his possession, for several weeks, while Congress was in session, despatches from the American Minister in France, without communicating them to Congress," which he was not bound to do, and which it was his duty not to do, if he supposed that the communication, at an earlier period, would be injurious to the public interest. The testimony of William B. Giles and Stevens Thompson Mason was to prove that Mr. Adams had uttered in their hearing certain sentiments favorable to aristocratic or monarchical principles of Government.

This had no application except to a part of the twelfth charge; which has been already shown to be wholly immaterial if taken separately, and wholly incapable of a separate justification, if considered as part of an entire charge. And, lastly, it was to be proved by General Blackburn, that in his answer to an address, Mr. Adams avowed, "that there was a party in Virginia which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted, and offended country." There were but two charges in the indictment to which this fact, if true, had the most distant resemblance. These are the fifteenth and sixteenth, the words forming the matter of which, call Mr. Adams "an hoary-headed libeller of the Governor of Virginia, who with all the fury, but without the propriety or sublimity of Homer's Achilles, bawled out, to arms, then, to arms!" and "who, floating on the bladder of popularity, threatened to make Richmond the centre point of a bonfire." It would be an abuse of the patience of this honorable Court, to occupy any part of its time in proving that the fact

intended to be proved by General Blackburn, could not in the slightest degree support or justify such charges as these.

To the third charge adduced in support of the article now under consideration, the charge of using “unusual, rude, and contemptuous expressions towards the prisoner’s counsel,” and of “falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of this respondent did manifestly tend,” he cannot answer otherwise than by a general denial. A charge so vague, admits not of precise or particular refutation. He denies that there was any thing unusual or intentionally rude or contemptuous in his conduct or his expressions towards the prisoner’s counsel; that he made any false insinuation whatever against them, or that his own conduct tended in any manner to produce insubordination to law. On the contrary, it was his wish and intention to treat the counsel with the respect due to their situation and functions, and with the decorum due to his own character. He thought it his duty to restrain such of their attempts as he considered improper, and to overrule motions made by them, which he considered as unfounded in law; but this it was his wish to accomplish in the manner least likely to offend, from which every consideration concurred in dissuading him. He did indeed think at that time, and still remains under the impression, that the conduct of the traverser’s counsel, whether from intention or not he will not undertake to say, was disrespectful, irritating, and highly incorrect. That conduct which he viewed in this light, might have produced some irritation in a temper naturally quick and warm, and that this irritation might, notwithstanding his endeavors to suppress it, have appeared in his manner and in his expressions, he thinks not improbable; for he has had occasions for feeling and lamenting the want of sufficient caution and self-command, in things of this nature. But he confidently affirms, that his conduct in this particular was free from intentional impropriety; and this respondent denies, that any part of his conduct was such as ought to have induced the traverser’s counsel to “abandon the cause of their client,” nor does he believe that any such cause did induce them to take that step. On the contrary, he believes that it was taken by them under the influence of passion, for some motive into which this respondent forbears at this time to inquire. And this respondent admits that the said traverser was convicted, and condemned to fine and imprisonment, but not by reason of the abandonment of his defence by his counsel; but because the charges against

him were clearly proved, and no defence was made or attempted against far the greater number of them.

The fourth charge in support of this article attributes to this respondent “repeated and vexatious interruptions of the said counsel, which at length induced them to abandon the cause of their client, who was therefore convicted, and condemned to fine and imprisonment.” To this charge, also, it is impossible to give any other answer but a general denial. He avers that he never interrupted the traverser’s counsel vexatiously, or except when he considered it his duty to do so.

Lastly, this respondent is charged, under this article, with an “indecent solicitude, manifested by him, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.” This is another charge of which it is impossible to give a precise refutation, and to a general denial of which this respondent must therefore confine himself. He denies that he felt any solicitude whatever for the conviction of the traverser; other than the general wish natural to every friend of truth, decorum, and virtue, that persons guilty of such offences as that of which the traverser stood indicted, should be brought to punishment for the sake of example.

And the said respondent for plea to the said fourth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fourth article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to require.

The fifth article of impeachment charges this respondent with having awarded “a *capias* against the body of the said James Thompson Callender, indicted for an offence *not capital*, whereupon the said Callender was arrested and committed to *close* custody, contrary to law in that case made and provided.”

This charge is rested, 1st, on the act of Congress of September 24, 1789, entitled “An act to establish the judicial courts of the United States,” by which it is enacted “that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process, in the State where such offender may be found.” And, 2dly, on a law of the State of Virginia, which is said to provide “that upon

presentment by any grand jury, of an offence *not capital*, the Court shall order the clerk to issue a *summons* against the person or persons so offending, to appear and answer such presentment at the *next court*.” It is contended, in support of this charge, that the act of Congress above mentioned made the State law the rule of proceeding, and that the State law was violated by issuing a *capias* against Callender, instead of a summons.

It will also appear, as this respondent believes, by a reference to the laws and practice of Virginia, into which he has made all the inquiries which circumstances and the shortness of time allowed him for preparing his answer would permit, that all the cases in which a summons is considered as the only proper process, are cases of petty offences, which, on the presentment of a grand jury, are to be tried by the court in a summary way, without the intervention of a petit jury. Therefore these provisions had no application to the case of Callender, which could be no otherwise proceeded on than by indictment, and trial on the indictment by a petit jury.

And the said respondent, for plea to the said fifth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fifth article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The sixth article of impeachment alleges that this respondent, “with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to the law in that case made and provided.”

This charge also is founded, 1st, on the act of Congress of September 24, 1789, above mentioned, which enacts, section 34, “that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise provide, shall be regarded as the rules of decision, in trials at *common law*, in the courts of the United States, in cases where they apply;” and, 2dly, on a law of the State of Virginia, which is supposed to provide, “that in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next preceding that during which such presentment shall have been made.” This law, it is contended, is made the rule of decision by the above-mentioned act of

Congress, and was violated by the refusal to continue the case of Callender till the next term.

In answer to this charge this respondent declares, that he was at the time of making the above-mentioned decision wholly ignorant of any such law of Virginia as that in question; that no such law was adduced or mentioned by the counsel of Callender, in support of their motion for a continuance; neither when they first made it, before this respondent sitting alone, nor when they renewed it, after Judge Griffin had taken his seat in court; that no such law was mentioned by Judge Griffin, who concurred in overruling the motion for a continuance and ordering on the trial; which he could not have done had he known that such a law existed, or considered it as applicable to the case; and that this respondent never heard of any such law until the articles of impeachment now under consideration were reported, in the course of the present session of Congress, by a committee of the House of Representatives.

And for plea to the said sixth article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said-article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The seventh article of impeachment relates to some conduct of this respondent in his judicial capacity, at a circuit court of the United States held at Newcastle, in the State of Delaware, in June, 1800. The statement of this conduct, made in the article, is altogether erroneous; but if it were true, this respondent denies that it contains any matter for which he is liable to impeachment.

These charges amount in substance to this: that the respondent refused to discharge a grand jury, on their request, which is every day's practice, and which he was bound to do, if he believed that the due administration of justice required their longer attendance; that he directed the attention of the grand jury to an offence against a statute of the United States, which, he had been informed, was committed in the district; and that he desired the District Attorney to aid the grand jury in their inquiries concerning the existence and nature of this offence. By these three acts, each of which it was his duty to perform, he is alleged "to have degraded his high judicial

functions, and tended to impair the public confidence in, and respect for, the tribunals of justice, so essential to the public welfare.”

That this honorable Court may be able to form correctly its judgment concerning the transaction mentioned in this article, this respondent submits the following statement of it, which he avers to be true, and expects to prove:

On the 27th day of June, 1800, this respondent, as one Of the Associate Justices of the Supreme Court of the United States, presided in the circuit court of the United States, then held at Newcastle, in and for the district of Delaware, and was assisted by Gunning Bedford, Esq., then district judge of the United States for that district. At the opening of the court on that day, this respondent, according to his duty and his uniform practice, delivered a charge to the grand jury, in which he gave in charge to them several statutes of the United States, and, among others, an act of Congress, passed July 14th, 1798, entitled “An act in addition to the act for the punishment of certain crimes against the United States,” and commonly called the “sedition law.” He directed them to inquire concerning any breaches of those statutes, and especially of that commonly called the sedition law, within the district of Delaware.

On the same day, before the usual hour of adjournment, the grand jury came into court, and informed the Court that they had found no indictment or presentment, and had no business before them, for which reason they wished to be discharged. This respondent replied, that it was earlier than the usual hour of discharging a grand jury; and that business might occur during the sitting of the court. He also asked them if they had no information of publications within the district, that came under the sedition law, and added, that he had been informed that there was a paper called the *Mirror*, published at Wilmington which contained libellous charges against the Government and President of the United States: that he had not seen that paper, but it was their duty to inquire into the subject; and if they had not turned their attention to it, the attorney for the district would be pleased to examine a file of that paper, and if he found any thing that came within the sedition law, would lay it before them. This is the substance of what the respondent said to the grand jury on that occasion, and, he believes, nearly his words; on the morning of the *next day* they came into court and declared that they had no presentments or indictments to make, on which they were

immediately discharged. The whole time, therefore, for which they were detained, was twenty-four hours, far less than is generally required of grand juries.

And for plea to the said seventh article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said seventh article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The eighth article of impeachment charges that this respondent, “disregarding the duties and dignity of his official character, did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution,” and also that this respondent, “under pretence of exercising his judicial right to address the grand jury as aforesaid, did endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions which were, at that time and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan.”

In answer to this charge this respondent admits that he did, as one of the Associate Justices of the Supreme Court of the United States, preside in a circuit court held at Baltimore in and for the district of Maryland, in May, 1803, and did then deliver a charge to the grand jury, and express in the conclusion of it some opinions as to certain public measures, both of the Government of Maryland and of that of the United States. But he denies that, in thus acting, he disregarded the duties and dignity of his judicial character, perverted his official right and duty to address the grand jury, or had any intention to excite the fears or resentment of any person whatever against the Government and Constitution of the United States or of Maryland. He denies that the sentiments which he thus expressed were “intemperate and inflammatory,” either in themselves or in the manner of

delivering; that he did endeavor to excite the odium of any person whatever against the Government of the United States, or did deliver any opinions which were in any respect indecent, or which had any tendency to prostitute his judicial character to any low or improper purpose. He denies that he did any thing that was unusual, improper, or unbecoming in a judge, or expressed any opinions, but such as a friend to his country and a firm supporter of the Governments, both of the State of Maryland and of the United States, might entertain. For the truth of what he here says, he appeals confidently to the charge itself: which was read from a written paper now in his possession ready to be produced. A true copy of all such parts of this paper as relate to the subject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his answer.

Admitting these opinions to have been incorrect and unfounded, this respondent denies that there was any law which forbids him to express them in a charge to a grand jury, and he contends that there can be no offence without the breach of some law. The very essence of despotism consists in punishing acts which, at the time when they were done, were forbidden by no law. Admitting the expression of political opinions by a judge, in his charge to a grand jury, to be improper and dangerous, there are many improper and very dangerous acts, which not being forbidden by law, cannot be punished. Hence the necessity of new penal laws, which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever since the beginning of the Revolution which separated us from Great Britain, for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability such political opinions as they thought correct and useful. There have been instances in which the Legislative bodies of this country have recommended this practice to the judges; and it was adopted by the judges of the Supreme Court of the United States as soon as the present Judicial system was established.

Nor can the incorrectness of the political opinions thus expressed have any influence in deciding on the guilt or innocence of a judge's conduct in expressing them. For if he should be considered as guilty or innocent, according to the supposed correctness or incorrectness of the opinion thus

expressed by him, it would follow that error in political opinion, however honestly entertained, might be a crime; and that a party in power might, under this pretext, destroy any judge who might happen, in a charge to a grand jury, to say something capable of being construed by them into a political opinion adverse to their own system.

And the said Samuel Chase, for plea to the said eighth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said eighth article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

This respondent has now laid before this honorable Court, as well as the time allowed him would permit, all the circumstances of the case, with an humble trust in Providence, and a consciousness that he has discharged all his *official* duties with justice and impartiality, to the best of his knowledge and abilities; and that intentionally he hath committed no crime or misdemeanor, or any violation of the constitution or laws of his country. Confiding in the impartiality, independence, and integrity of his judges, and that they will patiently hear, and conscientiously determine this case, without being influenced by the spirit of party, by popular prejudice, or political motives, he cheerfully submits himself to their decision.

He is satisfied that every member of this tribunal will observe the principles of humanity and justice, and will presume him innocent until his guilt shall be established by legal and creditable witnesses, and will be governed in his decision by the moral and Christian rule of rendering that justice to this respondent which he would wish to receive.

This respondent now stands not merely before an earthly tribunal, but also before that awful Being whose presence fills all space, and whose all-seeing eye more especially surveys the temples of justice and religion. In a little time, his accusers, his judges, and himself, must appear at the bar of Omnipotence, where the secrets of all hearts shall be disclosed, and every human being shall answer for his deeds done in the body, and shall be compelled to give evidence against himself, in the presence of an assembled universe. To his Omnipotent Judge, at that awful hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accused.

Mr. RANDOLPH, on behalf of the Managers, requested time to consult the House of Representatives, and likewise to be furnished with a copy of the answer of Judge Chase, for the purpose of making a replication to it.

The PRESIDENT said the Senate would take the request into consideration, and make known to the House of Representatives such order as should be taken thereon.

Whereupon the Senate, at the suggestion of the PRESIDENT, retired to their legislative apartment.

On Wednesday, the 6th instant, the House of Representatives received a copy of the foregoing answer, which was referred to the Managers. On the same day, Mr. RANDOLPH reported a replication to the answer, which was immediately taken into consideration. Several motions were made and rejected, after a short debate, to soften the style; when the replication, as reported, was adopted—yeas 77, nays 34. Whereupon, it was resolved that the Managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

THURSDAY, February 7.

The Court was opened about two o'clock.

Present: The Managers, and Mr. HOPKINSON, of the counsel for Mr. Chase.

Mr. RANDOLPH, on behalf of the Managers, read the replication of the House of Representatives, to the answer of Samuel Chase, as follows:

Replication by the House of Representatives of the United States, to the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment exhibited against him by the said House of Representatives.

The House of Representatives of the United States have considered the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment against him, by them exhibited, in the name of themselves and of all the people of the United States, and observe,

That the said Samuel Chase hath endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations and misrepresentation of facts; that the said answer does give a gloss and coloring utterly false and untrue, to the various criminal matters contained in the said Articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice, of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true, and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place as shall be appointed for that purpose.

Signed by order, and in behalf of, the said House.

NATH. MACON, *Speaker*,

Attest:

JOHN BECKLEY, *Clerk*.

Mr. HOPKINSON requested a copy of the replication, which, the PRESIDENT replied, would be furnished by the Secretary.

Mr. BRECKENRIDGE moved a resolution to the following effect:

That the Secretary be directed to inform the House of Representatives that the Senate will, to-morrow, at twelve o'clock, proceed with the trial of Samuel Chase; which was agreed to without one dissenting voice, 34 members voting for it.

Whereupon, the Senate withdrew to their legislative apartment.

FRIDAY, February 8.

The Court opened precisely at twelve o'clock.

Present: The Managers, and the House of Representatives, in Committee of the Whole; and Mr. Chase, attended by his counsel, Messrs. MARTIN, HARPER, HOPKINSON, and KEY.

The crier having, agreeably to a prescribed form, notified all those concerned to come forward and make good the charges exhibited against Samuel Chase,

Mr. RANDOLPH, the leading Manager, requested that the witnesses on the part of the prosecution might be called, to ascertain who were present.

They were accordingly called, to the number of twenty-four.

Present: Alexander James Dallas, William Lewis, William Rawle, William S. Biddle, Edward Tilghman, George Reed, John Montgomery, John Stephen, John Thompson Mason, Samuel H. Smith, John Taylor, George Hay, William Wirt, and John Heath.

Absent: James Lea, John Crow, Risdon Bishop, Aquila Hall, Philip Stewart, Thomas Hall, Philip N. Nicholas, John Harvie, Meriwether Jones, and James Pleasants.

Mr. RANDOLPH observed that various considerations, which it was unnecessary to detail, induced him, on behalf of the Managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed with it.

Mr. HARPER said that, on behalf of Judge Chase, he would not object to the motion.

The PRESIDENT informed the Managers that the Senate acceded to their request, and added, that the Senate would attend to-morrow at twelve o'clock, for the purpose of proceeding with the trial.

At the request of Mr. HARPER, the witnesses on the part of Judge Chase were called over, to the number of forty.

Present: John A. Chevalier, David M. Randolph, John Marshall, John Basset, Samuel P. Moore, William C. Frazier, David Robertson, Edward Tilghman, Wm. Meredith, Jared Ingersoll, Samuel Ewing, James Winchester, Walter Dorsey, James P. Boyd, Nicholas Brice, John Purviance, William M. Mechin, Thomas Chase, William H. Winder, William Gwynn, William Rawle, William J. Govane, Gunning Bedford, Nicholas Vandyke, John Hall, jun., Archibald Hamilton, and Thomas Carpenter.

Absent: William Marshall, Edmund Randolph, Robert Gamble, Philip Moore, Cornelius Comegys, John Stewart, and Edward J. Coale.

Not found: John Hopkins, Philip Gooch, William Minor, and Samuel Wheeler.

Sick: Cyrus Griffin. *Dead:* J. C. Barrett.

Whereupon the Court rose.

SATURDAY, February 9.

The Court was opened precisely at 12 o'clock.

Present: The Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel, as mentioned in the proceedings of yesterday.

At a quarter after 12 o'clock, Mr. RANDOLPH, on behalf of the Managers, opened the impeachment, as follows:

Mr. President: It becomes my duty to open this cause on behalf of the prosecution. From this duty, however incompetent I feel myself to its performance at all times, and more especially at this time, as well from the very short period which has been allowed us to consider the long and elaborate plea of the respondent, as from the severe pressure of disease, it does not become me to shrink. The station in which I have been placed calls

for the discharge of an important public trust at my hands. It shall be performed to the best of my ability, inadequate as I know that ability to be. When I speak of the short period which has been allowed us, I hope not to be understood as expressing, on our part, any dissatisfaction at the course which has been pursued, or any wish to prolong the time which has been allotted for trial. We are sensible of a disposition in this honorable Court to grant us every indulgence which we ought to ask, and when their attention is called to the precipitate hurry of our preparation, it is only to offer, on behalf of an individual, perhaps a weak apology for the weak defence which he is about to make of the cause confided to his care. A desire for the furtherance of justice and the avoidance of delay, but, above all, an unshaken conviction that we stand on impregnable ground, induce us on this short notice to declare that we are ready to substantiate our accusation, to prove that the respondent is guilty in such manner as he stands impeached.

It is a painful but indispensable task which we are called upon to perform: to establish the guilt of a great officer of Government, of a man, who, if he had made a just use of those faculties which God and nature bestowed upon him, would have been the ornament and benefactor of his country, would have rendered her services as eminent and useful as he has inflicted upon her outrages and wrongs deep and deadly. A character endowed by nature with some of her best attributes, cultivated by education, placed by his country in a conspicuous station, invested with authority whose righteous exercise would have rendered him a terror to the wicked, whilst it endeared him to the wise and good: such a character, presented to the nation in the light in which he now stands, and in which his misdeeds have made it our duty to bring him forward, forms one of the saddest spectacles which can be offered to the public eye. Base is that heart which could triumph over him.

I will now proceed to state the principal points on which we mean to rely, and which we expect to establish by the clearest evidence. In doing this I shall be necessarily led to notice many of the leading statements of the respondent's answer. We will begin with the first article. [Here Mr. R. read that article.] The answer to the first of these charges is by evasive insinuation and misrepresentation, by an attempt to wrest the accusation from its true bearing, the manner and time of delivering the opinion, and the

intent with which it was delivered, to the correctness of the opinion itself, which is not the point in issue. And here permit me to remark, that if the Managers of this impeachment were governed only by their own conviction of the course which they ought, necessarily, to pursue, and not by the high sense of duty which they owe to their eminent employers, they would have felt themselves justified in resting their accusation on the admissions of the respondent himself. It is not for the opinion itself, that the respondent is impeached; it is for a daring inroad upon the criminal jurisprudence of his country, by delivering that opinion at a time and in a manner (in writing) before unknown and unheard of. The criminal intent is to be inferred from the boldness of the innovation itself, as well as from other overt acts charged in this article. The admission of the respondent ought to secure his conviction on this charge. He acknowledges he did deliver an opinion, *in writing*, on the question of law, (which it was the right and duty of the jury to determine, as well as the fact,) *before* counsel had been heard in defence of John Fries, the prisoner. I must beg the assistance of one of the gentlemen with whom I am associated, to read this part of the answer. [Mr. Clark accordingly read the reply of Mr. Chase to this charge.] We charge the respondent with a gross departure from the forms, and a flagrant outrage upon the substance of criminal justice, in delivering a written, prejudicated opinion on the case of Fries, tending to bias the minds of the jury against him before counsel had been heard in his defence. The respondent (page 33, of the answer) admits the fact, for he knew that we are prepared to prove it. But he artfully endeavors to shift the argument from the real point in contest, to the soundness of the opinion itself, which, however questionable, (and of its incorrectness I entertain no doubt,) it is not our object at this time to examine. For the truth of this opinion and, as it would seem, for the propriety of this proceeding, the respondent takes shelter under precedent. He tells you, sir, this doctrine had been repeatedly decided on solemn argument and deliberation, twice in the same court, and once in that very case. What is this, but a confession, that he himself hath been the first man to venture on so daring an innovation on the forms of our criminal jurisprudence? To justify himself for having given a written opinion *before* counsel had been heard for the prisoner, he resorts to the example set by his predecessors, who had delivered the customary verbal opinion, after solemn arguments and deliberation. And what do these repeated arguments and solemn deliberations prove, but that none of his predecessors ever arrogated

to themselves the monstrous privilege of breaking in upon those sacred institutions, which guard the life and liberty of the citizen from the rude inroads of powerful injustice? The learned and eminent judges, to whose example he appeals, for justification, decided *after*, and not *before* a hearing. They exercised the acknowledged privilege of the bench in giving an opinion to the jury on the question of law, after it had been fully argued by counsel on both sides. They never attempted, by previous and written decisions, to wrest from the jury their undeniable right of deciding upon the law as well as the fact, necessarily involved in a general verdict, to usurp the decision to themselves, or to prejudice the minds of the jurors against the defence. I beg this honorable Court never to lose sight of the circumstance, that this was a *criminal* trial, for a *capital* offence, and that the offence charged was *treason*. The respondent also admits, that the counsel for Fries, not meaning to contest the truth of the facts charged in the indictment, rested their defence altogether upon the law, which he declared to have been settled in the cases of Vigol and Mitchell: a decision which, although it might be binding on the Court, the jury were not obliged to respect, and which the counsel had a right to controvert before them, the sole judges, in a case of that nature, both of the *law* and *fact*. I do not deny the right of the Court to explain their sense of the law to the jury, after counsel have been heard; but I do deny that the jury are bound by such exposition. If they verily believe that the overt acts charged in the indictment did not amount to treason, they could not without a surrender of their consciences into the hands of the Court, without a flagrant violation of all that is dear and sacred to man, bring in a verdict of guilty. I repeat that in such a case the jury are not only the sole judges of the law, but that where their verdict is favorable to the prisoner, they are the judges without appeal. In civil cases, indeed, the verdict may be set aside and a new trial granted; but in a criminal prosecution, the verdict, if not guilty, is final and conclusive. It is only when the finding of the jury is unfavorable to the prisoner, that the humane provisions of our law, always jealous of oppression when the life or liberty of the citizen is at stake, permits the verdict to be set aside, and a new trial granted to the unhappy culprit. When I concede the right of the Court to explain the law to the jury in a criminal, and especially in a capital case, I am penetrated with a conviction that it ought to be done, if at all, with great caution and delicacy. I must beg leave to take, before this honorable Court, what appears, to my unlettered

judgment, to be a strong and obvious distinction. There is, in my mind, a material difference between a naked definition of law, the application of which is left to the jury, and the application by the Court of such definition to the particular case upon which the jury are called upon to find a general verdict. Surely, there is a wide and evident distinction between an abstract opinion upon a point of law, and an opinion applied to the facts admitted by the party accused, or proven against him. But it is alleged, on behalf of the respondent, that the law in this case was settled, and upon this he rests his defence. Will it be pretended by any man that the law of treason is better established than the law of murder? What is treason, as defined by the constitution? Levying war against the United States, or adhering to their enemies, giving them aid and comfort. What is murder? Killing with malice aforethought, a definition at least as simple and plain as the other. And because what constitutes murder has been established and settled through a long succession of ages and adjudications, has any judge, for that reason, been ever daring enough to assert that counsel should be precluded from endeavoring to convince the jury that the overt acts, charged in the indictment, did not amount to murder? Is a Court authorized to say, that, because killing with a deliberate malice is murder, therefore the act of killing, admitted by the prisoner's counsel, or established by evidence, was a killing with malice prepense, and did constitute murder? I venture to say that an instance cannot be adduced, familiar as the definition of murder is even to the most ignorant, numerous as have been the convictions for that atrocious crime, where counsel have been deprived of their unquestionable right to address the jury on the law, as well as on the fact. Much less can an instance be produced, in any trial for a capital offence, where they have found themselves anticipated in the question of law by a written opinion, to be taken by the jury out of court, as the landmark by which their verdict is to be directed. I have always understood, that even in a civil case, when the jury carried out with them a written paper, relating to the matter in issue, and which was not offered, or permitted to be given in evidence to them, it was sufficient to vitiate their verdict, and good ground for a new trial. This written opinion of the Court, delivered previous to a hearing of the cause, is a novelty to our laws and usages. It would be reprehensible in any case, but in a criminal prosecution, for a capital offence, and that offence treason, (where, above all, oppression and arbitrary proceedings on the part of courts

are most to be dreaded and guarded against,) it cannot be too strongly reprobated or too severely punished.

What would be said of a judge who in a trial for murder, where the facts were admitted (or proved) should declare from the bench, that whatever argument counsel had to offer, in relation to the facts, may be addressed to the jury, but that they should not attempt to convince the jury that such facts came not within the law, did not amount to murder, but that every thing which they had to say upon the question of law, should be addressed to the Court, and to the Court only. Can you figure to yourselves a spectacle more horrible?

We are prepared to prove, what the respondent has in part admitted, that he “restricted the counsel of Fries from citing such English authorities as they believed apposite, and certain statutes of the United States which they deemed material to their defence:” that the prisoner was debarred by him from his constitutional privilege of addressing the jury, through his counsel, on the law, as well as the fact involved in the verdict which they were required to give, and that he attempted to wrest from the jury their undeniable right to hear argument, and, consequently, to determine upon the question of law which in a criminal case it was their sole and unquestionable province to decide. These last charges (except as far as relates to the laws of the United States) are impliedly admitted by the respondent. He confesses that he would not admit the prisoner’s counsel to cite certain cases, “because they could not inform but might deceive and mislead the jury.” Mr. President, it is the noblest trait in this inestimable trial, that in criminal prosecutions, where the verdict is general, the jury are the sole judges, and, where they acquit the prisoner, the judges, without appeal, both of law and fact. And what is the declaration of the respondent but an admission that he wished to take from the jury their indisputable privilege to hear argument and determine upon the law, and to usurp to himself that power which belongs to them, and to them only? It is one of the most glorious attributes of jury trial, that in criminal cases (particularly such as are capital) the prisoner’s counsel may (and they often do) attempt “to deceive and mislead the jury.” It is essential to the fairness of the trial, that it should be conducted with perfect freedom. It is congenial to the generous spirit of our institutions to lean to the side of an unhappy fellow-creature, put in jeopardy of limb, or life, or liberty. The free principles of

our Governments, individual and federal, teach us to make every humane allowance in his favor, to grant him, with a liberality unknown to the narrow and tyrannous maxims of most nations, every indulgence not inconsistent with the due administration of justice. Hence, a greater latitude is permitted to the prosecutor. The jury, upon whose verdict the event is staked, are presumed to be men capable of understanding what they are called upon to decide, and the Attorney for the State a gentleman learned in his profession, capable of detecting and exposing the attempts of the opposite counsel to mislead and deceive. There is, moreover, the Court, to which, in cases of difficulty, recourse might be had. But what, indeed, is the difficulty arising from the law in criminal cases, for the most part? What is to hinder an honest jury from deciding, especially after the aid of an able discussion, whether such an act was killing with malice prepense, or such other overt acts set forth in an indictment, constituted a levying war against the United States; and to what purpose has treason been defined by the constitution itself, if overbearing, arbitrary judges are permitted to establish among us the odious and dangerous doctrine of constructive treason? The acts of Congress which had been referred to on the former trial, but which the respondent said he would not suffer to be cited again, tended to show that the offence committed by Fries did not amount to treason; that it was a misdemeanor only, already provided for by law, and punishable with fine and imprisonment. The respondent indeed denies this part of the charge, but he justifies it even (as he says) if it be proved upon him. And are the laws of our own country (as well as foreign authorities) not to be suffered to be read in our courts, in justification of a man whose life is put in jeopardy?

I now proceed to the second article—the case of Basset, whose objection to serve on Callender’s jury was overruled by the judge who stands arraigned before this honorable Court. In the 30th page of the respondent’s answer it is stated, that a new trial was granted to Fries, “upon the ground (as this respondent understood and believes) that one of the jurors, after he was summoned, but before he was sworn, had made some declaration unfavorable to the prisoner.” It will be remembered that both the trials of Fries preceded that of Callender. Upon what principle, then, could the respondent declare Basset a good juryman, when he was apprised of the previous decision in the case of Fries, by his brother judge, whom he professes to hold in such high reverence, and by whose decision, on his own principles, he must have held himself bound. For surely the same exception

to a jurymen which would furnish ground for a new trial, ought to be a cause of setting aside such juror, if it be taken previous to his being sworn.

From the respondent's own showing it appears, that the question put to the jurymen generally, and to Basset among others, was, whether they "had formed *and* delivered any opinion upon the subject-matter then to be tried, or concerning the charges contained in the indictment." And here let me refer the Court to the question which the respondent put to the jurors in the case of Fries. It was, "whether they had ever formed *or* delivered any opinion as to his guilt, or innocence, or that he ought to be punished?" How is this departure from the respondent's own practice, this inconsistency with himself, to be reconciled? In the one case the question is put in the disjunctive; "have you formed *or* delivered?" In the other, it is in the conjunctive, "formed *and* delivered;" besides other material difference in the terms and import of the two questions. Wherefore, I repeat, this contradiction of himself? But, Mr. President, we shall be prepared to prove that the words "*subject-matter then to be tried*," were not comprised in the question propounded to Basset, or to any of the other jurors. The question was, as will be shown in evidence, "have you ever formed *and* delivered any opinion *concerning the charges contained in the indictment*?" And it is remarkable that the whole argument of the respondent upon this point goes to justify the question which was *actually* put, and which he probably expected we should prove that he did put, rather than that which he himself declares to have been propounded by him. Such a question must necessarily have been answered in the negative. Basset could never have seen the indictment: and although his mind might have been made up on the *book*, whatever opinion he might have formed and delivered as to the guilt of Callender, or however desirous he might have been of procuring his conviction and punishment, still, not having seen the indictment, he could not divine what passages of the book were made the subject of charges, and, by the criterion established by the judge, he was a good juror. But if the juror's mind was thus prejudiced against the book and the writer, was he, merely because he had not seen the indictment, competent to pass between him and his country on the charges contained in it, and extracted out of the book? And even if the question had been such as the respondent states, yet being put in the conjunctive, the most inveterate foe of the traverser who was artful, or cautious enough to forbear the expression of his enmity,

would thereby have been admitted as competent to pass between the traverser and his country in a criminal prosecution.

The third article relates to the rejection of John Taylor's testimony. This fact also is admitted, and an attempt is made to justify it, on the ground of its "*irrelevancy*" on the pretext that the witness could not prove the whole of a particular charge. By recurring to "The Prospect before Us," a book, which, with all its celebrity, I never saw till yesterday, I find this charge consists of two distinct sentences. Taken separately the respondent asserts that they mean nothing; taken together, a great deal. And because the respondent undertook to determine (without any authority as far as I can learn) that Colonel Taylor could not prove the whole, that is both sentences, he rejected his evidence entirely, for "*irrelevancy*." Might not his testimony have been relevant to that of some other witness, on the same, or on another charge? I appeal to the learning and good sense of this honorable Court, whether it is not an unheard of practice (until the present instance) in a criminal prosecution, to declare testimony inadmissible because it is not expected to go to the entire exculpation of the prisoner? Does it not daily occur in our courts, that a party accused, making out a part of his defence by one witness and establishing other facts by the evidence of other persons; does it not daily occur that the testimony of various witnesses sometimes to the same, and sometimes to different facts, does so *relieve* and support the whole case, as to leave no doubt of the innocence or guilt of the accused, in the minds of the jury, who, it must never be forgotten, are, in such cases, the sole judges both of the law and the fact? Suppose, for instance, that the testimony of two witnesses would establish all the facts, but that each of those facts are not known by either of them. According to this doctrine the evidence of both might be declared inadmissible, and a man whose innocence, if the testimony in his favor were not rejected, might be clearly proved to the satisfaction of the jury, may thus be subjected by the verdict of that very jury to an ignominious death. Shall principles so palpably cruel and unjust be tolerated in this free country? I am free to declare that the decision of Mr. Chase, in rejecting Colonel Taylor's testimony, was contrary to the known and established rules of evidence, and this I trust will be shown by my learned associates, to the full satisfaction of this honorable Court, if indeed they can require further satisfaction on a point so clear and indisputable. But this honorable Court will be astonished when they are told (and the declaration will be supported by undeniable

proof) that at this very time neither the traverser, his counsel, nor the Court, knew the extent to which Colonel Taylor's evidence would go. They were apprised, indeed, that he would show that Mr. Adams was an aristocrat, and that he had proved serviceable to the British interest, in the sense conveyed by the book; but they little dreamed that his evidence, if permitted to have been given in, would have thrown great light upon many other of the charges. There is one ground of defence taken by the respondent, which, I did suppose, a gentleman of his discernment would have sedulously avoided: that although the traverser had justified nineteen out of twenty of the charges contained in the indictment, if he could not prove the truth of the twentieth, it was of little moment, as he was, "thereby, put into the power of the Court." Gracious God! sir, what inference is to be drawn from this horrible insinuation?

In justification of the charges contained in the fourth article, the respondent, unable to deny the fact, confesses that he did require "the questions intended to be put to the witness to be reduced to writing, and submitted to the Court," in the first instance, as we shall prove, and before they had been verbally propounded. And this requisition, he contends, it was "the right and duty of the Court" to make. It would not become me, elsewhere, or on any other occasion, to dispute the authority of the respondent, on legal questions, but I do aver that such is *not* the *law*, at least in the State in which that trial was held, nor do I believe that it is law any where. I speak of the United States. Sir, in the famous case of Logwood, whereat the Chief Justice of the United States presided, I was present, being one of the grand jury who found a true bill against him. It must be conceded that the Government was as deeply interested in arresting the career of this dangerous and atrocious criminal, who had aimed his blow against the property of every man in society, as it could be in bringing to punishment a weak and worthless scribbler. And yet, although much testimony was offered by the prisoner, which did by no means go to his entire exculpation; although much of that testimony was of a very questionable nature, none of it was declared *inadmissible*; it was suffered to go to the jury, who were left to judge of its weight and credibility; nor were any interrogatories to the witnesses required to be reduced to writing. And I will go farther, and say that it never has been done before or since Callender's trial, in any court of Virginia, and I believe I might add in the United States, whether State or Federal. No, sir, the enlightened man who presided in Logwood's case

knew that, although the basest and vilest of criminals, he was entitled to *justice*, equally with the most honorable member of society. He did not avail himself of the previous and great discoveries, in criminal law, of this respondent; he admitted the prisoner's testimony to go to the jury; he never thought it *his right* or *his duty* to require questions to be reduced to writing; he gave the accused a *fair trial*, according to law and usage, without any innovation or departure from the established rules of criminal jurisprudence in this country.

The respondent also acknowledges his refusal to postpone the trial of Callender, although an affidavit was regularly filed, stating the absence of material witnesses on his behalf; and here again the ground of his defence is, in my estimation, good cause for his conviction. The dispersed situation of the witnesses, which he alleges to have been the motive of his refusal, is, to my mind, one of the most unanswerable reasons for granting a postponement. The other three charges contained in this article will be supported by unquestionable evidence: the rude and contemptuous expressions of the judge to the prisoner's counsel; his repeated and vexatious interruptions of them; his indecent solicitude and predetermined resolution to effect the conviction of the accused. This predetermination we shall prove to have been expressed by him long before, as well as on his journey to Richmond, and whilst the prosecution was pending; besides the proofs which the trial itself afforded.

The fifth article is for the respondent's having "awarded a *capias* against the body of James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in such case made and provided:" that is, contrary to the act of Assembly of Virginia, recognized (by the act of Congress passed in 1789, for the establishment of the judicial courts of the United States) as the rule of decision in the federal courts, to be held in that State, until other provision be made. The defence of the respondent embraces several points: That the act of Virginia was passed posterior to the act of Congress, viz: in 1792, and could not be intended by the latter to be a rule of decision. Fortunately, there is no necessity to question, which we might well do, the truth of his position. It may be necessary to inform some of the members of this honorable Court, that, about twelve or thirteen years ago, the laws of Virginia underwent a revision; all those relating to a particular subject being

condensed into one, and the whole code thereby rendered less cumbrous and perplexed. Hence, many of our laws, to a casual and superficial observer, would appear to take their date so late as the year 1792, although their provisions were, long before, in force. The twenty-eighth section of this very act, on which we rely, the Court will perceive to have been enacted in 1788, one year *preceding* the act of Congress. (Virg. laws, chap. 74, sec. 28, page 106, note b. Pleasants' edition.) [Here Mr. Randolph read the act referred to.] "Upon presentment made by a grand jury of an offence not capital, the Court shall order the clerk to issue a summons, or other proper process, against the person so presented, to appear and answer such presentment at the next court," &c. But the respondent, aware, no doubt, of this fact, asserts that the act not being adduced, he was not bound to know of its existence, and that he ought not to be censured for the omissions of the traverser's counsel, whose duty it was to have cited it on behalf of their client; and this objection, with the preceding ones, which I have endeavored to answer, will equally apply to the sixth article. Sir, when the counsel for the traverser were told by the judge at the outset, when they referred to a provision of this very law, "that such may be your local State laws here in Virginia, but that to suppose them as applying to the courts of the United States, is a *wild notion*," would it not, indeed, have been a *wild experiment* in them to cite the same law with a view of influencing the opinion of a man, who had scornfully scouted the idea that he was to be governed by it?

Unwilling, however, to rest himself now on the ground which he then took, the respondent justifies himself by declaring that he complied, although ignorantly, with this law, by issuing that *other proper process*, of which it speaks, that is, a *capias*. But that other process must be of the nature of a summons, notifying the party to appear at the *next term*; and will any man pretend to say, that a *capias* taking him into close custody and obliging him to appear, not at the next, but at the existing term, is such process as that law describes? Sir, not only the law, but the uniform practice under it, as we are prepared to show by evidence, declares the *capias* not to be the proper process. But it is said that this would be nothing more than notice to the party accused to abscond, and therefore *ought not* to be law. Sir, we are not talking about what ought to have been the law; that is no concern of ours; the question is, what *was* the law? But the impolicy of this mode of proceeding is far from being ascertained. It is a relief to the innocent who may be in a state of accusation. It saves the expense of

imprisoning the guilty, and if they should prefer voluntary exile to standing a trial, is it so very clear that the State is thereby more injured than by holding them to punishment, after which they would remain in her bosom to perpetrate new offences? Remember, this proceeding is against petty offenders, not felons. It does not apply to capital cases; to felonies, then capital, for which our law has since commuted the punishment of death, into that of imprisonment at hard labor.

For further defence against the sixth article, the respondent takes shelter under this position: That the provision of the law of the United States establishing the judicial courts relates only to rights acquired under *State* laws, which come into question on the trial, and not to forms of process *before* the trial, and can have no application to offences created by statute, which cannot, with propriety, be termed trials at “*common law*.” We are prepared to show that the words “trials at common law,” are used in that statute, not in their most restricted sense, but to contradistinguish a certain description of cases from those arising in equity, or under maritime or civil law.

I will pass over the seventh article of impeachment, as well because I am nearly exhausted, as being content to leave it on the ground where the respondent himself has placed it. It would be impossible for us to put it in a stronger light than has been thrown upon it by his own admission.

The eighth and last article remains to be considered—[article read.] I ask this honorable Court whether the prostitution of the bench of justice, to the purposes of an hustings, is to be tolerated? We have nothing to do with the politics of the *man*. Let him speak, and write, and publish, as he pleases. This is his right in common with his fellow-citizens. The press is free. If he must electioneer and abuse the government under which he lives, I know no law to prevent or punish him, provided he seeks the wonted theatres for his exhibition. But shall a judge declaim on these topics from his seat of office? Shall he not put off the political partisan when he ascends the tribune? or shall we have the pure stream of public justice polluted with the venom of party virulence? In short, does it follow that a judge carries all the rights of a private citizen with him upon the bench, and that he may there do every act which, as a freeman, he may do elsewhere, without being questioned for his conduct?

But, sir, we are told that this high Court is not a court of errors and appeals, but a court of impeachment, and that however incorrectly the respondent may have conducted himself, proof must be adduced of criminal intent, of wilful error, to constitute guilt. The *quo animo* is to be inferred from the facts themselves; there is no other mode by which, in any case, it can be determined, and even the respondent admits that there are acts of a nature so flagrant that guilt must be inferred from them, if the party be of sound mind. But this concession is qualified by the monstrous pretension that an act to be impeachable must be indictable. Where? In the federal courts? There, not even robbery and murder are indictable, except in a few places under our exclusive jurisdiction. It is not an indictable offence under the laws of the United States for a judge to go on the bench in a state of intoxication—it may not be in all the State courts; and it is indictable nowhere for him to omit to do his duty, to refuse to hold a court. But who can doubt that both are impeachable offences, and ought to subject the offender to removal from office? But in this long and disgusting catalogue of crimes and misdemeanors, (which he has in a great measure confessed,) the respondent tells you he had accomplices, and that what was guilt in him could not be innocence in them. I must beg the Court to consider the facts alleged against the respondent in all their accumulated atrocity; not to take them, each in an insulated point of view, but as a chain of evidence indissolubly linked together, and establishing the indisputable proof of his guilt. Call to mind his high standing and character, and his superior age and rank, and then ask yourselves whether he stands justified in a long course of oppression and injustice, because men of weak intellect and yet feebler temper—men of far inferior standing to the respondent, have tamely acquiesced in such acts of violence and outrage? He is charged with various acts of injustice, with a series of misconduct so connected in time, and place, and circumstance, as to leave no doubt, on my mind at least, of intentional ill. Can this be justified, because his several associates have at several times and occasions barely yielded a faint compliance, which perhaps they dared not withhold? Can they be considered as equally culpable with him whose accumulated crimes are to be divided amongst them, who had given at best but a negative sanction to them? But, sir, would the establishment of their guilt prove his innocence? At most, it would only prove that they too ought to be punished. Wherever we behold the respondent sitting in judgment, there do we behold violence and

injustice. Before *him* the counsel are always contumacious. The most accomplished advocates of the different States, whose demeanor to his brethren is uniformly conciliating and temperate, are to *him*, and him only, obstinate, perverse, rude, and irritating. Contumacy has been found to exist only where he presided.

I have endeavored, Mr. President, in a manner, I am sensible, very lame and inadequate, to discharge the duty incumbent on me; to enumerate the principal points upon which we shall rely, and to repel some of the prominent objections advanced by the respondent. Whilst we confidently expect his conviction, it is from the strength of our cause, and not from any art or skill in conducting it. It requires so little support that (thank Heaven) it cannot be injured by any weakness of mine. We shall bring forward, in proof, such a specimen of judicial tyranny, as, I trust in God, will never be again exhibited in our country.

The respondent hath closed his defence by an appeal to the great Searcher of Hearts for the purity of his motives. For his sake, I rejoice that, by the timely exercise of that mercy which, for wise purposes, has been reposed in the Executive, this appeal is not drowned by the blood of an innocent man crying aloud for vengeance; that the mute agony of widowed despair, and the wailing voice of the orphan, do not plead to Heaven for justice on the oppressor's head. But for that intervention, self-accusation before that dread tribunal would have been needless. On that awful day the blood of a poor, ignorant, friendless, unlettered German, murdered under the semblance and color of law, sent without pity to the scaffold, would have risen in judgment at the Throne of Grace, against the unhappy man arraigned at your bar. But the President of the United States by a well-timed act, at once of justice and mercy, (and mercy, like charity, covereth a multitude of sins,) wrested the victim from his grasp, and saved him from the countless horrors of remorse, by not suffering the pure ermine of justice to be dyed in the innocent blood of John Fries.

The Managers proceeded to the examination of witnesses in support of the prosecution.

William Lewis, affirmed.

Mr. Dallas, Mr. W. Ewing, and I were counsel for John Fries, at his request, and I believe by the assignment of the Court, on his trial in the year 1799. It was conducted, I believe, in the usual manner, and we were certainly allowed all the privileges that were customary on such occasions. The trial was had before Judges Iredell and Peters. He was convicted, and a new trial was ordered, because one of the jurors had manifested a prejudice against the people in general concerned in the insurrection, and against Fries in particular. This trial took place partly in April and partly in May, 1799. At October session following, Mr. Dallas and I attended at Norristown, expecting the trial would again take place; but it did not. The proceedings on the first indictment were quashed by the District Attorney, and a new bill was found at April term, 1800, at which Judges Chase and Peters presided. Mr. Dallas and I appeared again as the counsel of Fries, at his request, and I believe we were assigned by the Court, but of this I am not certain. On the morning of a certain day, which I do not now recollect, I entered the court room when the judges were on the bench, and, if I recollect rightly, the prisoner was in the bar; but if he was not then there, I feel very sure that he soon was. The list of petit jurors was called over, and many of them answered.

Almost immediately after the jurors were called over, Judge Chase began to speak. At this time Mr. Dallas had not come into court. Judge Chase said, he understood, or had been informed, that on the former trial or trials, for it was impossible for me to know whether he alluded to the case of Fries only, or of him and others, there had been a great waste of time in making long speeches on topics which had nothing to do with the business, and in reading common law cases on treason, as well as on treason under the statute of Edward the Third, and also certain statutes of the United States, respecting the resisting of process, and other offences less than treason. He also said, that to prevent this in future, he or they, I do not precisely recollect which, had considered the law, had made up their minds, and had reduced their opinion to writing on the subject, and would not suffer these cases to be read again; and in order that the counsel (but whether for the prisoner, or the counsel on both sides, I cannot say) might govern themselves conformably, he had ordered three copies of that opinion to be made out, one to be delivered to the prisoner's counsel, one to the counsel in support of the prosecution, and the other, as soon as the case was fully opened, or gone through, I cannot say which, to be delivered by the clerk of

the court to the jury. I rather think that the expression was, fully gone through.

Judge Chase said, I think on the first day, that they were judges of the law, and if they did not understand it they were unworthy of their seats, or unfit to sit there, and that if the prisoner's counsel had any thing to say, to show that they had mistaken the law, or that they were wrong, the counsel must address themselves to the Court for that purpose, and not to the jury. I made some observations in answer, which it is impossible for me in all respects particularly to recollect, as having passed at this time, since some parts of it may perhaps have taken place in other stages of the business. At this time Mr. Dallas was not in court. I was struck with what appeared to me to be a great novelty in the proceedings; and as I was extremely anxious to be of service to Fries, I was desirous that Mr. Dallas might be present. I think I went out of the bar to get somebody to go for him, and while I was out of the bar, he entered the room. I briefly stated to him what had taken place, or some parts of it; but I believe, not the whole. We came forward, and we made some remarks, which I am unable to repeat. I was early struck with the idea, that as the Court had made up their minds, and decided the question of law, before the jury was sworn, or the witnesses or counsel heard, it was not likely we should alter that opinion by any thing we might say, and that we should probably render Fries more service by withdrawing from his defence, than by engaging in it. We told him so, and earnestly recommended to him to pursue that course. He appeared greatly alarmed and extremely agitated, and much at a loss what determination to come to. We, however, told him that, if he insisted on it, we would proceed in his defence at every hazard, and contend for what we deemed our constitutional rights as his counsel, until stopped by the Court; or we used expressions to this effect. His state of alarm and apprehension scarcely left him the power to decide for himself. After some time he acquiesced in our advice; said he had nobody to depend on but us; that he was sure we would do our best for him, and he would leave us to do for him as we pleased. Being very anxious for him, we told him we would call upon him at the jail, and satisfy his mind as to the course which we wished him to pursue. He finally agreed to our proposal to withdraw; but as we were apprehensive that the Court might assign him other counsel in our place, and that our views might be defeated by such an arrangement, we advised him against accepting any, and I understood that he afterwards did refuse to accept of any other counsel. I

will not assign my reasons for giving this advice, as it might, perhaps, be improper, unless I am directed by the Court.

Mr. Martin asked what those reasons were?

The President desired the examination to proceed on the part of the House of Representatives, and said when that was closed, the witness might be examined by the counsel for Judge Chase.

Mr. Lewis. It being thus determined that we should withdraw, and that Fries should not accept any counsel that might be assigned him, I left the court, expecting to have little or nothing more to say, as we were no longer counsel for the prisoner. The next morning, soon after the court was opened, and, I believe, when the prisoner was in the bar, Judge Chase addressed Mr. Dallas and myself, and probably Mr. Rawle, and asked us if we were ready to proceed? I answered that I was not, or that we were not any longer counsel for the prisoner. He asked our reasons for this; and I began to answer by mentioning what had taken place the day before; on which he and Judge Peters certainly manifested a strong disposition that we should proceed in the prisoner's defence, and that they would remove every restriction which had been previously imposed. I was stopped in what I was about to say by Judge Chase telling us to go on in our own way, and address the jury on the law as well as the facts, as we thought proper; but, at the same time, he said it would be under the direction of the Court; and at our own peril, or the risk of our characters, if we conducted ourselves with impropriety. This had rather a contrary effect on my mind than that of inducing me to proceed, as I did not know that there had been any thing in my conduct so indecorous as to make it necessary to remind me that, if I proceeded, it should be at my own peril and risk of character; and this expression, therefore, rather strengthened than lessened the determination which I had taken.

Finding that Mr. Dallas and I were determined not to proceed in the prisoner's defence, Judge Chase said, if we intended to embarrass the Court we should find ourselves mistaken, as they would proceed without us, and, by the blessing of God, render the prisoner as much justice as if he had the aid of our counsel or assistance. Both the judges, therefore, on the second day, even took pains to induce us to proceed in the defence, with liberty to go through the whole question as well in relation to the law as the facts; but

we absolutely refused, believing it not likely that any arguments we could urge would change the opinion of the Court already formed, or destroy its effects, and also believing that, after what had taken place, the life of Fries, even if he should be convicted, would be exposed to less jeopardy without our aid than it would be if we should engage in his defence.

Alexander J. Dallas, sworn.

Mr. Dallas. I will endeavor to be correct in the statement which it is my duty to give; and I am sure that I shall be substantially so, though I cannot promise to place the facts precisely in the order of time in which they occurred; nor to recite the very words that were used by the several parties in the course of the transaction.

When the northern rioters were brought to Philadelphia, in the spring of 1799, some of their friends applied to Mr. Ingersoll and to me to undertake their defence. Mr. Ingersoll was then Attorney-General of Pennsylvania; and on consideration, I believe, declined the task. Mr. Lewis, either before or after this application, was also requested to act as counsel for the prisoners; and upon his acquiescence, we repaired to the prison to make the necessary arrangements preparatory to a trial. Mr. William Ewing had been engaged by several of the rioters, and we agreed to unite in the defence, as the same general facts in law applied to all the cases.

In April term, 1799, the first trial of Fries took place. It was conducted with great propriety throughout, by the Court, and by the prosecuting officer; and the counsel of the prisoner were permitted to address the jury at large, on the law and the facts, as well as to cite every authority which they thought proper. Fries was convicted; but on a motion made by Mr. Lewis and me, the verdict was set aside, and a new trial awarded.

The second trial of Fries, upon a new indictment (the first having been discontinued by Mr. Rawle) occurred in May, 1800. Mr. Lewis and I had again, at his request, been assigned by the Court to defend him. On the morning fixed for the trial, I entered the court room some time after the court had been opened. Fries was standing in the prisoner's box, the jurors of the general panel appeared to be in the jury boxes, and the hall was crowded with citizens. On my entrance, I perceived Mr. Lewis and Mr. E.

Tilghman engaged eagerly in conversation, and the gentlemen of the bar, generally, seemed to be much agitated. As soon as Mr. Lewis saw me, he hastened towards me on the outside of the bar, and told me, in effect, that a “very extraordinary incident had occurred; that Mr. Chase, after speaking in terms of great disapprobation of the defence at the former trial, declared that the Court, on mature deliberation, had formed and reduced to writing, an opinion on the law of treason involved in the case; and that he should direct one copy to be delivered to the attorney of the district, another to the prisoner’s counsel, and a third (after the opening for the prosecution) to the jury, to take out with them.”

Here Mr. Harper rose, and said: Mr. President, surely it is improper that the witness should repeat what Mr. Lewis told him, not in court, nor when the judge was present.

Mr. Dallas, turning to Mr. Harper, said: “Sir, I know the rules of evidence, and I mean to conform to them.” Then turning to the Vice President, he continued, “If, Mr. President, the counsel’s patience had lasted for a minute, he would have heard that I repeated Mr. Lewis’s communication to the Court, and that it was not contradicted. What I have said was necessary to introduce that fact; and surely, it is strictly within the rules of evidence.”

Mr. Lewis and I exchanged an opinion on the impropriety of the conduct of the Court; we determined (as I thought, when first recurring to my memory for the facts, and as I still think, though I wish not to speak positively) to withdraw from the defence; and we entered the bar together. When there, something occurred which called the attention on our part, and Mr. Lewis informed the Court, in effect “that there was little dispute about the facts in the cause, and that as the Court had deliberately prejudged the law, he could not hope to change their opinion, nor to serve his client; while a submission to such a proceeding would be degrading to the profession.” It was then, I think, that I stated to the Court, the information which I had received from Mr. Lewis, (but certainly it was either then, or, as it has been suggested to me by a respectable gentleman of the bar, at the opening of the court on the next day,) and I paused, to give an opportunity for contradiction or explanation; for, although I had no doubt of Mr. Lewis’s intention to deliver a correct representation of what had passed, it was possible, and I might myself have mistaken the import of his

communication. I cannot now state all that Mr. Lewis told me, but I am confident that I then repeated it all to the Court. No remark being made in consequence of the pause, I proceeded to state a few comparative observations on the province and rights of the judge, and the province and rights of the advocate; and concluded with declining to act any longer as counsel for the prisoner. The Court was soon afterwards adjourned. These are all the material occurrences of the first day, which I recollect; except, perhaps, that soon after I came into court, I heard Mr. Peters remark to Mr. Chase, "I told you what would be the consequence. I knew they would take the stud."

On the next day, the court was opened, Fries was placed in the prisoner's box, the jury attended, and the number of spectators was increased. Silence being proclaimed, Mr. Chase asked, "if the prisoner's counsel were ready to proceed on the trial?" and Mr. Lewis and I, successively, declared, that we no longer considered ourselves as the counsel of Fries. Mr. Peters then, as well as at other times, expressed a great desire that we should overlook what had passed; he told us that the papers delivered the day before had been withdrawn, and that he did not care what range we took, either on the law, or the fact. Mr. Chase also said: "The papers are withdrawn, and you may take what course in the defence you please; but it is at the hazard of your characters." I thought the expression was in the nature of a menace; that it was unkind, improper, and unnecessary. Mr. Lewis observed, in effect: "You have withdrawn the papers; but can you eradicate from your own minds the opinion which you have formed, or the effect of your declaration on the attending jurors, a part of whom must try the prisoner?" Mr. Chase said: "If you think to embarrass the Court, you will find yourselves mistaken." He then asked Fries if he chose to have other counsel assigned? Fries answered, that he did not know how to act, but that he thought he would leave it to the Court and the jury. On which, Judge Chase exclaimed, "Then we will be your counsel; and, by the blessing of God, do you as much justice as those who were assigned to you." Mr. Lewis and I had visited Fries in prison during the preceding afternoon; we had told him our determination to withdraw from his defence, unless he and his friends wished us to resume it; and we declared it to be, in our view of the case, his best chance to escape, as we could entertain no hope of changing the opinion of the Court. He finally left the matter to us; and I think Mr. Lewis in my hearing, with my concurrence, advised him not to accept other

counsel, if the Court should offer to assign them. The rest of the facts, as stated by Mr. Lewis, correspond so precisely with my recollection, that I presume, after this recognition, it is unnecessary to repeat them. I wish it, however, to be properly understood that, on the second day, both the judges were extremely anxious to prevail on us to proceed in the defence; and, as I understood, withdrew all the restrictions of the preceding day. We persisted, however, in our determination; because, after what had happened, we deemed it the best chance to save our client's life, and not because we wished, as has been insinuated, to bring the Court into disgrace or odium. Fries was accordingly tried and convicted without counsel.

On this course of argument, we could not ascertain the opinion of the Court, nor how far the case of the Western insurrection would be deemed to apply, till the charge was pronounced. But, after hearing the charge, and after a new trial was granted, I confess the whole force of my mind was bent to show, on the new trial, the strong distinction between the cases of 1794 and those of 1799; and that even in England, there was no authority since the Revolution of 1688, for construing the offence of Fries to be treason, unconnected with the obligation of the judges to conform to the previous adjudications.

The President. Both you and Mr. Lewis have stated that the jury were present when the written opinions of the Court were handed to the clerk: Could they hear what passed on the occasion?

Mr. Dallas. Undoubtedly, sir. I do not mean, however, the jury who tried Fries, but the general panel of jurors, from whom Fries's jury might have been taken.

The Court rose about four o'clock.

MONDAY, February 11.

The Court was opened at 12 o'clock.

Henry Tilghman, sworn.

I was present at the circuit court of the United States, for the district of Pennsylvania, held on the 22d day of April, 1800. A very short time after

the opening of the court, (whether the general panel of jurors had been called over or not, I do not recollect,) Judge Chase declared that the Court had maturely considered the law arising on the overt acts charged in the indictment against John Fries; and that they had reduced their opinion to writing; he mentioned that he understood that a great deal of time had been consumed on a former trial, and that in order to save time, a copy of the opinion of the Court would be given to the attorney of the district; another to the counsel for the prisoner, and that the jury should have a third to take out with them. I took no notes of what passed either on the first or second day. Fries was tried on the third day, and having been appointed, with Mr. Levy, counsel for Heany and Getman, indicted for treason, and who were actually tried on the 27th or 28th, I deemed it my duty to attend the trial of Fries, to take notes of the evidence, the arguments, and the charge of the judge. I do not recollect that Judge Chase said any more on the first day than what I have mentioned previous to his throwing a paper or papers on the table round which the bar usually sit. The moment the paper or papers were thrown on the table, Judge Chase expressed himself in these words: "Nevertheless, or notwithstanding this," (I cannot recollect which expression he used) "counsel will be heard." The throwing of the papers on the table and the address of the judge caused some degree of agitation at the bar; in a short time after the judge used the last expression, I looked round and saw Mr. Lewis walking from under the gallery towards the bar: I stepped towards Mr. Lewis, and met him directly opposite the entrance into the prisoner's bar. The prisoner, as well as I can recollect, not being then in court, but being brought into court some time that morning, I entered into conversation with Mr. Lewis, and as well as I can recollect, during that conversation, Mr. Dallas came into court. Mr. Dallas and Mr. Lewis had some conversation in my hearing, after which they came forward to the bar; the paper, as well as I can recollect, was then handed by Mr. Caldwell, the clerk of the court, to Mr. Lewis. Mr. Lewis cast his eye on the outside of the paper, and looked down, as if he was considering what to say. He threw the paper from him, as it appeared to me, without reading it, and the moment he threw the paper down, said, "My hand shall never be stained by receiving a paper containing a prejudged opinion, or an opinion made up without hearing counsel." I cannot recollect which was the expression, but this was the substance. I have not the least recollection that any thing passed on the third day, between the counsel for the prisoner and the Court; for when Mr.

Lewis used these expressions, his face was not turned to the Court, and he spoke with a considerable degree of warmth; the Court sat in the south part of the room, and Mr. Lewis (I think) turned his face full to the westward, when he used these expressions. The paper lay on the table a considerable time; after which some gentlemen of the bar took it up, and I for one copied it. Whether I took the whole of it, and all the authorities cited, I cannot say. The prisoner having been brought into court, his counsel had a good deal of conversation in my hearing on the subject of supporting or abandoning his defence; that conversation appears to me to have been accurately stated by Mr. Lewis and Mr. Dallas. I do not recollect why the prisoner was not put on his trial that day, but the Court adjourned between 12 and 1 o'clock. I went home, and after taking a walk, on returning, I saw the district attorney on my steps. He asked me whether I would have any objection to delivering up the copy which I had taken of the opinion of the Court. I said I had no objection, and gave it to him. That paper was not read on the first, or any other day by the Court, or any thing stated by the Court, as the substance of it. On the next morning, to wit, the 23d, the prisoner was brought into court. The Court asked the prisoner's counsel if they were ready to proceed to the trial. Mr. Lewis rose and uttered a few words, in order to show that they did not mean to proceed with it. Judge Chase here interrupted Mr. Lewis—the particular expressions of the judge I do not recollect; the substance of them was, that the counsel were not to consider themselves bound by the opinion which the Court had reduced to writing the day before; that the counsel were at liberty on both sides to combat that opinion. Judge Chase, as well as Judge Peters, appeared to be very anxious that the counsel should undertake the defence of the prisoner. Judge Chase said, the cases at common law before the statute of Edward the Third, ought not to be read to the Court: he mentioned the case of a man whose stag the king had killed, and who said he wished the stag's horns were in the king's belly; he also mentioned the man who kept a public house, with the sign of a crown, and said he would make his son heir to the Crown. He said such cases as these must not, shall not be cited; and I think he made use of these expressions: "What! cases from Rome, Turkey and France?" That, the counsel should go into the law, but must not cite cases that were not law.

He said that he had an opinion in point of law as to every case that could be brought before the Court, or else he was not fit to sit there. He said something (but the precise words I do not pretend to recollect) as to the

counsel proceeding according to their consciences; he said that the gentlemen would proceed at the hazard of their character, and when it appeared pretty plain that the gentlemen would not proceed in defence of the prisoner, he said, You may think to put the Court to difficulties; but if you do, you miss your aim, or words in substance to that effect. Judge Peters addressed the counsel, and said if an error has been committed, why may it not be redressed? the paper has been withdrawn—and I think both the judges concurred in expressing the sentiment that matters were to be considered as if the paper had never been thrown on the table. When Judge Peters mentioned that the paper had been withdrawn, Mr. Lewis answered, The paper, it is true, is withdrawn, but how can the Court erase from their minds an opinion formed without hearing counsel. A good deal more passed which I do not recollect, having taken no notes. Mr. Dallas addressed the Court, but I have no recollection of what he said. The counsel continued firm in their determination to abandon the prisoner: the Court took great pains to induce them to act as counsel for the prisoner, and before Fries was remanded to jail, expressed their hope that the counsel would think better of it, and appear in his defence. I recollect nothing more of what happened on the second day. Should any questions be put to me, they may awaken a recollection of what does not now occur to me.

On the third day when the prisoner was brought to the bar, he was asked if he had any counsel, (I think, on the second day, the Court had mentioned to him that he might have other counsel,) he said no, he would depend on the Court to be his counsel. Judge Chase said, The Court will be your counsel, and by the blessing of God, will serve you as effectually as your counsel could have done. The trial proceeded, and after the testimony was given and a short statement of the case made by the district attorney, the judge charged the jury; he told them they were judges of the law as well as the fact. He stated to them that cases determined in England, before their Revolution, should not be received by the Court. I have my notes of the charge; he stated the law very much in the manner as it was stated by Judge Patterson in the trial of Mitchell, for whom I was counsel. I cannot undertake to recollect any thing farther than I have already stated.

William Rawle, affirmed.

The circuit court of the United States sat in Philadelphia in April, 1800. As the former proceedings in relation to the prisoners indicted for treason were considered at an end, except from the intervention of an act of Congress, it appeared to me most regular to quash all the previous proceedings. I made a motion to this effect, which was granted. On the same day the Court charged the grand jury, and I sent to them bills against John Fries, and other persons charged with treason and other offences. The bill against John Fries was returned on the 16th a true bill, and he was immediately brought up, arraigned, and pleaded not guilty. Messrs. Lewis and Dallas appeared as counsel for Fries. Copies of the indictment, and lists of the jurors and witnesses, were furnished to Fries as directed by law. The bringing on the trial was postponed on account of the absence of George Mitchell, whom I deemed to be a material witness. According to my best recollection it was not intended that John Fries should be tried on the 22d, the first day alluded to. I cannot say that John Fries was then at the bar. That circumstance does not appear on the minutes of the clerk of the court. It was certainly not my intention that he should have been brought up, but he may possibly have been brought through mistake. Shortly after the Court met, Judge Chase observed, that, as much time had been lost on the former trial or trials, the Court had determined to express their opinion in writing, on the point of law, that they might not be misunderstood; that they had therefore committed that opinion to writing, and that the clerk had made copies of it, one of which should be given to the district attorney, one to the counsel for the prisoner, and one the jury should take out with them: as these words were pronounced, several papers (I think three) were handed down, or thrown down, as it were; my back was to the Court, and whether this was done by Judge Chase or the clerk, I know not. I immediately took up the one intended for me and began to read it, but casting my eyes to the opposite side of the table, I saw Mr. Lewis with another copy before him, looking at it, apparently, with great indignation, and then throwing it on the table. I am pretty clear nothing passed between the Court and the counsel in the course of that morning. I observed much agitation among the gentlemen of the bar, who were conversing with each other with apparent warmth; but having at that time a very great burden of criminal prosecutions on me, my attention was much engaged, and I did not hear distinctly what was said, nor did I know, until the Court rose, that there was a probability of the counsel for John Fries declining to act. I think that twenty-one persons were

that day brought before the Court charged with seditious combinations, and who submitted to the Court. The Court rose pretty early in the morning, and intimated that I should not call any witnesses in relation to the submissions until the trials for treason were over. When the Court rose I learnt from several gentlemen, that Mr. Lewis and Mr. Dallas were disgusted with the conduct of the Court, and meant to decline acting as counsel for Fries, and I have an indistinct recollection that I heard something of this kind drop from Mr. Dallas himself. I went home, and had been there but a few minutes, when Judge Chase and Judge Peters came in. We went into another room, and Judge Peters began by expressing a good deal of uneasiness, from an apprehension that the gentlemen assigned as counsel for John Pries would not go on. Judge Chase said he could not suppose that that would be the consequence. I supported the idea which Judge Peters had expressed; I told him the gentlemen of the Philadelphia bar were men of much independence and character, and that unless those papers were withdrawn, and the business conducted as usual at our bar, they probably would desist from conducting the defence. My recollection at this distance of time cannot be very distinct, but I am pretty well satisfied that Judge Chase expressed his regret that the conduct of the Court should be so taken, and said, that he did not mean that any thing which he had done should preclude the counsel from making a defence in the usual manner. Judge Peters asked if I would consent to go out, and undertake to recover the papers; I said I had no objection, and both the judges concurred in requesting me to do so. I recollected seeing Mr. Edward Tilghman and Mr. Thomas Ross engaged in making copies. I did not recollect to have seen any others so engaged. I went to their houses and asked for the copies, which were readily given, and took them to Mr. Caldwell, clerk of the court. I asked him if he had noticed any others to have been taken? He said he thought a copy had been taken by Mr. William Meredith. I desired him to go to him and endeavor to recall it. I did not know that Mr. Biddle, who was then a student in my office, had taken a copy in part, or I should have desired him to give it up. From some circumstances which I do not recollect, I find that I did not hand my own copy to Mr. Caldwell. I now have it in my possession. The paper was not read, I think, by any but those who transcribed it, and I entertained an anxious hope, after what had taken place, that the gentlemen would proceed with the defence of the prisoner. I shall now take the liberty of referring to some original notes made by me at the time—from which I can state what

passed the following morning. So far as they go I believe them accurate, though they may not enable me to relate all that was said. On the 23d April, John Fries was brought and put to the bar, Messrs. Lewis and Dallas attending. The Court asked if we were ready to proceed. Mr. Lewis rose and said: If employed by the prisoner, I should think myself bound to proceed, but being assigned—he was here interrupted by Judge Chase, who said, “You are not bound by the opinion delivered yesterday, you may contest it on both sides.” Mr. Lewis answered: I understood that the Court had made up their minds, and as the prisoner’s counsel have a right to make a full defence, and address the jury both on the law and the fact, it would place me in too degrading a situation, and therefore I will not proceed. Judge Chase answered with apparent impatience: “You are at liberty to proceed as you think proper, and address the jury, and lay down the law as you think proper.” Mr. Lewis answered, with considerable emphasis, I will never address the court in a criminal case on a question of law. He then took a pretty extensive view on the propriety of going into cases decided before the Revolution, and said, if he was precluded from showing that the judges since the Revolution in England had considered themselves bound by the decisions before the Revolution, which ought not to be the doctrine in this country, he must decline acting as counsel for the prisoner. Judge Chase answered: “Sir, you must do as you please.” Mr. Dallas then addressed the Court. He contended that the rights of advocates had been encroached upon by the proceedings of the day before. He went into a general view of the ground taken by Mr. Lewis, and concluded with his determination not to proceed as counsel for John Fries.

Judge Chase then observed, No opinion has been given as to facts in this case. I would not let the witnesses be examined in the combination cases, because I would not let the jury hear them before the trial of Fries came on. As to the law, I knew that the trial before had taken nine days; that many common law cases were cited, such as wishing a stag’s horns in the King’s belly, and that of a man’s saying he would make his son heir to the Crown; such cases ought not, shall not go to the jury. No case can come before me on which I have not a decided opinion as to the law, otherwise I should not be fit to preside here. I have always conducted myself with candor, and I meant, gentlemen, to save you trouble. It is not respectful, nor is it the duty of counsel, to say they have a right to offer any thing they please. What! decisions in Rome, France, Turkey? No lawyer will say that common law

cases are law under the statute of Edward the Third, nor justify those judges who overset the statute of William, and overrule the necessity of having two witnesses to one overt act, and to admit hearsay testimony to prove matters of fact. It is the duty of counsel to lay down the law, but not to read cases that are not law. Having thus explained the meaning of the Court, you will stand acquitted or condemned to your own consciences, as you think proper to act. But, gentlemen, do as you please. The course will be, the district attorney will open the law, state his case, and produce his witnesses. You are at liberty to controvert the law as to the matter, but the manner must be regulated by the Court. Judge Peters said, You are to consider every thing done yesterday as withdrawn. Mr. Lewis replied, True, sir, the papers are withdrawn, but the sentiments still remain; I shall not therefore act.

Mr. Dallas expressed the same determination, which I did not take down.

A pause for a few moments took place, when Judge Chase said, You cannot put the Court into a difficulty by this conduct, gentlemen; you do not know me if you think so; and, desiring the persons between him and the prisoner to stand aside, and addressing himself to John Fries, he asked, Are you desirous of having other counsel assigned you, or will you go on to trial without? John Fries, after a pause, said he did not know what to do; he would leave it to the Court. Under these circumstances I felt a repugnance to go on with the trial, not wishing to act in a case so extremely singular. I therefore moved to postpone the trial to the next day; the Court readily concurred, and Fries was remanded to jail.

On the 24th, Fries was brought to the bar again. Judge Chase asked him if he had any counsel. He told the Court that he relied on them as his counsel, and he expressed himself with a degree of firmness and composure that convinced me that his decision was formed on mature reflection. Then, Judge Chase answered, By the blessing of God we will be your counsel, and do you as much justice as those assigned you.

George Hay, sworn.

The greater part of the evidence I am to deliver relates to what was said by me as counsel for J. T. Callender, who was indicted for a libel on the President of the United States, and what was said by *one* of the judges; for I

do not recollect to have heard the voice of Judge Griffin at any time during the trial. In order to make this statement as accurate as possible, as my memory is not strong, it is necessary to resort to a statement made by myself and the counsel associated with me in the defence of J. T. Callender, which I now hold in my hand, and every part of which, according to my best recollection, is correct.

Mr. Harper here interrupted Mr. Hay, and said, The witness may refer to any thing done by himself at the time the occurrences happened which he relates. But I submit it to the Court how correct it is to refer to what was not done by him, or done at the time.

The President asked Mr. Hay whether the notes were taken by him.

Mr. Hay. The statement was made by different persons. Some parts were made by myself, perhaps the greater part; the rest by Mr. Nicholas and Mr. Wirt. I believe I shall be able to state from it every material occurrence which took place at the time.

President. Have you the parts made by yourself separate?

Mr. Hay said he had not.

The President then put the question, whether the witness should be permitted to use the paper? and, the question being taken by yeas and nays, passed in the negative—yeas 16, nays 18.

Mr. Randolph asked the witness to state to the Court the circumstances which took place during the trial of James T. Callender, and particularly what respected the excuse and testimony of John Basset.

Mr. Hay. I will state as well as I can what fell from the judge, and which appeared to me to be material. After some previous observations, the counsel for the traverser claimed for their client his constitutional right to be tried by an impartial jury. I cannot pretend to relate precisely either the course of proceeding or the exact words which were used, since I am deprived of the aid of those notes which I know to be correct. I shall not, therefore, recite the precise words, but I shall give the substance of them, and the words themselves as nearly as possible. According to my best recollection, Judge Chase's declaration on that point was, that he would see justice done to the prisoner in that respect. In order to obtain the object which the counsel for Callender had in view, we pursued this course.

Believing that a majority of the petit jury, if not all of them, were men decidedly opposed to J. T. Callender, in political sentiments, and thinking it probable, from the state of parties at that time, that they had made up their minds, we wished to ask every juror, before he was sworn, whether he had ever formed an opinion with respect to the book called "The Prospect before Us." According to my best recollection, Judge Chase interfered, and told us it was not the proper question. He said he would tell us what the proper question was. He then went on to state that the proper question was this: "Have you ever formed and delivered an opinion concerning the charges in this indictment?" Though I have but little dependence on my memory, in general, yet in this I am certain, that I not only give the substance, but the identical words used. To this question an answer was necessarily given in the negative.

When Mr. Basset was called by the marshal, he manifested some repugnance to serving on the jury. He said, according to my best recollection, that he was unwilling to serve, because he had made up his mind as to that book. I do not pretend to say that the words used were precisely those I state. He may have expressed himself in the words ascribed to him by the stenographical statement given of the trial. The objection, thus made by Mr. Basset, was overruled by Judge Chase, who asked him whether he had ever formed and delivered an opinion concerning the charges in the indictment. He was sworn to answer this question. Like the other jurors, he answered in the negative, and the judge ordered him, like the other jurors, to be sworn on the jury. He was sworn, and did serve.

Mr. Harper. Was the word used by the judge, *and* or *or*?

Mr. Hay. I am perfectly clear it was *and*, and not *or*.

In the state of things at that time, and seeing the temper that was manifested on the trial, I would not, and did not, ask the juror a single question without submitting it to the Court, and soliciting their permission to ask it. I solicited the leave of the Court to ask a question. The reply of the judge was this—the difficulty I experience at this moment in stating the precise words, furnishes the reason I had for wishing to have recourse to the statement I had in my hand; since I am denied that indulgence, I will not pretend to state literally what was said, but I will state the substance. I told the judge I wished to ask a question. "What," said the judge, "is the

question you want to put?—state it. If I think it a proper question, or if I choose it, you may put it. Come, what is your question?” Notwithstanding the humiliation I felt at being addressed in such a way before a crowded audience, I asked, “Have you formed (leaving out, “and delivered”) an opinion concerning the book from which the charges in the indictment are taken?” The reply of Judge Chase was, “no, sir, No, you shall ask no such question.” And the question was not asked. This is all I recollect at this moment respecting Mr. Basset, and the occurrences connected with that part of the trial.

It was stated by Callender, in his affidavit, that Colonel Taylor, of Caroline, was a material witness; but of this I am not certain, because I have not read the affidavit since the trial. In the interval that elapsed between the day on which the first motion was made, and that on which the trial took place, Tuesday, Colonel Taylor was summoned. When he came to town, I know not. I have no recollection of having seen him until he came into court. I had, therefore, no opportunity of ascertaining whether it would be in his power to furnish the accused with the evidence he expected to derive from him. After the witnesses on the part of the United States had been adduced to prove the fact of publication, and after the attorney of the United States had opened the case, and stated the law arising upon the evidence, Colonel Taylor was offered to the Court as a witness. He was sworn; and, immediately after, or probably while he was swearing, Mr. Chase asked the counsel of Callender what they expected to prove by him. If I recollect rightly, Mr. Nicholas, one of my associates, observed that we did not know distinctly what could be proved by Colonel Taylor; but that we expected to prove what would amount to a justification of one of the counts in the indictment; that we expected to prove that Mr. Adams, the then President of the United States, had avowed, in conversation with Colonel Taylor, sentiments hostile to a republican Government; and that he had voted in the Senate of the United States against the law for sequestering British property in this country, and against the law for suspending commercial intercourse between the United States and the Kingdom of Great Britain. I do not recollect precisely the words which were used by Mr. Nicholas, in making the observations that accompanied this statement; but I think he said he hoped that it would be understood that he was not tied down to these particular points, saying that probably the answers given by Colonel Taylor might suggest other questions proper to be put. Nor do I use the precise

words in which Judge Chase made an objection; but I do remember that the objection was made. The principle upon which he founded his objection was this, that Colonel Taylor's evidence did not go to a justification of any one entire charge; and he declared Colonel Taylor's evidence to be inadmissible on that ground. The judge was then asked by Mr. Nicholas whether we might not prove part of a charge by one witness, and the other part by another. The judge answered him, that he desired him to understand the law as he had propounded it; and the law was this: that this could not be done; that Colonel Taylor's evidence related to only one part of a charge, and that he could not prove one part by one evidence, and one part by another. I then observed to the judge that I thought Colonel Taylor's evidence admissible even on the principle laid down by the Court; that I thought his testimony would go to prove both members of the sentence. The one asserted that Mr. Adams was an aristocrat, the other, that he had proved faithful and serviceable to the British interest; and that he could prove that he had heard Mr. Adams make the remarks already stated; and that he had proved serviceable to Great Britain in the way mentioned by the author, that is, in giving the two votes in the Senate, alluded to in the work. The judge did not say in express terms that the position taken at the bar was wrong, but he said that the evidence of Colonel Taylor was inadmissible, and that the counsel knew it to be so; and I believe it was at the same moment of time he said that our object was to deceive and mislead the populace. I remember these expressions as well as if I had heard them yesterday. Finding that the attempt I had made to render a service, not to the man, but to the cause, instead of affording service to the cause, only brought on me the obloquy of the Court, I felt myself disgusted, and said no more on the subject.

I recollect that we were requested by the judge to reduce to writing the questions that we wished to propound to Colonel Taylor. I thought the measure so novel and unprecedented that I was not disposed to comply with this desire. The questions were, however, stated in writing by Mr. Nicholas, who observed that he hoped we would not be confined in the examination of the witness to the questions thus stated in writing. If I mistake not, before the questions were reduced to writing, Mr. Nicholas made some observations about the mode pursued by the Court in reference to the attorney for the United States, and that exercised towards the counsel for the prisoner; that the attorney for the United States had not been required to

state in writing the questions he wished to ask. When this remark was made to the judge, he said that the attorney for the United States had stated in the opening of the case all that he expected to prove; “but though this were done, we were not bound to do it.” My impression is that that word escaped the judge several times.

Mr. Nicholson. What word?

Mr. Hay. The word “we.”

Mr. Nicholson. Did it refer to the Court as well as the attorney?

Mr. Hay. So, sir, I understood it.

The fourth article relates to the refusal of the judge to postpone the trial on the affidavit of Callender; on which I can only say that the affidavit was filed, but whether regularly drawn or not I do not know. This affidavit, according to my best recollection, stated the absence of material witnesses.

The next article relates to a subject that it is very unpleasant to me to make any remarks upon, because I feel myself to be a party concerned. The judge is charged with—

[Mr. Hay here read the third, fourth, and fifth clauses of the fourth article.]

There were many expressions used by Judge Chase during the trial which were uncommon, and which I thought, and still think to be so. With respect to the asperity with which he censured me, I shall not—

Mr. Harper interrupted the witness, and desired him to state the expressions, and let the Court judge for themselves.

Mr. Hay. The first expression which made a very strong impression on my mind, was this: In the course of the argument, urged by me in support of the motion for a continuance to the next term, I assumed it as a clear position, that the law of the State of Virginia, which directs that the jury shall assess the fine, would govern in this case. As soon as I got to that part of the argument the judge interrupted me, and gave me to understand that I was mistaken in the law, and added, the assessment of the fine by the jury may be conformable to your local and State laws, but when applied to the federal courts, it is a “*wild notion*.” In the case of Colonel Taylor’s evidence, which I have already stated, the judge said that we knew the

evidence to be inadmissible, though we pressed it upon the Court, and then the expression followed which has been already mentioned, that we were endeavoring to mislead and deceive the populace. At another time he was pleased to observe, Gentlemen, you have all along been in error in this cause, and you persist in pressing your mistakes on the Court. On more occasions than one he charged the counsel with advancing doctrines they knew to be wrong. I endeavored in one part of the cause to satisfy the Court that the book called the "Prospect before Us," could not be given in evidence in support of the indictment, because the title of the book was not mentioned in the indictment. In support of my argument, I observed to the Court that if the indictment mentioned the book from which the charges were formed, and any subsequent prosecution should afterwards be instituted, the traverser would have nothing more to do than to produce a copy of the record, and plead in bar of a subsequent prosecution; but that according to the opinion of the Court, the situation of the traverser would be more precarious than according to the doctrines for which I contended; for that the traverser, if he should plead a former prosecution in bar, would not be able to prove the fact by comparing the record with the indictment; but must resort to extraneous evidence to prove that the subsequent prosecution was founded on the same publication that gave rise to the first. The judge was pleased to observe, without seeming to understand the distinction that I endeavored to draw, that I knew the present prosecution could be pleaded in bar. I certainly did know it, and was endeavoring at that very time to show by my argument that the better mode of proving the truth of the plea would be by a copy of the record, rather than by an appeal to parol testimony. Judge Chase again interrupted me, and said, I knew that this prosecution might be pleaded in bar.

In the course of the same argument, which I addressed to the judge, for the purpose of showing the truth of the positions we had stated, I observed that according to the established doctrine, the words "tenor and effect," in an indictment for a libel, bound the party to the literal recital of the parts charged as libellous. In support of that opinion I quoted several authorities that satisfied my mind. The judge was pleased to tell me, I was mistaken in my application of them; but I do not remember his precise words. He said the words "tenor and effect" did not oblige the prosecutor to give more than the substance of the paper meant to be recited. It is contended, said he, that

the book ought to be copied *verbatim et literatim*; I wonder, he continued, *they* do not contend for *punctuatim* too.

Mr. Nicholson. Was this observation addressed to the bar?

Mr. Hay. It appeared to me to be intended for the people; for he looked round the room when he said, with a sarcastic smile, I wonder they do not contend for *punctuatim* too. I recollect also, that when Mr. Wirt, who was associated with me as counsel for the traverser, was addressing the Court, he was ordered by Judge Chase to sit down—in this precise language, *sit down*. The judge also declared that the counsel on the part of Callender should not address any observations to the jury concerning the unconstitutionality of the second section of the sedition law, in respect to prosecutions for libellous publications.

When Mr. Wirt was arguing from a proposition he had laid down, he said the conclusion which followed was perfectly syllogistical. The judge bowed to him in a manner I cannot describe, and said, “*A non sequitur, sir.*” I do not remember any other expression used by the judge calculated to deter the counsel from proceeding in the defence of J. T. Callender. But I do remember that I was more frequently interrupted by Judge Chase on that trial, than I have ever been interrupted during the sixteen years I have practised at the bar. I do not state how often I was interrupted, because I do not recollect; but I know the interruptions were frequent, and I believed them to be very unnecessary, not only as they regarded myself, but the counsel who were associated with me in the defence.

TUESDAY, February 12.

The Court met at 12 o'clock.

John Taylor, sworn.

Mr. Randolph. The witness will please to state the circumstances that passed in the rejection of his testimony, and other circumstances which have any relation to the conduct of Judge Chase on the trial of Callender?

Mr. Taylor. I was summoned as a witness on that trial on the part of Callender. I attended and was sworn. On being sworn, Judge Chase inquired

what it was intended to prove by my testimony? I do not recollect the expressions of Judge Chase, nor do I recollect precisely the answer made to this inquiry; but Judge Chase desired the counsel for the accused to reduce their questions to writing. They did so.

I had come into court very near the hour when the Court met, nor had I previously given any intimation of the testimony I could give either to Callender or his counsel. I should have added that, after, I think, the judge had declared the witness could not be examined, he applied to the district judge for his opinion; who replied in so low a voice that I could not well tell what he said. But this was after he had given his own opinion that my testimony could not be received.

Mr. Randolph. Did you observe anything unusual in conducting the trial?

Mr. Taylor. One or more motions were made by the counsel for Callender, who was interrupted by Judge Chase repeatedly. The words in which these interruptions were couched, I cannot recollect, though I formed an opinion of the style and manner of them; the effect of which was to produce laughter in the audience at the expense of the counsel. If I am required to declare the character in which I conceived them to be made, I am ready to do so.

There was here a short pause, when Judge Chase rose and said, he had no objection to the opinion of the witness being delivered.

Mr. Taylor. I thought the interruptions were in a very high degree imperative, satirical, and witty.

Mr. Randolph. Did there appear to you any thing unusual in the manner of the counsel for the accused towards the Court?

Mr. Taylor. I neither discovered the least degree of provocation given by the counsel, nor perceived any anger expressed by the Court. Judge Griffin was silent, nor were Judge Chase's interruptions accompanied by the indication of any anger, as far as I could perceive.

To an interrogatory made, Mr. Taylor said, the interruptions of the Court were extremely well calculated to abash and disconcert counsel.

Mr. Harper. You have said you considered the interruptions of the Court as highly calculated to abash the counsel; did you mean thereby to give

your opinion that they were so intended, or that such was their tendency?

Mr. Taylor. I thought they were so intended, and they had their full effect. They were followed by a great deal of mirth in the audience. The audience laughed, but the counsel never laughed at all.

Philip N. Nicholas, sworn.

In the year 1800, in the month of May, the circuit court of the United States sat at Richmond. Of this court, Mr. Chase and Mr. Griffin were the judges. I believe Mr. Chase sat alone for some time—for how long I do not recollect. Mr. Griffin did not, I believe, take his seat until the motion to continue the cause was renewed. On the first day of the court Judge Chase delivered a charge to the grand jury, and called their attention, in a particular manner, to infractions of the sedition law. The grand jury returned with a presentment against James Thompson Callender, for a libel against the President, by the publication of a work, entitled “The Prospect before Us.” On this presentment, the attorney for the district filed an indictment, which the grand jury found a true bill.

Process was immediately issued on the indictment. My impression at the time, and until very lately, was, that the process issued was a bench warrant. I have lately heard that it was a *capias*. For several days it was believed that Callender, who resided at Petersburg, could not be found; but the marshal at length arrested him, and brought him into court. Mr. Hay and myself undertook his defence. My motive was, that I believed the sedition law unconstitutional, and of course oppressive to any person prosecuted under it.

Mr. Hay and myself had an interview with Callender, in order to ascertain the grounds on which he expected to make his defence. Callender informed us that his witnesses were considerably dispersed, and that there were many documents which it would be necessary for him to obtain, before he could be prepared for his trial. An affidavit was drawn, stating the absence of Callender’s witnesses, the want of the documents, and that the counsel could not be prepared during that term. On this affidavit was founded the motion to continue the cause. This motion was urged with great earnestness and zeal, as we were convinced that justice could not be done if the case

was tried during that term. The arguments principally urged by us were, that the defendant had a constitutional right to compulsory process for his witnesses, and to counsel, but that these privileges would be nugatory if the Court would not allow time to summon the witnesses, and for counsel to prepare for the defence.

The motion to continue the case was overruled, and Judge Chase directed the jury to be called. When the jury came to the book, I stated to the Court that I believed there was ground of challenge to the panel in consequence of one of the jurors, who was returned, having expressed opinions very hostile to the traverser. Mr. Chase, after looking into an authority which I quoted, and also into Coke Littleton, said the law was clear, that our objection did not apply to the panel, but to the individual juror. He further said, that we must proceed regularly; that we might either introduce testimony to prove that a particular juror had expressed an opinion on the case, or we might examine the jurors as they came to the book. We preferred the latter mode, and Mr. Hay asked if he might ask a question of the first juror who was sworn. Mr. Chase said that Mr. Hay must submit the question to his previous inspection, and that, if he thought it a proper question, it might be asked. Mr. Hay stated that the question which he wished to ask, was, Have you ever formed an opinion on the work, entitled “The Prospect before Us,” from which the charges in the indictment were extracted? Judge Chase said that the counsel should not ask that question; that the only proper question was, Have you ever formed and delivered an opinion on the charge in the indictment? I say, (continued the judge,) formed and delivered; for it is not only necessary that he should have formed, but also delivered an opinion, to exclude the juror. The judge propounded the last-mentioned question to the first juror, and he replied that he had never seen the indictment, or heard it read. The judge said he was a good juror, and desired he might be sworn. Mr. Hay requested that the indictment be read to the juror, that he might be thereby enabled to say whether he had formed and delivered an opinion on the indictment. The judge replied, that he had already indulged the counsel as much as he could, and they ought to be satisfied; he refused to let the indictment be read to the juror. The clerk then called the jury and swore them, till he came to John Basset, who in reply to the previous question said, he never had seen the indictment or heard it read. But Mr. Basset seemed to have considerable scruples at serving, and said he had formed and delivered an opinion that the book called “The Prospect before Us,”

came within the sedition law. Judge Chase, however, said he was a good juror, and he was sworn and served as such. The witnesses on the part of the prosecution were called and sworn, and, among others, Mr. Rind was examined to prove the publication of "The Prospect before Us." Mr. Hay observed, that no witness who was in any way concerned in the printing of the "Prospect," was bound to criminate himself. Mr. Chase admitted this to be correct, but declared that the witnesses might rest assured that no person would be prosecuted in consequence of any evidence given in the case then before the court. Under these circumstances, Mr. Rind proved that he had printed part of the "Prospect" for Callender, and took out of his pocket some of the original sheets from which he had printed parts of the work. Judge Chase himself compared these sheets with the work as published, and they were found to correspond. After the testimony on the part of the prosecution was finished, Col. Taylor of Caroline was called on the part of the traverser, and, after he was sworn, Judge Chase asked with apparent haste and earnestness of manner, what we expected to prove by that witness. We said we expected to prove that Mr. Adams had avowed in the presence of the witness sentiments favorable to monarchy or aristocracy, and that he had voted in the Senate against the sequestration of British debts, and the suspension of commercial intercourse with Great Britain. Judge Chase then said that we must reduce the questions to writing. This I objected to, and stated that it was a thing very unusual in our courts; that it had not been required by the Court of the district attorney, when he examined witnesses against Callender; that it involved a dangerous principle, and was calculated to subject every question of fact to the control of the Court; besides, I added, that I did not know the extent to which Col. Taylor's evidence would go; that I wished him to state all he knew, and that very probably the examination would point out new questions proper to be asked. I then stated that if the Court insisted on the questions being reduced to writing, I would comply with their direction, but that I hoped it would not be considered as precluding us from asking any additional questions. The questions were then reduced to writing, and are as follows, viz:

1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy, and what were they?
2. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3. Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and the suspension of intercourse with Great Britain?

Judge Chase, after examining the questions, declared Col. Taylor's evidence inadmissible. No evidence can be received, said the judge, which does not go to justify the whole charge; the charge is, that the President is a professed aristocrat, and has proved faithful and serviceable to the British interest. Now, you must prove both these points, or you prove nothing, and as your evidence relates to one only, it cannot be received; you must prove all or none. These, I believe, were the precise words of the judge. I think it right here to state that after Mr. Chase had declared Colonel Taylor's evidence inadmissible, he said to the district attorney, that although the questions were improper, he wished the attorney would consent to let them be asked of the witness. The attorney said he could not consent. The evidence of Colonel Taylor being excluded, the attorney for the United States addressed the jury, and commented at considerable length on the indictment. After that, Mr. Wirt addressed the jury for the defendant. He premised that the counsel for the traverser were placed in a very embarrassed situation; that the prisoner during the same term was presented, indicted, arrested, arraigned, tried; and that this precipitation precluded the possibility of obtaining witnesses or making the necessary preparations for arguing a cause of so much magnitude. Here Judge Chase interrupted Mr. Wirt, and told him, that he would not suffer any thing to be said which reflected on the Court. Mr. Wirt said he did not mean to reflect on the Court; his object was only to apologize to the jury for the lameness of the defence. Mr. Chase replied that his apology contained the very reflection he disclaimed, and desired him to go on with the cause. Mr. Wirt then said, that an act of Assembly had adopted the common law of England as a part of the laws of Virginia; that an act of Congress had directed the United States courts sitting in Virginia to conform to the laws of the State in which such court might happen to sit; that by the common law the jury had a right to decide on the law as well as the fact. He then said, that if the jury upon inquiry should find the sedition law unconstitutional, they would not consider it as law, and if they did, they would violate their oaths. Here Mr. Chase said to Mr. Wirt, Sit down, sir. Mr. Wirt endeavored to explain, and said, I am going on, sir, to——No, sir, said Mr. Chase, you are not going on; I am going on. Judge Chase then read from a paper, which he held in his

hand, an instruction to the counsel that they should not address the jury on the constitutionality of the act of Congress, but that arguments might be addressed to the Court to prove the right of the jury to consider the constitutionality. Mr. Wirt then addressed the Court. He said he had not considered the case elaborately; that it appeared to him so clearly that the jury had the right contended for, that he did not imagine it required any great research to prove it. He then proceeded to state that it was certainly the right of the jury to consider of and determine both law and fact. Mr. Chase here remarked that Mr. Wirt need not give himself trouble on that point; we all know, said he, that the jury have a right to decide the law. Mr. Wirt then said, that he supposed it equally clear that the constitution is the law. Yes, sir, said Mr. Chase, the supreme law. If, then, said Mr. Wirt, the jury have a right to decide on the law, and if the constitution is law, it follows syllogistically that they have a right to decide on the constitutionality of the law in question. *A non sequitur*, sir, said Judge Chase. Here Mr. Wirt sat down.

John Thompson Mason, sworn.

Mr. Randolph. It has been contended on the part of the respondent, that the *quo animo* determines the guilt or innocence of an action; now, if the *quo animo* with which he went down to Richmond to execute the sedition law, can be shown, it will have an important bearing on his conduct. I wish, therefore, to ask the witness this question: Did you ever hear Judge Chase, previous to the trial of Callender, utter any expression, and, if any, what was it, on the subject of Callender's prosecution, or respecting the book called "The Prospect before Us;" did he say that the counsel of the Virginia bar were afraid to press the execution of any law, and particularly the sedition law; did he say that he had a copy of that book, or what did he say? State the circumstances particularly.

Mr. Mason. The question refers to circumstances of which I have but an indistinct recollection, and which happened in a way which renders it extremely unpleasant on my part to relate them. Judge Chase presided in the circuit court held at Annapolis in the spring of the year 1800; during the term a man by the name of Saunders was tried for larceny, and found guilty. After sentence was passed upon him, he was taken out of court to receive it.

The press of the people being very great, the judges and myself were detained within the room. Judge Winchester, Judge Chase, and myself had a conversation, altogether of a jocular complexion. I think it was just after he delivered his valedictory, but how to connect the circumstances at this time, I do not know. I remember, however, that he asked me my opinion of the book called "The Prospect before Us;" I told him I had not seen it, and from the character I had heard of it, I never wished to see it. He told me, in reply, that Mr. Luther Martin had sent a copy to him, and had scored the parts that were libellous, and that he would carry it to Richmond as a proper subject for prosecution. There was a good deal of conversation besides, but I do not recollect it. There was one expression, however, that he used, which just occurs to my memory, and which I will repeat, that before he left Richmond, he would teach the people to distinguish between the liberty and the licentiousness of the press. He said that he was as sincere a friend to the liberty, as he was an enemy to the licentiousness of the press. There was a sentiment he expressed, which I cannot undertake to give in his precise words, that if the Commonwealth or its inhabitants were not too depraved to furnish a jury of good and respectable men, he would certainly punish Calender. I do not precisely recollect the words: I never repeated this conversation before, and seldom or ever, after it occurred, thought of it.

John Heath, sworn.

During the trial of J. T. Callender, I attended at the court in Richmond as one of the bar. I had occasion to apply to the Court for an injunction. The motion not having been decided upon, I went round to Crouch's, where Judge Chase lodged, and found him in his chamber alone, in which I thought myself very fortunate. We then talked over the application I had made the day before for an injunction; while talking on it, Mr. David M. Randolph, the then marshal, stepped in with a paper in his hand. The judge accosted him, and asked him what he had in his hand? He said that he had the panel of the petit jury summoned for the trial of Callender. This was after the indictment was found by the grand jury. After Mr. Randolph had mentioned that it was the panel of the petit jury that he had in his hand, Judge Chase immediately replied, Have you any of those creatures called Democrats on the panel? Mr. Randolph hesitated a moment, and then said that he had not made any discrimination in summoning the petit jury. Judge

Chase said, Look it over, sir, and if there are any of that description, strike them off. This is all I know of this affair.

The Court rose at 4 o'clock.

WEDNESDAY, February 13.

The Court was opened at half past 2 o'clock.

James Triplett, sworn.

Mr. Randolph. I wish to know whether you ever heard previous to, or during the trial of Callender, any expressions used by the respondent, Judge Chase, manifesting a hostility toward J. T. Callender, and what were those expressions?

Mr. Triplett. I recollect to have had a conversation with Judge Chase on our passage in the stage down to Richmond. A book was handed to me by him, and I was asked if I had read it? I was asked whether I had seen him, (Callender?) I told him I had never seen him. There was a story recited about the arrest of Callender by a warrant of a magistrate, under the vagrant act of Virginia; I recollect that the judge's reply was, "It is a pity you have not hanged the rascal."

Mr. Randolph. Were there any other expressions of this nature used, after you got to Richmond?

Mr. Triplett. I did not hear any thing particular; but I think the judge did say something about the Government of the United States showing too much lenity towards such renegadoes. I do not recollect any other conversation passing between us at that time, until after the Court was sitting, when Judge Chase was the first who informed me of the presentment being made by the grand jury against Callender. At the same time, he informed me that he expected I would have the pleasure of seeing Callender next day before sundown, that the marshal had that day started after him for Petersburg.

Mr. Randolph. We wish you, as well as your memory serves, to state not only the substance, but the exact expressions used by the judge.

Mr. Triplett. I will state them as well as my memory serves me. Some time after this conversation, I met the judge at the place where he boarded; he said that the marshal had returned without Callender, and used this expression, "I am afraid we shall not be able to get the damned rascal at this court."

John Basset, sworn for the defence.

At the request of Mr. Harper, and with the consent of the Managers, *John Basset*, a witness on the part of Judge Chase, was sworn and examined, in consequence of the peculiar situation of his family requiring his immediate return home.

Mr. Harper. Relate the circumstances that took place relative to your being sworn on the jury, on the trial of Callender, and what the application to the Court was on your behalf?

Mr. Basset. The circuit court of the United States at which James T. Callender was presented and indicted for a libel, was held on Monday the second or third of June. I left home in the morning and arrived in Richmond as early as might be expected. On my arrival I saw David M. Randolph, who was standing at a corner of a street; perceiving me, he came towards me; before I alighted from my horse, he informed me that I had been summoned as a grand juror, and that for not appearing had been crossed, that it was my duty to go to the court and justify myself for my absence; that he summoned me on the petit jury for the trial of Callender, and that my serving in that capacity would be an apology for my previous absence. I presented myself to the Court, but the trial did not come on that day. The second day I attended also. I knew very well that the law under which the traverser was to be tried, was odious to my fellow-citizens; I knew it was conceived to be a great oppression to the liberty of the subject, and I believed that great umbrage would be given to the mass of the people by those who should undertake to execute that law. I was weak or wicked enough to be among that class of people called federalists, and I did believe that the law [sedition law] was constitutional. I felt myself bound, when called on to be a juryman, to make a declaration of my political sentiments. I made this declaration to relieve the impression on my own mind, and not in order that it should be considered that I declined, in consequence of my

political opinions, to serve on Callender's trial, or in any other case. I thought it possible that I might be excused; but if I were found by the Court to stand in a proper relation between my country and the traverser, I would cheerfully serve. My object was to justify my own conduct to myself and to the whole world. I made use of these expressions, and I believe I repeat the very words, but I am well assured that I shall express the force and efficacy of what I said. I declared to the judge that my politics were federal; that I had never seen the book called "The Prospect before Us," but I had seen in a newspaper some extracts from it; that if the extracts were correctly taken from the book, and if the traverser was the author or publisher of that work, it appeared to me that it was a seditious act; that I had formed and expressed an unequivocal opinion, that the book was a seditious act; that I had never formed an opinion in respect to the indictment, for I had neither seen it nor heard it read. The Court considered me a good juror, and I was sworn accordingly.

Mr. Bayard. What was the general deportment of the judge to the counsel, and of the counsel to the Court?

Mr. Basset. The different coloring through which the same things are seen make some men see things differently from others. My own opinion is, that the judge conducted himself with decision unmixed with severity, and that he was witty without being sarcastic. It was my impression that the judge wished the prisoner to have a full hearing, that he might be acquitted, if innocent, and found guilty, if really guilty. It appeared to me that the sole point on which the counsel hoped to save their client was by proving the unconstitutionality of the sedition law, and it appeared to me that they could not form a reasonable expectation of acquitting him on any other ground. I believe his counsel believed the law unconstitutional, and thought they had eloquence and argument enough to convince the jury of it. I believe they thought the judge deprived them of their right to address the jury on that point; and that having the cause very much at heart, they were vastly mortified that the Court did not permit them to take the course they wished. They appeared to consider themselves as advocating the cause of an oppressed citizen, and they felt hurt at not being allowed the mode of defence which in their opinion the law authorized. In all their arguments they travelled but a little way before they came to the point that went to prove the law unconstitutional, and the judge declared, at every such time,

that they had no right to address the jury on that point; that the constitution had made the Court the sole judges of the law as far as it respected its constitutionality. From these circumstances, it is my impression that the altercation between the bar and the Court arose solely from the sensibility of the counsel to this particular subject, and from being deprived, as they supposed, of their rights.

The President. What were the particular causes of irritation between the judge and the counsel?

Mr. Basset. I have stated what I considered the causes. They arose from the counsel adverting to that particular point, and their so frequently doing it occasioned the judge to elevate his voice, and to pronounce over and over again what he conceived to be the law.

The Court rose at 4 o'clock.

THURSDAY, February 14.

The Court was opened at 12 o'clock.

George Read, sworn.

Mr. Randolph. The witness will please to state what he knows in relation to certain proceedings at a circuit court of the United States, held at Newcastle, in the State of Delaware, in the month of June, 1800.

Mr. Read. It is incumbent on me to state that several years have elapsed since the transactions which I am now about to relate occurred; of course I cannot pretend to say that the language I shall use to convey the sentiments delivered by Mr. Chase is precisely according to what occurred at the time; but the substance of what I relate will be correct. The transactions to which I presume I am called to testify took place at a session of the circuit court, held at Newcastle, for Delaware district, in June, 1800. The Court sat two days, viz: on the 27th and 28th days of the month. At that court, Samuel Chase, one of the associate justices, presided, and Gunning Bedford, district judge, was associated with him. Judge Chase, as usual, delivered a charge to the grand jury, on the first day of the term. The grand jury, after hearing the charge, retired to their chamber; after remaining there for some time, they

returned into court, and on being asked whether they had found any bills, or had any presentments to make, they answered they had found no bills of indictment, and had no presentments to make. After receiving this answer, Judge Chase proceeded to observe, as nearly as I can recollect, addressing himself to the grand jury, that he had been informed, or heard, that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, especially in Newcastle County, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was ——; the judge here paused, and said, perhaps it might be assuming, or taking upon himself too much to mention the name of this person; but, gentlemen, it becomes your special duty, and you must inquire diligently into this matter. Several of the jurors, I believe, made a request to the Court to dismiss them, and assigned as the reasons for their request, that some of them were farmers, and, as it was about the time of harvest, they were anxious to be on their farms. The judge observed that the business to which he had called their attention was of a very urgent and pressing nature, and must be attended to; that he could not, therefore, discharge them before the next day, when further information should be communicated to them on the subject he had referred to. The judge then addressing himself to me as the district attorney, asked me, as I believe is usual on such occasions, whether I had any criminal charges to submit to the grand jury? I said that none such had yet occurred, and I believed none were likely to occur during that term. Judge Chase, continuing his address to me, observed, You might, by prosecuting proper researches, make some discoveries. Have you not heard of some persons in this State who have been guilty of libelling the Government, or the administration of the Government of the United States? I am told, and the general circulation of the report induces me to believe it, that there is a certain printer in the town of Wilmington who publishes a most scandalous newspaper; but it will not do to mention names. Have you not two printers in that town? I answered that I believed there were. Judge Chase observed, that one of them was a seditious printer, adding, he shall be taken notice of, and it is your duty, Mr. Attorney, to examine unremittingly and minutely into affairs of that nature; times like these require that this seditious temper or spirit, which pervades too many of our presses, should be discouraged or repressed. Can you not find a file of these newspapers between this time and to-morrow morning,

and examine them, and discover whether this printer is not guilty of libelling the Government of the United States? This, I say, sir, must be done; I think it is your duty. I observed, as this subject was pressed by the honorable judge, I believed I was acquainted with the duties of my office, and was willing to discharge them. I mentioned that I had not in my possession the papers alluded to by the judge, nor had read them; but that if a file of them were procured and handed to me, I had no objection to examine them, and communicate with the grand jury on the subject. The judge then said he was satisfied, and, turning to the jury, observed, that he could not discharge them, however inconvenient their stay; they must attend the ensuing day, at the usual hour. The judge then directed that a file of the papers should be procured for me. I understood him to mean the paper called the Mirror of the Times and General Advertiser, though I do not recollect to have heard the title of the paper mentioned during the proceedings. A file of those papers was brought to me in the afternoon, after the adjournment of the Court; by whom they were brought I do not recollect. I examined them, but in a very cursory manner, as I was very much interrupted by persons calling upon me. I did not discover during the course of this examination, any libellous matter coming within the provisions of the sedition act.

According to what I understood to be the wish of the judge, I sent this file of papers to the grand jury. Soon after the meeting of the Court on the second day, and at the request of the grand jury, I attended them in their room. On entering, the foreman of the jury addressed me, and directed my attention to a paragraph in a publication contained in the Mirror of the 21st June, 1800, republished from the Aurora, reflecting, perhaps in strong and pointed language, on the former conduct of Judge Chase. He observed that there was a difference of opinion among the jurors as to the nature of the paragraph—some doubted whether it was a libel or not, and, if libellous, whether they had a right to present it to the circuit court. I observed that it was not necessary for me to be very particular in my opinion of the publication, as I did not consider it as coming under the sedition law, though it might be considered as an offence at common law, because Judge Chase had decided that the circuit court could not take cognizance of cases arising at common law. I returned into court. After some time, the file was placed before the judge. Judge Chase asked me what had been done, and whether the grand jury had made any discoveries of libellous matter? I

answered none, unless it were the paragraph which related to Judge Chase, which I showed him, observing that it did not appear to me to come under the sedition law. Judge Chase acquiesced, and the business passed over on his part in a very polite and affable manner. I do not recollect any thing further to have passed. I have, however, an indistinct recollection of a conversation between Judge Chase and myself, in the room of a tavern, before we went into court, in which I understood him to have made a general declaration of hostility against seditious printers.

James Lea, affirmed.

Mr. Rodney. Please relate to the Court the occurrences which took place at a circuit court of the United States at Newcastle, and whether you were summoned as a grand juror at that court.

Mr. Lea. I was summoned by the marshal of the district of Delaware as a grand juror at the circuit court held in the month of June, 1800. I attended agreeably to that summons, and was qualified as a juror. After receiving a charge from Judge Chase, we retired into our room, and remained there for some time. There appearing to be no business for us, we returned into our box. The usual question was put to us, whether we had found any bills? We said that we had not. After some time, Judge Chase addressed the grand jury, and observed that a very seditious disposition had manifested itself in the State of Delaware, in the county of Newcastle, and particularly in the town of Wilmington; that a seditious printer lived in that place, who edited a paper called the Mirror of the Times and the General Advertiser, who was in the habit of libelling the Government of the United States, and that his name was ——, he said he would not mention his name, but that it was our duty to inquire if any seditious publications had been made; that he would not discharge us that day, nor until we had made the inquiry. Several of the jurors addressed the judge for leave to return home, stating that they were farmers, and were extremely anxious to be on their farms, as it was harvest time. Some conversation passed between Judge Chase and the attorney for the district, after which he said he would not discharge us until the next day. We returned the next day into court, and after sitting some time in our box, we retired to the jury room. A file of newspapers was produced by some persons, and we examined them. We found nothing in them of a libellous

nature, in our opinion, excepting something relative to Judge Chase, which some of the jury thought came under the sedition law. We sent for the attorney of the district to inform us as to the nature of the paragraph. He told us it did not come under the sedition law. We went into the jury box, when a conversation of some length took place between Judge Chase and the attorney of the district, after which we were discharged.

John Montgomery, sworn.

Mr. Randolph. The subject on which it is understood you are capable of giving some information to the Court is the conduct of Judge Chase, at a circuit court of the United States, held for the district of Maryland at Baltimore, in May, 1803, or about that time.

Mr. Montgomery. The point, I presume, on which I am called to give testimony, relates to a charge to a grand jury delivered by Judge Chase, at a circuit court where he presided, and Judge Winchester was associated with him. It will not, from the nature of the subject, be expected that I shall be able to detail, in the precise language of the judge, the whole of the charge which was delivered in 1803 at the May term. Though not one of the bar, I was present at the court, and took a chair among the gentlemen of the bar. After the grand jury were impanelled, Judge Chase addressed them. He appeared to address them from a written paper that lay before him. He proceeded in the usual manner to charge the jury as to the duties expected to be performed by them. After he had thus far proceeded in his charge, he mentioned, that before the jury retired to their chamber, he would make some observations, and that they would be considered as flowing from a wish for the happiness or welfare of the community. He stated that it was important that the people should be fully informed, particularly at such a crisis; that falsehood was more easily disseminated than truth; and that the latter was reluctantly attended to, when opposed to popular prejudice. I cannot pretend to state the sentiments delivered by the judge, in the order in which they were delivered. I can undertake to state, from my recollection, the substance of those he delivered. To the best of my recollection, the judge stated that the Administration was weak, relaxed, and inadequate to the duties devolved on it; and that its acts proceeded not from a view to promote the general happiness, but from a desire for the continuance of

unfairly-acquired power. The language *unfairly-acquired power* made a strong impression on my mind at the time; and when the judge called the attention of the jury to the observations he was about to make, I was prepared to expect something extraordinary from him, as I was at Annapolis when he pronounced the valedictory address which Mr. Mason, in his testimony, took occasion to mention. The judge stated the violation of the constitution that had taken place by the act of Congress repealing the judiciary act of 1800, and the consequent removal of sixteen judges; that it had made a violent attack on the independence of the Judiciary. He also found fault with a law passed by the Legislature of Maryland in 1800, the effect of which was the removal of all the judges on the county-court establishment. He stated that those acts were a severe blow against the independence of the Judiciary. He stated, that since the year 1776, he had been an advocate for a representative or republican form of government; that it was his wish that freemen should be governed by representatives chosen by that class of citizens who had a property in, a common interest with, and an attachment to, the community. The language might have been in the words of our constitution. He found fault with the law passed by the Legislature of Maryland, which he styled “The Universal-suffrage Law.” He stated that that also affected the independence of the Judiciary, and to the best of my recollection, he explained his ideas in this manner: that every free, white male citizen, in the language of the constitution, having the qualification of age and residence, though he had not a property in, an interest with, and an attachment to, the community, being suffered to choose those who constituted the Legislature, and the Judiciary being dependent on the Legislature for their support and continuance in office, few characters of integrity and ability, who are competent to discharge the duties of judges, would be found to accept appointments held by such a tenure. He stated that these measures were destructive of the happiness and welfare of the community; that they would have a tendency to sink our Republican Government into what he called a *Mobocracy*—the worst of all possible governments. At the close of the judge’s charge, he, in an impressive manner, called on the jury to pause, to reflect, and when they returned to their homes, to use their endeavors to prevent these impending evils, and save their country. He said that the people had been misled by misrepresentation, falsehood, art, and cunning; that, by correcting these errors, the threatened evils might be prevented—or words to that effect.

Samuel H. Smith, sworn.

Mr. Nicholson. Please to state what you know of the charge delivered by Judge Chase at Baltimore.

Mr. Smith. The charge of Judge Chase having been published, I did not expect to be called upon to state in detail its general contents; supposing that the only inquiry made would be on the correspondence of my recollection with the contents of the published charge. I do not know that I should be able, under these circumstances, to give a particular statement, from memory, of its contents. On the evening subsequent to the delivery of the charge, I committed to paper the most important features of it, which were published in the National Intelligencer, and which form part of the printed testimony received by the committee of inquiry. If I could be indulged with access to it, I should be enabled to state more correctly my knowledge of the charge.

[Mr. Smith here, with permission, read the following, extracted from the National Intelligencer of May 20, 1803:—

“After a definition of the offences cognizable by the grand jury, Judge Chase said he hoped he should be pardoned for making a few additional observations. He had, he remarked, been uniformly attached to a free republican government, and had actively participated in our revolutionary struggle to obtain it. He still remained warmly attached to the principles of government then established. Since that period, however, certain opinions had sprung up which threatened with ruin the fair fabric then raised. It had been contended that all men had equal rights derived from nature, of which society could not rightfully deprive them. This he denied. He could conceive of no rights in a state of nature, which was in fact entirely a creature of the imagination, as there was no condition of man in which he was not, under some modification, subject to a particular leader or particular species of government. True liberty did not, in his opinion, consist in the possession of equal rights, but in the protection by the law of the person and property of every member of society, however various the grade in society he filled. Nor did it consist in the form of government in any country. A monarchy might be free, and a republic in slavery. Wherever the laws protected the person and property of every man, there liberty existed, whatever the government was. Such, said he, is our present

situation. But much I fear that soon, very soon our situation will be changed. The great bulwark of an independent judiciary has been broken down by the Legislature of the United States, and a wound inflicted upon the liberties of the people which nothing but their good sense can cure. Judge Chase here went into an assertion of the right of the judiciary to decide on the constitutionality of laws. He then adverted to the proceedings of the Legislature of Maryland. He commented on the wisdom and patriotism of those who had framed the constitution of that State. That wisdom and patriotism had never conceived liberty to consist in every man possessing equal political rights. To secure property, the right of suffrage had been limited. The convention had not imagined, according to the new doctrine, that property would be best protected by those who had themselves no property. The great rampart established in the limitation of suffrage was now demolished by the principle of universal suffrage ingrafted in the constitution. In addition to this, a proposition was now submitted, whose ratification depended upon the next Legislature and which, if ratified, would destroy the independence and respectability of the judiciary, and make the administration of justice dependent upon legislative discretion. If this shall, in addition to that which establishes universal suffrage, become part of the constitution, nothing will remain that will be worth protecting. Instead of being ruled by a regular and respectable government, we shall be governed by an ignorant mobocracy. When he reflected on the ruinous effects of these measures, he could not but blush at the degeneracy of sons, who destroyed the fair fabric raised by the patriotism of their fathers.”]

President. Did you hear any reflections cast on the Administration?

Mr. Smith. I do not recollect any other beside those contained in the statement I have read.

John Stephen, sworn.

I was at Baltimore when the charge was delivered by Judge Chase. My recollection of its contents is extremely vague. But, with regard to some of it, it coincides with that of Mr. Montgomery, Mr. Mason, and Mr. Smith. He spoke of the repeal of the judiciary law, and said that it was injurious to the independence of the judges. He also mentioned the general suffrage law as

injurious; and said no man ought to be permitted to vote unless he had a property in, a common interest with, and an attachment to, the community; that the act violated this principle, and would be attended with very injurious consequences; he denied the doctrine of natural rights; and said that they were altogether derived from convention; and at the end of the charge he exhorted the jury to use their efforts to prevent the injury likely to result from the temper of the times. I cannot say whether Judge Chase confined himself to a written paper or not. He declared that the independence of the judiciary of the United States had been injured by the repeal of the judiciary system; and that the bill then pending before the Legislature of Maryland, if adopted, would have the same effect upon the judiciary of that State.

Mr. Nicholson stated, that all the witnesses present on the part of the prosecution had been examined; the managers would therefore proceed to offer certain records; but, as several material witnesses were absent, he hoped they would not be precluded from calling them, should they attend, at a future stage of the trial.

Mr. Randolph offered in evidence a copy of the record in the case of J. T. Callender; also in the case of Fries.

Mr. Randolph then stated that the Managers had submitted all the evidence they were prepared to adduce. Whereupon the Court rose.

FRIDAY, February 15.

The Court was opened at 10 A. M.

Present: The Managers, accompanied by the House of Representatives in Committee of the Whole: and Judge Chase attended by his counsel.

The evidence being closed on the part of the prosecution,

Mr HARPER, of counsel for the respondent, addressed the Court to this effect:

Mr. President: We feel so strong a reliance on the justice, impartiality, and discernment of this honorable Court, that nothing but an anxious regard for the character and feelings of the honorable gentleman who is the object of this prosecution, and a solicitude to remove even the slightest imputation

of impropriety or incorrectness that may rest on his conduct, could induce us to occupy any portion of that time which we know to be so precious, by the introduction of testimony on his part. We believe the charges to be utterly unsupported by the testimony adduced on the part of the prosecution; and had we no other object than a mere legal acquittal, we should cheerfully rest the case on that testimony. But we are aware that some part of the honorable judge's conduct, though not criminal nor punishable by impeachment, may, if left without explanation, appear in an unfavorable light. We are prepared with testimony to give this explanation; to show that, through all the transactions which form the matter of this prosecution, he has been governed by the purest motives, and that whatever errors he may have committed, are trivial in themselves, are imputable to human infirmity alone, and were instantly corrected by himself. This testimony we request the permission of this honorable Court to produce. But a consciousness of the strong ground on which we stand, and a recollection of the very important public business which now presses on the attention of this honorable Court, in its legislative capacity, have determined us to waive our right to a general opening of our case; and to confine ourselves, in this stage of the cause, to a brief statement of the points to which our testimony will be directed.

On the first article, which relates to the conduct of Judge Chase in the trial of John Fries for treason, we shall produce testimony to show, that the opinion contained in the paper which the judge delivered to the prisoner's counsel was not only legal, but had been twice expressly decided, and once admitted in the same court, and had before that trial been laid down as a general principle of law, in a charge delivered to a grand jury in the same court, by one of Judge Chase's predecessors.

We shall show, said he, by the most indisputable testimony, that the point of law respecting treason in levying war against the United States, which was stated in the paper delivered to the counsel of Fries, had been once informally decided by the same court, in a prior case, and twice after solemn argument and full discussion, and that one of those discussions was made in the case of John Fries himself, on an indictment for the same offence. We shall show that Judge Chase's predecessor had, before counsel was heard and before an indictment was found, delivered the same opinion in a charge to the grand jury. We shall proceed to prove in a more particular

manner the contents of the paper thus delivered to the counsel. We shall produce the original paper itself; and shall prove that delivered to the prisoner's counsel to be a true copy of it; and we shall conclude, by showing that when the counsel of Fries had refused to proceed in his defence, and were informed by the judge that they might go on, and conduct the case as they thought proper, he employed no menacing expression, and uttered no such words as "proceed at the hazard of your characters:" but merely informed them that they should be under no other restriction but that which a regard to their professional character would impose. That, far from threatening, he did all in his power to soothe; and instead of restricting, gave the utmost latitude of indulgence.

Proceeding, then, to the second general head of accusation, the conduct of the respondent relative to the trial of Callender, which furnishes the matter of the second article, and embraces in the whole five articles, we shall show that the copy of the "Prospect before Us," which the respondent carried with him to Richmond, was marked, not by him, but by another person, without any view to a prosecution of the author, and was given to him by that person without any request, on his part, as a performance which might amuse him on the road.

As to the private conversation at Annapolis, we shall prove that it was a mere jest between the respondent and the gentleman, who, after treasuring it up for five years, has this day brought it forward to support an impeachment; and whose recollection of it we shall show to be far less accurate than ought to be required of a man, who, after so great a lapse of time, adduces a private, confidential, and jocular conversation, to aid a criminal prosecution.

We shall then follow Judge Chase to Richmond, where we shall show that, far from having formed a corrupt determination to oppress Callender, he felt solicitous for the escape of that unfortunate wretch; that, far from entering into a combination with the marshal to pack a jury for the conviction of Callender, Judge Chase expressed a wish that he might be tried by men of that political party whose cause his book was intended to support. We shall prove, by testimony not to be doubted, that no conversation whatever took place between the judge and the marshal, relative to striking any person from the panel, much less such a conversation as has been sworn to by one witness for the prosecution. We

shall show that no panel of the jury actually summoned was formed, until the opening of the Court on the day when the trial of Callender was to have commenced; that it was completed in open court, and was never seen by the judge. And we shall prove that the marshal, not by the direction of the judge, from whom he was bound to receive no directions on that subject, but with his entire approbation and according to his advice, took the utmost pains to select a jury of the most impartial, considerate, and respectable men; that, in this selection, no attention was paid to party distinctions; and that if no persons of Callender's political opinion actually did serve on the jury, it was because, after being summoned, they made excuses, which were admitted by the Court, or refused to attend.

Thus much respecting the conduct of the judge previous to the trial. Proceeding then to the particular matter of the second article, which relates to the supposed rejection of John Basset's application to serve on the jury, we shall prove, more fully than we have already done, that the nature of this application has been wholly misunderstood by the witnesses on the part of the prosecution; that the juror did not offer an excuse, or apply to be discharged, but merely suggested some scruples of delicacy, and was willing to serve if those scruples were not sufficient to constitute a legal disqualification. We shall fully corroborate the testimony which the juror himself has given on this head, and shall show clearly that his scruples were not of such a nature as to furnish a legal or proper ground of objection to his competence as a juror.

As to the refusal of a continuance, which has been so much relied on as a criminal violation of the law, with intent to oppress the party, we shall prove, that although no legal grounds for a continuance were shown, and it was therefore not in the power of the Court to grant it, Judge Chase did offer to postpone the trial for a month or six weeks, in order to accommodate Callender and his counsel, and to enable them to prepare; an offer which they thought proper to reject. And we shall also show, that when this motion for a continuance was made, the law of Virginia, by which it is now contended that the Court ought to have been governed, was not cited, nor even mentioned.

With respect to the conduct of Judge Chase towards Callender's counsel, we shall prove that it was free from any appearance of harshness, or desire to intimidate, abash, or oppress; that the irritation which took place

proceeded from the counsel themselves, and that the conduct of the Court was far more mild and forbearing than from those irritations could have been expected. That every decision on the law was the joint opinion of Judge Chase and his colleague, delivered after consultation between them. That every interruption of the counsel arose from their pertinacity in pressing points which had been decided, and on which propriety and duty required them to be silent; and that after the respondent had delivered the opinion of the Court on these points of law, he offered to assist the counsel for the traverser in framing a case for the opinion of all the judges of the Supreme Court, and thus to give them an opportunity of correcting any errors which he and his colleague might have committed in those decisions. And finally, we shall produce a witness who, having attended the trial and taken down all the proceedings in short-hand, will lay before this honorable Court an exact detail of all that passed.

Passing then to the matter of the fifth and sixth articles, we shall prove, by a rule solemnly made by the Supreme Court of the United States, that they never considered the State laws as regulating *process*, by virtue of the act of Congress which is relied on in support of these articles; but merely as governing the decision of rights acquired under them, when such rights come into question in the courts of the United States; that the practice in the courts of Virginia, under the State law in question, has been and is conformable to our construction, and not to that contended for on the other side. And as a proof how little the recollection of men, even the most correct, can be relied on, in cases where their feelings have been strongly excited, we shall produce a record, in which the learned gentleman who, though very young, was Attorney-General of Virginia in 1800, and who has delivered his testimony with the greatest candor and propriety, did himself order a *capias*, on a presentment in a case not capital. We shall produce evidence to prove that the *capias* is the proper process, in all cases of presentments, except those of petty offences, which are tried by the court, without an indictment, and are punishable by fine only, but not imprisonment. And to remove every possible doubt on this head of accusation, we shall prove that when the presentment against Callender was made, and it became necessary to issue process against him, Judge Chase applied to the district attorney for information as to what was the proper process, who answered, a *capias*; and that the *capias*, which was actually

issued, was drawn up by the clerk, inspected and approved by the district attorney, and issued on his suggestion.

Respecting the transactions at Newcastle, in the State of Delaware, which constitute the matter of the seventh article, we shall prove that those offensive and improper expressions, which are attributed to the respondent, relative to a seditious temper, in the State of Delaware, and especially in the county of Newcastle and the town of Wilmington, never were uttered by him; that the witnesses who have deposed to those expressions are under a mistake; and that nothing was said or done by Judge Chase on that occasion, but what he has admitted in his answer; but what propriety justifies, and his duty required. To this end we shall offer the testimony of persons who were in a situation to remark every occurrence, to listen to every expression, and on whom such expressions, had they been uttered, could not have failed to make a strong impression. We shall then proceed to the charge delivered to the grand jury at Baltimore, which furnishes the eighth and last ground of accusation; and then we shall prove that the respondent said nothing of a political nature to the jury, except that which he has stated in his answer, and which he hopes to satisfy this honorable Court he had a right to say, however indiscreet or unnecessary the exercise of that right in this instance may have been. We shall produce a host of witnesses to prove that he never uttered such sentiments as are attributed to him by one witness, relative to the present Administration, its character, views, and manner of obtaining its power; sentiments which he admits would have been in the highest degree reprehensible on such an occasion; that the charge which was delivered was read from a book; and that he spoke nothing extemporaneous, as other witnesses for the prosecution have supposed. And, finally, we shall produce this book to speak for itself; shall prove it to be the same from which the charge was delivered; and shall conclude with the examination of witnesses who stood round the respondent while he read it, sat by his side, and almost looked over him while he delivered the charge which it contains.

This, Mr. President, will be the general bearing of our testimony; which we shall now, with the permission of this honorable Court, proceed to adduce, in the order in which it has been stated.

Samuel Ewing, sworn.

Mr. Hopkinson. Please to state whether you were in the court the day subsequent to that on which the opinion was delivered by the Court, and what you recollect occurred at that time?

Mr. Ewing. I attended at the court the day succeeding, and I remember that Judges Chase and Peters, addressing Messrs. Lewis and Dallas, said they were not to consider any thing which took place the day before as a restriction on the course they wished to pursue; Judge Peters said that every thing done yesterday was withdrawn. Judge Chase asked them if they would go on in the cause; some conversation ensued, which ended in the determination of Messrs. Lewis and Dallas not to proceed in the defence of Fries. Judge Chase then made this observation: that if, after the Court had expressed their opinion on the law, they persisted in stating to the jury their sentiments on the law, they must do it at the hazard of their legal reputations. I did not understand this as a menace, but as a declaration to the counsel that they must do it on their standing at the bar, and from a regard to their reputations. If I state any thing further, it will only be a recapitulation of the testimony already given.

Edward J. Coale, sworn.

Mr. Hopkinson. Will you examine that paper, and say what you know respecting it?

Mr. Coale. It is a copy of the paper handed down by Judge Chase on the trial of Fries, made at the instance of Judge Chase, from a paper in his handwriting; there were some words in the original which I could not ascertain: I left blanks for them, and they were filled up by Judge Chase; the other parts are written by me. It was made out before the trial of Fries. When in the office of Judge Chase, I was frequently in the habit of transcribing papers from his handwriting. After I left him I went to Philadelphia, and lived there when Fries was tried. The judge occasionally, during my residence there, sent for me to transcribe his opinions; and on that occasion he called on me to transcribe this paper from the original handwriting of himself.

William Meredith, sworn.

Mr. Hopkinson. Were you present at the trial of Fries?

Mr. Meredith. On the 22d day of April, 1800, I went to the court house for the purpose of attending the trial. It was rather at a late hour; I think after eleven o'clock before I reached the court house. I met several persons coming from the court room; I thought therefore that the Court had adjourned, but not seeing any gentlemen of the bar, or the judges, I went on; when I came into court, I saw Judge Chase holding a paper in his hand, and he said that the Court had with great deliberation considered the overt acts in the indictment against Fries, that they had made up their minds on the extent of the constitutional definition of treason, and that to prevent their being misunderstood, they had committed their opinion to writing, one copy of which was intended to be given to the district attorney, another to the counsel for the prisoner, and a third to be given to the jury; perhaps something else might have been said, but I do not recollect it. The paper was then thrown down by him to the bar, and a sentiment of this kind expressed by Judge Chase: that this opinion was not intended by the Court to prevent the counsel from proceeding in the usual manner. I felt a desire to take a copy of the paper. I do not recollect whether more than one was thrown down. I had not, however, an opportunity of doing it. The paper was so fully occupied till the adjournment of the Court, that although I made two or three attempts to obtain it, I could not succeed. The Court adjourned a short time afterwards. After I went home I recollect that an application was made to me by the clerk of the court to return the copy, which he understood I had taken. I informed him I had not taken a copy. On the following day I was in the court room at the opening of the Court. Fries was put to the bar, and the judge then inquired whether the counsel were ready to proceed on the trial. I remember Mr. Lewis addressing himself to the Court, and objecting to proceed in the defence, because the counsel had been restrained by the Court from proceeding in the manner which they deemed most beneficial to their client. I remember also that Judge Chase told him that he ought not to refer to the opinion which had been delivered on the preceding day; that the counsel were not to be bound by that opinion, as it had been withdrawn. Mr. Lewis referring to that opinion, however, considered it as the formed and decided opinion of the Court, and that although the Court had withdrawn it, it still would have an operation upon their minds; that while the Court was under its influence, they could not expect to be heard in any of their arguments with effect. Judge Peters

replied that the opinion was withdrawn, and I think Judge Chase repeated the opinion before expressed, that the counsel were not to be bound by that opinion, might enter fully into the case, and argue as well on the law as on the fact before the jury. I recollect Mr. Lewis stating to the Court his opinion of the appositeness of cases decided at common law in England. I remember Judge Chase expressing his opinion and belief that they were perfectly inapplicable; and afterwards remarking, that if, however, the counsel would go on, it was not the intention of the Court to circumscribe them, or to take from the jury the decision of the law as well as the fact. He further added, that the counsel might manage the defence in such way as they thought proper, having a regard to their own characters. I am the more particular and positive of these expressions, because very shortly after the trial I made a summary of the proceedings. I find it stated as coming from the mouth of Judge Chase, and that he repeated that the counsel for the prisoner might go on in their own way, having a regard to their own characters. Judge Peters made a remark which I thought was calculated to put the counsel into good humor, but they persisted in their refusal to proceed. Thus far the Court manifested, in my opinion, a desire that the cause might progress, and a persuasive and conciliatory temper; but Mr. Lewis having again decidedly said that he would not proceed, Judge Chase said, if you suppose by conduct like this to put the Court into a difficulty, you are mistaken. After a pause, Judge Chase addressed himself to the prisoner, and asked him if he was ready to proceed on his trial, or whether he would have other counsel assigned to him. Fries replied he did not know what was best for him to do, but he would leave his case to the Court. Mr. Rawle stated that from the peculiarity of the circumstances of the case, and the prisoner being left without the assistance of counsel, his wish was that the trial might be postponed for a day, and the postponement took place by order of the Court. The following morning when the Court was assembled, Fries was again put to the bar, and Judge Chase inquired of him whether he wished the Court to assign him counsel? His reply was, that he would trust himself to the Court and jury. Judge Chase replied, Then by the blessing of God the Court will be your counsel, and will do you as much justice as could be done by the counsel that were assigned you, or nearly in those words. The trial proceeded, but I was not present during the whole of it.

Luther Martin, sworn.

Mr. Harper. Did you furnish Judge Chase with a copy of the book, entitled the "Prospect before Us," and at what time did you furnish him with it?

Mr. Martin. It is not a pleasing thing for me to be a witness on this point, as I may be considered as a party concerned, and especially from being one of the counsel for Judge Chase. Yet, as it is required from me, I will proceed to state what I know. When I was in New York, I observed in a newspaper which I took up at a barber's shop an advertisement for the sale of the "Prospect before Us." I mentioned it to Judge Washington, and he sent his servant to procure a copy, and I desired him to purchase two copies. I read it, and as was usual with me with respect to books any wise interesting, I scored such passages as were remarkable either for their merit or demerit, and I did score a great portion of the book. But I did not score them with the least idea of an indictment being founded upon them. When I scored the book I did not know that Judge Chase was going on the circuit of Virginia. My scoring was for my own amusement, and for that of my friends. Afterwards I saw Judge Chase. I asked him if he was going down to Richmond; he answered yes. I asked if he had seen the book called the "Prospect before Us?" He said he had not. I then told him, I will put it into your hands; you may amuse yourself with it as you are going down, and make what use of it you please. There was a great deal more scored than was contained in the indictment. I most solemnly declare that I had no view to a prosecution in scoring it; though I have no hesitation in saying that in common with every worthy inhabitant of America I detested the book.

Mr. Nicholson. What do you mean by detest?

Mr. Martin. I am ready candidly to acknowledge that I did think it a book that ought to be prosecuted; and I did not think that Judge Chase would have an opportunity of seeing it unless I gave him a copy of it. Having since heard it suggested that I had some share in drawing up the indictment against Callender, I most solemnly declare I did not put pen to paper on the subject.

James Winchester, sworn.

Mr. Harper. Will you please to state whether you were in Annapolis in 1800, in court with Judge Chase, and Mr. John T. Mason, and what was the conversation which then took place?

Mr. Winchester. I attended a circuit court held at Annapolis in 1800. I do not recollect either the day the Court commenced or ended. I think on the last day of the term sentence was passed on ——— Saunders for stealing, in his character of postmaster, the contents of a letter. A crowd gathered round the door, and retarded our passage out of court. I do not remember what persons remained; but Mr. Mason came up and addressed himself to Judge Chase. My recollection is at best but imperfect, and of this conversation necessarily indistinct. In the account of it, therefore, I shall use my own language. I may occasionally use the language of Judge Chase and Mr. Mason. According to the impression on my mind the conversation commenced in this way: Judge Chase had delivered a charge to the grand jury. Mr. Mason came up, and in a laughing manner jocosely asked, In what light are we to consider the charge, as moral, political, judicial, or religious? These are the words, I believe, but of this I am not certain. The judge replied in the same style and manner, I believe, that it was a little of all. I cannot be certain, but I think Mr. Mason intimated to the judge that he would not deliver such sentiments in Virginia. It appeared to me that the language of Mr. Mason conveyed to Judge Chase the idea that he was afraid to deliver such sentiments in Virginia, though I am not myself confident that such was his meaning. The judge replied that he would, and that he would at all times and in all places execute the laws in the manner he had declared.

William Marshall, sworn.

Mr. Harper. Inform the Court how soon you saw Judge Chase after his arrival at Richmond, what passed between you, &c.

Mr. Marshall. Judge Chase arrived in Richmond, but whether on the 21st or 22d of May, I do not recollect; but my impression is that it was Tuesday. I waited on him, as was usual with me, and gave him information respecting the state of the docket. The associate judge did not attend on the 22d, when the Court was opened and the grand jury received their charge. They went to their room, and did not return till Saturday the 24th of May, when they

returned a presentment against James T. Callender, which I have. [The original presentment was produced by the witness, read, and delivered to the Secretary.]

As soon as I had read the presentment, at the request of the attorney of the district the jury were taken back to their chamber, and progress was made in preparing the indictment. There was some conversation between Judge Chase and Mr. Nelson, which lasted for a few minutes. Judge Chase inquired what was the proper process on the presentment. The answer which the district attorney made, was, that he supposed a *capias* was the proper process. I recollect that Judge Chase said something of a bench warrant, which was a practice unknown to us. Judge Chase asked me to draw the warrant. I said I could not. He then said he would endeavor to draw it. Afterwards Judge Chase desired the district attorney to draw out the form of a *capias*; the judge said he would draw one himself, and that I might draw out another; and he said he would take the most approved of the three. I recollect mine was drawn first; but whether before Judge Chase and Mr. Nelson had finished theirs, I do not recollect. On looking over mine, he said he was better satisfied with mine than his own; and he requested me to sign, seal, and deliver it to the marshal.

[Mr. Marshall here produced and read the original *capias*.]

On Saturday the 24th of May, in the afternoon, the grand jury brought in the indictment. I have taken these circumstances from a copy of the minutes of my office, which, if the Court wish to see, I can produce, as I have them with me. Judge Chase alone formed the Court from the 22d to the 29th of May, inclusive. On the 27th of May the marshal brought Callender into court, Judge Chase being at that time the only member of the Court. A chair was handed to him, and he remained in court while the Court proceeded with the docket in the usual way, until near evening, when Judge Chase observed that as the traverser was in court, he might perhaps have some application to make. I do not recollect whether the counsel afterwards employed for the defence of Callender were then in court; but if they were, they made no observations. But Mr. Meriwether Jones, with whom Callender resided, said that Callender was not then prepared to make any application; but that perhaps to-morrow he would move a continuance. Then Judge Chase applied to Callender, and asked if he could give bail. Mr. Jones replied that he could give bail in a moderate sum. Judge Chase asked

Callender what were his circumstances; that in fixing the sum, he would be governed by that circumstance. Callender said they were nearly equal. The judge repeated the question, and then Callender said he was indebted about two hundred dollars, and there was about as much due to him which he expected to receive; and therefore he did not consider himself worth any thing. Judge Chase then asked if he could give bail, himself in two hundred dollars, and another in a like sum. The reply made by Mr. Callender or Mr. Jones was, that he could find bail to that amount; and he accordingly gave bail. On the 28th May, an application was made by Mr. Hay; this was the first instance in which Mr. Callender took any steps for his defence. Mr. Hay stated that he was not well acquainted with the practice in such cases; that he had an affidavit, of a general nature, stating the impossibility of going into the trial, with any prospect of success, without the attendance of a number of witnesses who lived at a great distance. Mr. Hay also inquired whether a general affidavit was sufficient, or whether a special affidavit, stating the names of the witnesses and the facts they were expected to prove, would be required. Judge Chase said that the strict practice of the law required a special affidavit; but they might take till to-morrow to prepare a special affidavit, submitting it to their discretion to manage the cause as they thought proper. I beg pardon for being a little too hasty in my narrative. When Mr. Hay offered his motion for a continuance, the Court said that before they could hear the motion it was necessary that the traverser should plead to the indictment. For if he pleaded guilty, there would be no necessity for an application. Mr. Hay assured the Court that the traverser would not plead guilty. Mr. Callender was arraigned and he plead not guilty; and then the conversation which I have stated took place. The reply of Judge Chase was, after a general affidavit is made, it must be relied on, but you may withdraw the general, and file a special affidavit. Nothing further passed on the 28th.

On the 29th, in the morning, Mr. Hay produced a special affidavit; I have the original here. It is stated therein, that there were a number of witnesses, one from New Hampshire; one from Massachusetts; some from Pennsylvania, and some from South Carolina, absent; who were material witnesses for his defence; that there were also sundry documents to be procured; and an essay written by Mr. Adams on canon and feudal law, which the traverser supposed it important to have for his defence. Mr. Hay, on these grounds, moved for a continuance to the next term, in a pretty long

speech. Judge Chase observed, that every person before he made a publication, if he meant to justify it, ought to know the names of his witnesses; and if he meant to justify it by documents, they ought to have been within his reach. It was not to be presumed, indeed, that he could calculate upon being able to procure his witnesses in a few days; that in this case, it was alleged that one witness resided in New Hampshire, which was a great way off. He said that the ordinary sittings of the Court would be too short for him to obtain witnesses from so great a distance. He said that the prisoner should have time, and he should have a fair trial, but he could not allow him to the next term. He said he might have two weeks—but that might be too short a time—you may have three weeks, a month, nay, six weeks. We cannot sit so long, because we are obliged to hold a court in the district of Delaware; but I will adjourn this Court, to go to Delaware, and will return in six weeks. In the course of the observations offered by Mr. Hay to the Court, as well as I can recollect, he said, if the documents and witnesses were here, he did not think he would be prepared during that term to investigate all the facts, and the law arising on them; but he would be prepared against the next term, if the Court would indulge him with a continuance. After Judge Chase had made this offer of a postponement, I do not distinctly remember that Mr. Hay or Mr. Nicholas made any reply. After a short interval Judge Chase said, as they did not seem disposed to take the time he had offered, the trial should come on within the time the testimony of the witnesses residing in Virginia, deemed material, can be procured. He asked the marshal what was the distance of the residences of Mr. Giles and General Mason, and in what time they could conveniently come to Richmond; and, whether his deputy marshals could go for them? The reply of the marshal was, that his deputies were prepared to execute any orders of the Court. Judge Chase then directed me to make out the subpœnas for Monday, the 2d of June; and I issued subpœnas for Messrs. Giles, Mason, and Taylor; but Colonel Taylor's name does not appear in the affidavit. The deputy marshals were directed to use all possible expedition in serving the subpœnas: they were all returned executed on Monday the 2d of June, endorsed with the hour of the day on which they were executed.

[Here Mr. Marshall offered the originals with the endorsements of the time of service.]

On Monday, the 2d day of June, Colonel Taylor appeared in court. The other witnesses were called, but they did not appear. A postponement was asked by one of the gentlemen, for two hours, who stated that it had rained on Sunday preceding, which might have impeded travelling, and it was granted. Some time in the course of the day, Judge Chase observed he might have till to-morrow, which was accepted.

On Tuesday morning, soon after the opening of the Court, the motion for a continuance was renewed, founded on the affidavit of Callender, which gave rise to the first motion. Judge Griffin was then in court, having arrived on the 30th of May, and continued during the remainder of the term. It was argued much at length, and received the same decision as on the 29th. The marshal was then ordered to call the petit jury; twelve jurors appeared; there were some objections which I do not precisely recollect, to the panel of the jury; and a motion made to quash the array. An argument was made and some authorities quoted; Judge Chase said they were not to be relied on, and he asked for Coke upon Lyttleton. I brought it from the library in the capitol. Judge Chase looked into it, and said the array should not be quashed; but I do not know the principle on which he decided. When the jury had all answered, the gentlemen proposed to propound a question to the jurors as they came to the book. I do not recollect what the question was, but Judge Chase said he would propound the proper question himself. The question which Judge Chase said it was proper to propound, was: "Have you formed and delivered an opinion (for he said it was necessary to have delivered as well as formed it) on the indictment?" The answer of the first juror was, that he had never seen or heard the indictment, and could not say that he had formed an opinion respecting it. Eight or nine of the jurors were asked the same question, and gave a like answer. The gentlemen who defended the traverser then said it was unnecessary to ask the other jurors that question; the rest were sworn, and the trial proceeded. The course it took was pretty lengthy, and I cannot state all the circumstances that took place. I recollect that the testimony of Colonel Taylor was refused, but I do not recollect the particular circumstances attending it.

Mr. Giles was on a jury in the circuit court, on, I think, the 27th of May, the day Callender was brought into court by the marshal. When Mr. Giles's name was called, Judge Chase asked me whether that was the celebrated Mr. Giles, member of Congress. I said that it was. He said that he had never

seen him before. Nothing more passed at that time. In the evening I was at Judge Chase's lodgings. He asked me whether I supposed Mr. Giles would remain in Richmond until the trial of Callender. I said it was uncertain, that it was not customary for Mr. Giles to remain any length of time when he came to town. Judge Chase said he wished he would remain, and serve in Callender's case; nay, he wished that Callender might be tried by a jury of his own politics. He said that if his situation as a judge would permit him to drop a hint to the marshal with respect to the jury, he would intimate his wish that Callender should be thus tried; but, in his situation, it would be improper for him to interfere with the duty of the marshal.

Mr. Harper. Inform the Court at what time, if any, you were at Judge Chase's chambers, when a certain Mr. John Heath was there; what passed, and what did not pass.

Mr. Marshall. Judge Chase was, as he informed me, a total stranger in Richmond, and had never been there until he held the Court in 1800. He asked me if I would call upon him from time to time. When I knew he was at home, I used to go in an evening, and spend an hour or two with him at his lodgings. I also generally went in the morning, about an hour before the meeting of the Court. I recollect about ten o'clock going to Mr. Chase's lodgings. I went, I think, but of this I am not positive, with Mr. Randolph. I found Mr. Heath in Judge Chase's chamber, or in the passage. Mr. Heath was, I think, in the act of leaving the room; he had his hat in his hand, and I met him either in his way out of the room, or in the passage.

President. Can you state the day of the month?

Mr. Marshall. I cannot, but I think it was the day before Judge Griffin arrived. I recollect very well, on that day Mr. D. Randolph and myself walked up to the court room. I was surprised at seeing Mr. Heath at Judge Chase's, and asked Mr. Randolph what could have brought him there.

Mr. Harper. Was Mr. Heath in the act of going out when you entered?

Mr. Marshall. Yes, sir, he was on the floor. He had taken his leave, as I supposed, of Judge Chase, and was either out of the room, or in the act of coming out of it. I do not recollect positively whether Mr. Randolph went with me. I recollect going with Mr. Randolph to court, and that it was the usual practice of Mr. R. and myself to go to Judge Chase's chambers in the

morning and attend him to court. I do not certainly recollect whether that morning we went together to the judge's chambers, but I am positive we left the chamber together. The Court met generally at eleven o'clock. I had something particular to do that morning, and it was from ten to half-past ten when I went to the judge's chambers; it may have been about ten. The time I saw Mr. Heath must have been about ten o'clock.

Mr. Harper. Did any conversation take place between the judge and Mr. Heath while you were there?

Mr. Marshall. I believe I met Mr. Heath outside of the door. There was not a word of conversation at any rate.

Mr. Harper. Did any incident take place respecting a paper handed from Mr. Randolph to Mr. Chase?

Mr. Marshall. There did not.

Mr. Harper. Did you hear any thing about creatures called democrats?

Mr. Marshall. I never heard any thing pass between them. I never heard the judge say any thing about the jury, except what occurred either at the judge's lodgings or at court, which I took to be instructions to summon twenty-four jurors about twenty-five years of age, and freeholders; that there should be enough to supply the juries required at that court.

SATURDAY, February 16.

The Court was opened at 10 o'clock A. M.

David M. Randolph, sworn.

Mr. Harper. Were you marshal of the United States for the district of Virginia in 1800?

Answer. I was, sir.

Mr. Harper. Did you attend the circuit court held in May of that year, as marshal?

A. I did, sir.

Mr. Harper. Did you summon the panel of the jury that served on the trial of Callender?

A. I did.

Mr. Harper. Had you any conversation with Judge Chase on the forming that panel?

A. I had no conversation with him on that subject. There was a conversation offered to me by Judge Chase.

Mr. Harper. What was it?

A. The judge recommended to me that I should get persons generally from the country; represented that they should be twenty-five years of age, of fair characters, untainted by party prejudices.

Mr. Harper. Did any gentlemen summoned apply to you to be discharged?

A. Several. At the moment I received orders to have two juries ready by Monday, I called on my two deputies, and desired them to take down, on distinct papers, the names I mentioned to them. I observed that I chose to take the responsibility on myself. While they were taking down the names, I summoned several persons whose names were not put down till Monday. On Monday, finding my two deputies had not summoned a sufficient number, I went in quest of them. I found them at the end of the town, in the act of executing my orders. Mr. Moseby, one of my deputies, was standing with Colonel Vanderval, I think in conversation with him. I called him across the street, and asked him how they succeeded. At this time I saw my other deputy. They told me they wanted but one or two jurors. I told them they must make haste. About this time I saw Mr. Basset entering town on horseback. I told him that he had been crossed as a grand juror for non-attendance; that he must serve as a petit juror, which would give him an opportunity of offering his apology. I took out my watch, and told him that I allowed him five minutes. We arrived at the capitol, and my deputies there gave me their memorandums, from which, and my own, I made up the list of the jury. Two gentlemen, Mr. Lewis and Mr. Blakely, offered something like excuses. I looked at Mr. Blakely, and said there was only one excuse that I would admit, to wit: his being under twenty-five years of age. He said he was under that age, and I dismissed him. Mr. Lewis said he might make

the same excuse. I said I doubted it, but I let him off. As I went into the passage, I met Mr. Samuel Myers, who also desired to be let off. I told him I could not and would not. He said I would excuse him for a reason which he could assign. He whispered, and said that he was prejudiced against Callender. I permitted him to go, but begged him to keep that reason to himself. Another juror summoned, was very warm and importunate to be excused. I told him there was only one ground on which I would excuse him. He asked me what it was. I answered that if it applied to him he already knew it. I begged him to go to the court, and he would learn what it was. He did so. Colonel Harvie stopped me in the passage in a hasty manner, and with great warmth and friendliness urged me to let him off. He said he was sheriff of Henrico County. I said I knew it, but that I also knew that his duties were generally performed by deputies. I did not let him off. He applied to the Court, and was excused.

John Marshall, sworn.

Mr. Harper. Please to inform this honorable Court whether you did, or did not, on the part of Colonel Harvie, make an application for his discharge from the jury, and on what ground that application was made?

Mr. Marshall. I was at the bar when Colonel Harvie, with whom I was intimately acquainted, informed me that he was summoned on the jury. Some conversation passed, in which he expressed his unwillingness to serve, and stated that he was an unfit person; for that his mind was completely made up, that he thought the (sedition) law unconstitutional, and that, whatever the evidence might be, he should find the traverser not guilty; and requested me, on that ground, to apply to the marshal for his discharge. I told the marshal that Colonel Harvie was extremely desirous of being discharged, and, on his discovering great repugnance to his discharge, I informed him that he was predetermined, and that no testimony could alter his opinion. The marshal said that Colonel Harvie might make his excuse to the Court; he observed that he was watched, and to prevent any charge of improper conduct from being brought against him, he should not interfere in discharging any of the jurors who had been summoned. I informed Colonel Harvie of this conversation, and it was then agreed that I should apply to the Court for his discharge, upon the ground of his being sheriff of

Henrico County; that his attendance was necessary, as that Court was then in session. I moved the discharge of the juror on that ground, and he was discharged by the Court.

Mr. Randolph. Were you in court during a part of the trial, or during the whole of the trial?

Mr. Marshall. I think I was there only during a part of the time.

Mr. Randolph. Did you observe any thing unusual in the conduct on the part of the counsel towards the Court, or the Court towards the counsel, and what?

Mr. Marshall. There were several circumstances that took place on that trial, on the part both of the bar and the bench, which do not always occur in trials. I would probably be better able to answer the question, if it were made more determinate.

Mr. Randolph. Then I will make the question more particular by asking whether the interruptions of counsel were much more frequent than usual?

Mr. Marshall. The counsel appeared to me to wish to bring before the jury arguments to prove that the sedition law was unconstitutional, and Mr. Chase said that that was not a proper question to go to the jury; and whenever any attempt was made to bring that point before the jury, the counsel for the traverser were stopped. After this there was an argument commenced (I think) by Mr. Hay, but I do not recollect positively, to prove to the judge that the opinion which he had given was not correct in point of law, and that the constitutionality of the law ought to go before the jury; whatever the argument was which Mr. Hay advanced, there was something in it which Judge Chase did not believe to be law, and he stopped him on that point. Mr. Hay still went on, and made some political observations; Judge Chase stopped him again, and the collision ended, by Mr. Hay sitting down, and folding up his papers as if he intended to retire.

Mr. Randolph. There were many preliminary questions, such as, with respect to the continuance of the cause, the admissibility of testimony, &c. Did the interruptions take place on the part of the Court only when the counsel pressed the point of the unconstitutionality of the sedition law?

Mr. Marshall. I believe that it was only at those times, but I do not recollect precisely. I do not remember correctly what passed between the

bench and the bar; but it appeared to me that whenever Judge Chase thought the counsel incorrect in their points, he immediately told them so, and stopped them short; but what were the particular expressions that he used, my recollection is too indistinct to enable me to state precisely; what I do state is merely from a general impression which remains on my mind.

Mr. Randolph. Was there any misunderstanding between the counsel and the Court, and what was the cause of that misunderstanding, or what was your opinion as to the cause, or did you form one?

Mr. Marshall. It is impossible for me to assign the particular cause. It began early in the proceedings and increased as the trial progressed. On the part of the judge it seemed to be a disgust with regard to the mode adopted by the traverser's counsel, at least I speak as to the part which Mr. Hay took on the trial, and it seemed to increase also with him as he went on.

Mr. Randolph. When the Court decided the point that the jury had not a right to decide upon the constitutionality of a law, did the counsel for the traverser begin an argument to convince Judge Chase that the opinion which he had delivered on that point was not well founded? Is it the practice in courts when counsel object to the legality of an opinion given by the Court, to hear the arguments of counsel against such opinion?

Mr. Marshall. If the counsel have not been already heard, it is usual to hear them, in order that they may change or confirm the opinion of the Court, when there is any doubt entertained. There is, however, no positive rule on this subject, and the course pursued by the Court will depend upon circumstances; where a judge believes that the point is perfectly clear and settled, he will scarcely permit the question to be agitated. However, it is considered as decorous on the part of the judge to listen while the counsel abstain from urging unimportant arguments.

Mr. Randolph. In the circuit courts of the United States, after a court is opened for any district, is it the practice of such courts to adjourn over from time to time, in order to hold a court in another district in the intermediate time, and then to return back; or is not the uniform practice to postpone causes when they cannot be conveniently tried, to the next term?

Mr. Marshall. I can only speak of courts where I have attended, in which the practice is, that the business of one term shall be gone through as far as

possible, before any other court is held.

Mr. Randolph. Was it ever the practice of any court, in which you have practised or presided, to compel counsel to reduce to writing the questions which they meant to propound to their witnesses?

Mr. Marshall. It has not been usual; but in cases of the kind, the conduct of the Court will depend upon circumstances. If a question relates to a point of the law, and is understood to be an important question, it might be proper to require that it be reduced to writing. Unless there is some special reason which appears to the Court, or on the request of the adverse counsel, questions are not commonly reduced to writing, but when there is a special reason in the mind of the Court, or it is required by the opposite counsel, questions may be directed to be committed to writing.

Mr. Randolph. When these questions are reduced to writing, is it for a special reason, after the Court have heard the question, and not before they have been propounded?

Mr. Marshall. I never knew it requested that a question should be reduced to writing in the first instance in the whole course of my practice.

Mr. Randolph. Did you ever, sir, in a criminal prosecution, know a witness deemed inadmissible, because he could not go a particular length in his testimony—because he could not narrate all the circumstances of the crime charged in an indictment, or in the case of a libel; and could only prove a part of a particular charge, and not the whole of it?

Mr. Marshall. I never did hear that objection made by the Court except in this particular case.

[Some inquiry was here made relative to the above question put by Mr. Randolph, and objected to by Mr. Cocke, which Mr. R. answered by observing that he withdrew it.]

Mr. Harper. Please to inform this honorable Court, sir, whether you recollect that Judge Chase during any part of the proceedings made an offer to postpone the trial of Callender, and if you do, to what time?

Mr. Marshall. I recollect at the time a motion was made for the continuance till the next term, that Judge Chase declared, as his opinion, that it ought to be tried at the present term. A good deal of conversation

took place on the subject. The counsel for the traverser stated several circumstances in favor of their client, particularly relative to the absence of his witnesses; but the whole terminated at that time by a postponement for a few days; so many days as, I thought at the time, were sufficient for obtaining the witnesses residing in Virginia. I do not now recollect what the time was, nor do I say it was sufficient. I simply recollect that I thought it was. When the cause came on again, there was no proposition that I recollect on the part of the traverser's counsel for a continuance, but a desire was expressed of a postponement for a few hours in order to give their witnesses time to arrive at Richmond, as it was possible they had been impeded by the badness of the roads; a considerable quantity of rain having fallen the preceding day. There was a declaration on the part of the Court that they might take until the next day, and they went on to say they might have a longer time, if they thought it was necessary, but the precise length of time offered I do not recollect; but I do remember that they said the trial must come on before the present term closed.

The President. Do you recollect whether the conduct of the judge on this trial was tyrannical, overbearing, and oppressive?

Mr. Marshall. I will state the facts. The counsel for the traverser persisted in arguing the question of the constitutionality of the sedition law, in which they were constantly repressed by Judge Chase. Judge Chase checked Mr. Hay whenever he came to that point, and after having resisted repeated checks, Mr. Hay appeared to be determined to abandon the cause, when he was desired by the judge to proceed with his argument, and informed that he should not be interrupted thereafter. If this is not considered tyrannical, oppressive, and overbearing, I know nothing else that was so.

Mr. Randolph. Are you acquainted with Mr. Wirt; was he a young man at that time; was he single, married, or a widower?

Mr. Marshall. I am pretty well acquainted with him; he is about thirty years of age, and a widower.

Edmund J. Lee, sworn.

Mr. Harper. Were you at the circuit court in the spring of 1800, held at Richmond, at which Judge Chase presided?

Mr. Lee. I was not in court when Callender was presented by the grand jury; but I was when application was made for a continuance, and I remember that Judge Chase, on an application made for a continuance, on account of the absence of some of the witnesses, informed the counsel that he could not continue the cause, but if they would fix upon any determinate time, within which they could obtain their witnesses, without its going over to the next term, the Court would postpone the trial. Judge Chase also added that he had no objection to postpone it for a fortnight or a month; I am not certain whether he did not say he would postpone it for a longer time, I do not know but he said for six weeks, but he said positively he would not postpone it to the next term. He added, if the counsel conceived they could obtain the evidence within the time mentioned, they might have it.

Robert Gamble, sworn.

Mr. Harper. Were you at the circuit court of the United States for the Virginia district, in the month of May or June, 1800, held at Richmond?

Mr. Gamble. I was one of the jurors, sir, and I was in court when a motion was made for continuing the cause of Callender to the next term.

Mr. Harper. Do you recollect whether an offer was made by the Court to postpone that cause?

Mr. Gamble. Yes, sir; Judge Chase said he would postpone it for a week, a fortnight, a month, or more, and I think he mentioned he would postpone it for six weeks, or as long as the term would admit, without its going over to the next term.

Philip Gooch, sworn.

Mr. Harper. What did you observe relative to the conduct of the Court and counsel on that day? State what happened.

Mr. Gooch. When Mr. Basset suggested to the Court his wish to be informed whether it was their opinion that he was a proper person to serve on the jury, because he had formed and expressed an opinion on the extracts which he had seen, and declared that if correctly copied from the work called "The Prospect before Us," the author was within the pale of the

sedition law; on that suggestion, I recollect, the Court decided, and laid it down as law, that he must not only have formed an opinion, but delivered it also, and the judge gave some reasons why he must not only have formed, but delivered an opinion. I think he said that if a notorious murder was committed in the body of a county, which every man believed ought to be punished with death, and had so formed his opinion, it would in that case be impossible to get a jury to try such an offender, if it was an objection that a man had formed an opinion. I understood that he had consulted Judge Griffin on this point. The court was very crowded, but I had obtained a situation just behind the judges, and had an opportunity of hearing in some degree what passed between them, though not distinctly. Mr. Basset was eventually sworn upon the jury. The cause proceeded.

Mr. Wirt opened the cause on the part of the traverser; he made some allusion to the Court's prohibiting the mode of defence which the counsel for the traverser had adopted, but he was interrupted by the Court, and was told that the decision of the Court must be binding for the present; that if they objected, they might file their bill of error, and it should be allowed.

Mr. W. proceeded in the cause, and was endeavouring to show that the sedition law was unconstitutional; the Court interrupted him, and told him that what he had to say must be addressed to the Court, but if he was going on that point, he must again be informed that the Court would not suffer it to be urged. Mr. W. appeared to be in some agitation, but continued his argument, and when he came up to that point a second time, he was again interrupted by the Court. Mr. W. resumed his argument, and said he was going on. Judge Chase again interrupted him and said, "No, sir, you are not going on, I am going on; sit down." I recollect, also, after the judge had made some observations, Mr. W. again proceeded, and having observed that as the jury had a right to consider the law, and as the constitution was law, it followed syllogistically that the jury had a right to decide on the constitutionality of a law. Judge Chase replied to him, *A non sequitur*, sir, and, at the same time, made him a bow. Whether these circumstances took place exactly in the order in which I have mentioned them, I am not positive, but I believe they did. Mr. W. sat down, and the judge delivered a lengthy opinion. He stated that the counsel must argue the law before the Court, and not before the jury, for it was not competent for the jury to decide that point, or that the jury were competent to decide whether the

sedition law embraced this case or not, but that they were not competent to decide whether the sedition law was constitutional or not, and that he would not suffer that point to be argued.

Mr. Harper. What was the effect produced by the reply of Judge Chase to Mr. Wirt's syllogism, a *non sequitur*?

Mr. Gooch. It appeared to me as if it was intended to excite merriment; and if it was so intended, it certainly had that effect, and the same appeared to me to be the motive of the judge in adding the word *punctuatim* after the words *verbatim et literatim*. I thought these circumstances were calculated to display his wit.

Mr. Harper. When the judge told Mr. Wirt to sit down, did you conceive the conduct of the court to be rude and peremptory, or was there any thing like it in his application of the term "young gentlemen?"

Mr. Gooch. I did not perceive any thing rude or intemperate in his conduct, unless it can be inferred from the words themselves, when he said, You show yourselves clever young gentlemen, but the law is, nevertheless, not as you have stated it.

MONDAY, February 18.

Gunning Bedford, sworn.

Mr. Harper. Please to state to the Court whether you were present in your judicial character at a circuit court held at Wilmington in 1800, and relate the circumstances which occurred.

A. I attended that Court on the 27th of June. Judge Chase presided. I arrived in the morning about half an hour before Judge Chase. We went into court about eleven o'clock. The grand jury was called and impanelled. The judge delivered a charge: they retired to their box; after an absence of not more than an hour they returned to the bar. They were asked by the judge whether they had any bills or presentments to make to the Court. They said they had none. The Court called on the attorney of the district to say whether there was any business likely to be brought forward. He replied that there was none. Some of the grand jury then expressed a wish to be

discharged. Judge Chase said it was unusual for the Court to discharge the grand jury so early in the session; it is not the practice in any circuit court in which I have sat. He turned round to me, and said, Mr. Bedford, what is your usual practice? I said it depended upon circumstances, and on the business before the Court; that when the Court was satisfied there was nothing to detain them they were discharged. Judge Chase then turned to the jury, and observed, "But, gentlemen of the jury, I am informed that there is conducted in this State (but I am only *informed*) a seditious newspaper, the editor of which is in the practice of libelling and abusing the Government. His name is ——, but perhaps I may do injustice to the man by mentioning his name. Have you, gentlemen of the jury, ever turned your attention to the subject?" It was answered no. "But," resumed the judge, "it is your duty to attend to things of this kind. I have given you in charge the sedition act among other things. If there is any thing in what is suggested to you, it is your duty to inquire into it." He added, "It is high time that this seditious printer should be corrected; you know that the prosperity and happiness of the country depend upon it." He then turned to the attorney of the district, and said, Mr. Attorney, can you find a file of those papers? He answered that he did not know. A person in court offered to procure a file. The attorney then said, as a file was found, he would look it over. Can you, said the judge, look it over, and examine it by to-morrow at ten o'clock. Mr. Attorney said he would. Judge Chase then turned to the grand jury, and said, Gentlemen, you must attend to-morrow at ten o'clock. Other business was gone into, and the Court adjourned about two o'clock.

On my way to Judge Chase's lodgings, I said to him, My friend, I believe you know not where you are; the people of this country are very much opposed to the sedition law, and will not be pleased with what you said. Judge Chase clapped his hand on my shoulders and replied, "My dear Bedford, no matter where we are, or among whom we are, we must do our duty."

The next day we went into court about ten o'clock. The grand jury went to their chamber, and I believe Mr. Read returned with them into court. They were asked if they had any thing to offer to the Court; and the attorney was called on again to state whether he had found any thing in the file of a seditious nature. He had a file of the paper before him, and he said he had found nothing that was a proper subject for the notice of the jury, unless a

piece relating to Judge Chase himself. The judge answered, Take no notice of that, my shoulders are broad, and they are able to bear it; but where there is a violation of a positive law of the United States it is necessary to notice it.

Nicholas Vandyke, sworn.

Mr. Harper. Please to state whether you were at the circuit court for Delaware in the year 1800?

A. I attended the circuit court held in Newcastle on the 27th and 28th of June, 1800. I was not present when the Court opened; but I think I entered the court house while Judge Chase was delivering a charge to the grand jury. After its delivery the grand jury retired; they were absent a short time: and as well as I can recollect before and when they returned, I was either out of the court house, or engaged in conversation with some person out of the bar. I think so, as I have no recollection of the question put to the grand jury, whether they had found any bills, and that put to the district attorney. I entered the bar while there was a pause, and silence prevailed. I recollect that the first circumstance that attracted my attention was the observation of Judge Chase to the grand jury, that since he had come among them, he had been credibly informed that there was a seditious printer within the State, in the habit of libelling the Government of the United States, and having received this information, he thought it his duty to call the attention of the grand jury to the subject. He appeared to me to be proceeding to state the name of the printer; but he did not name him. He said that might be doing injustice to the man, or that it was improper in him. I cannot say which was the term he used. I think he then asked the district attorney if there were not two printers in the State. He answered that there were. There was then some conversation between the judge and the district attorney. My impression was that it conveyed a request from Judge Chase to the district attorney to inquire into the subject on which he had previously spoken to the jury. Mr. Attorney said that he had not seen the papers. The judge asked him whether he could not procure a file of them. I do not recollect that the name of the printer was mentioned then, or during the whole sittings of the Court. Some person at the bar said a file could be procured. Judge Chase asked the attorney, if he could make the inquiry by to-morrow at ten o'clock. About

this time I heard some observations made respecting the discharge of the grand jury on that day. Some of the gentlemen said it was a busy season, that they were farmers, and were desirous of returning to their homes. Judge Chase replied that might be very true; but that the business of the public was also important; it must be attended to: and therefore he could not discharge them. I do not pretend to say I have pursued the language used. I have only attempted to give my impression of the facts that occurred.

Archibald Hamilton, sworn.

Mr. Harper. Please inform the Court whether you were present at a circuit court for Delaware in 1800?

A. I recollect that I was present on the 27th of June. I arrived about 10 o'clock, at which time Judge Chase was not there. Some time after, the Court was formed, the grand jury was sworn, and Judge Chase delivered a charge. Having retired for about an hour, the grand jury returned to the bar. Judge Chase asked them if they had any bills or presentments to make. Their reply was that they had not. Judge Chase then asked the attorney of the district if he had no business to lay before them. He said he had not. The jury requested to be discharged. Judge Chase said, it was not usual to discharge them so early, some business might occur during the course of the day. He told them he had been informed that there was a printer who was guilty of libelling the Government of the United States; his name is ———; here he stopped, and said, "Perhaps I may commit myself, and do injustice to the man. Have you not two printers?" The attorney said there were. Well, said Judge Chase, cannot you find a file of the papers of the one I allude to? Mr. Read said he did not take the papers, or that he had not a file. Some person then observed that a file could be got at Mr. Crow's. Judge Chase asked the attorney if he could examine the papers by the next morning. Mr. Read said, that under the directions of the Court, he conceived it to be his duty, and he would do it.

On the second day the same questions, whether they had found any bills, were put to the grand jury. They answered that they had not. Mr. Chase asked the attorney of the district if he had found any thing in the papers that required the interposition of the jury. He said that he had found nothing which in his opinion came within the sedition law; but there was a

paragraph against his honor. Judge Chase said, that was not what he alluded to. He was abused from one end of the continent to the other; but his shoulders were broad enough to bear it.

Samuel Moore, affirmed.

Mr. Harper. Were you in the circuit court held in Delaware in June, 1800, when it met?

A. No, sir. I did attend early enough on the first day to hear the charge given to the grand jury. I think I did not attend before twelve o'clock. I attended as a juror. On the next day I attended early, and was in the court house when the Court met. When the jury returned into court, inquiry was made whether they had any bills or presentments to make. They answered no. The Court then inquired of the attorney of the district whether he had any business to lay before the grand jury. He said he had not. While he was making this reply, he rose, and laid hold of a file of newspapers, which I took to be the Mirror of the Times, and while he was in the act of presenting it, he observed that he had not seen any thing that in his opinion required notice, unless it were a publication reflecting on Judge Chase, which did not appear to him to come under the sedition law. Judge Chase answered, No, sir; they have abused me from one end of the continent to the other; but it is the Government, and not myself, that I wish protected from calumny. Immediately after the grand jury were discharged.

William H. Winder, sworn.

Mr. Harper. I will ask you whether you were in the circuit court of the United States, held at Baltimore, in May, 1803? I will, however, previously observe that it is not my intention to say or to prove that the witness, when he deposed to certain facts, knew that they had not passed. I mean only to impeach his correctness, and to infer that, as he was angry, he gave to what he heard the coloring of his own feelings.

Mr. Winder. I was present at that court when it was opened, and the jury impanelled, and I heard Judge Chase deliver his charge. After delivering the general and usual charge to the grand jury he said he begged leave to detain them a few minutes, while he made some general reflections on the

situation of public affairs. He commenced by laying down some abstract opinions, stating that that Government was the most free and happy that was the best administered; that a republic might be in slavery and a monarchy free. He also drew some distinctions with regard to the doctrine of equal rights, and said that the idea of perfect equality of rights, more particularly such as had been broached in France, was fanciful and untrue; that the only doctrine contended for with propriety was, the equal protection of all classes from oppression. He commented on the repeal of the judiciary system of the United States, and remarked that it had a tendency to weaken the judiciary, and to render it dependent. He then adverted to the laws of Maryland respecting the judiciary, as tending to the same effect. One was a law for the repeal of the county court system. He also alluded to the depending law for the abolition of two of the courts of Maryland. He said something of the toil and labor and patriotism of those who had raised the fair fabric, (constitution of Maryland,) and said that he saw with regret some of their sons now employed in destroying it. He also said that the tendency of the general suffrage law was highly injurious, as, under it, a man was admitted to full political rights, who might be here to-day and gone to-morrow.

James Winchester, sworn.

Mr. Harper. Please, sir, to state to this Court your recollection respecting a charge delivered by Judge Chase in the circuit court of Maryland in May, 1803.

Mr. Winchester. As already stated, that Court sat in May, 1803, in a room in Evans's tavern. The Court and gentlemen of the bar sat round several dining tables. I sat on the left of Judge Chase, and the jury were on his right. He addressed a charge to them, the beginning of which was in the usual style of such addresses. He then commenced what has been called the political part of the charge, with some general observations on the nature of government. He afterwards adverted to two measures of the Legislature of Maryland; the first related to an alteration of the constitution on the subject of suffrage; the other contemplated an alteration in the judiciary. He commented on the injurious tendency of the principle of universal suffrage, and deprecated the evil effects it was likely to have. Incidental to these

remarks, he adverted to the repeal of the judiciary law of the United States. I say incidental, for my impression was that his object was to show the dangerous consequences that would result to the people of Maryland from a repeal of their judiciary system, and to show that as the act of Congress had inflicted a violent blow on the independence of the federal judiciary, it was more necessary for the State of Maryland to preserve their judiciary perfectly independent. I was very attentive to the charge for several reasons. I regretted it as imprudent. I felt convinced that it would be complained of; and I am very confident from my recollection, and from the publications respecting it, which I afterwards perused, that all the political observations of the judge related to the State of Maryland.

TUESDAY, February 20.

Walter Dorsey, sworn.

Mr. Harper. Please to inform the Court whether you were at a circuit court held at Baltimore in 1803.

Mr. Dorsey. I was.

Mr. Harper. Were you present when Judge Chase delivered a charge to the grand jury?

Mr. Dorsey. I was.

Mr. Harper. Were you in such a situation as to hear that charge?

Mr. Dorsey. I was.

Mr. Harper. Were you near Mr. Montgomery?

Mr. Dorsey. I was; I think there was only one person between us.

Mr. Harper. Did you attend to the charge?

Mr. Dorsey. I attended to what is generally called the political part of it, because it was novel, and contained speculations with respect to government in general, and remarks on national and State laws.

Mr. Harper. Do you recollect any thing in it respecting the Administration?

Mr. Dorsey. I do not. I recollect a part of it relating to the State and national judiciary, and to universal suffrage. I did not hesitate to state that it was an indiscreet thing; my attention was particularly drawn to it by seeing in the room the editor of a newspaper, and from expecting that it would be the subject of newspaper animadversion.

John Purviance, sworn.

Mr. Harper. Please to inform this honorable Court whether you were present at a circuit court held at Baltimore in May, 1803.

Mr. Purviance. I was.

Mr. Harper. State what happened on that occasion.

Mr. Purviance. I do not pretend to recollect every thing which occurred; but as I attended to what Judge Chase said in his charge to the grand jury, I think I have a pretty distinct recollection as to the manner in which he delivered that address; he appeared to me to read the whole from a written paper lying before him. I never expected that this inquiry would have been made of me, and after such a lapse of time I can only speak of the impressions now on my mind.

Mr. Harper. Do you recollect whether Judge Chase made any mention of the present Federal Administration, and what was it?

Mr. Purviance. I have no recollection that he mentioned it, but as it was identified with the repeal of the law for establishing the circuit court of the United States; and so far as the Executive composed a part of the Legislature, he may have mentioned the Administration.

Mr. Harper. Was there any particular mention or allusion to the Executive of the United States?

Mr. Purviance. No, sir, nothing of the kind; I have endeavored to retrace in my mind every thing which was said, and I have not the smallest recollection that any remark was made upon the Executive Department of the United States.

Nicholas Brice, sworn.

Mr. Harper. Please to inform this honorable Court whether you were at a circuit court held in May, 1803, when a charge was delivered by Judge Chase to the grand jury.

Mr. Brice. I was there and attended to the charge very particularly.

Mr. Harper. Did he say any thing respecting the present Administration?

Mr. Brice. Not in the slightest manner, further than mentioning the repeal of the judiciary law of the United States, which he mentioned incidentally in the course of his observations on the alterations of the judiciary system in the State of Maryland. One thing more I will add, with respect to the advice

which it is alleged he gave to the grand jury: shortly after the charge was delivered, in talking over this subject with Mr. Stephen, I recollect that I rather thought it was an inference drawn from the charge, than any express advice of the Court on that point. Indeed, I am pretty sure the words were not used.

James P. Boyd, sworn.

Mr. Harper. Please to inform this honorable Court whether you were present at the circuit court held in Baltimore in May, 1803, and what occurred at that time.

Mr. Boyd. I was there, but I do not know whether I was there at the opening of the Court; but I was there when the charge was delivered to the grand jury. After Judge Chase had gone through that part of the charge which is an instruction to the grand jury relative to the duties of their office, he proceeded to make some further observations, to which I paid particular attention because they were novel to me. I was under an impression at the time that Judge Chase was watched.

Mr. Harper. Did that charge contain a sentiment like those you have heard, that the present Administration was weak, or wicked, &c.?

Mr. Boyd. I have not a scintilla of recollection of a word of the kind, no further than as an inference to be drawn from what was said in relation to the repeal of the Judiciary law. I have, however, a faint trace of the idea in my mind, not from my own recollection, but from having repeatedly heard it stated that there was such a remark made in the charge.

William McMechin, sworn.

Mr. Harper. Inform this honorable Court whether you were present at the circuit court held at Baltimore, in May, 1803.

Mr. McMechin. I was present and heard the charge delivered by Judge Chase to the grand jury.

Mr. Harper. Have you any recollection of his having said any thing against the present Administration?

Mr. McMechin. I have no recollection of any thing of the kind, either that they were weak, or of their having unfairly acquired power; such an idea was mentioned in no way, unless it be inferred from the remark on the repeal of the law establishing the sixteen circuit judges.

William S. Govane, sworn.

Mr. Harper. Were you at the circuit court of Baltimore in May, 1803?

Mr. Govane. I was, and heard the charge delivered by Judge Chase. The room in which the Court was held was a long one, in a tavern; a range of tables formed the bar, and the seats around were occupied by professional gentlemen. I went to the bottom of the table, opposite to Judge Chase, and directed my attention towards him. Whilst he was delivering his charge he appeared to read it from a book, but generally ended the sentences by looking towards the grand jury; except this circumstance, he appeared to read the whole time.

Mr. Harper. Do you retain a distinct recollection of the substance of what the judge said?

Mr. Govane. I think I do.

Mr. Harper. Do you remember any part containing animadversions on the present Administration, such as that they were weak, feeble, or incompetent?

Mr. Govane. I think no such words were used. If I could swear to a fact negatively after such a lapse of time, I could swear that no such expressions fell from the judge. He said that a Monarchy might be free, and a Republic a tyranny; and then proceeded to define what a free government was.

William Cranch, sworn.

Mr. Harper. Were you present at the circuit court held at Baltimore in 1803?

Mr. Cranch. I was. The Court was held at Evan's tavern, in Baltimore. Judge Chase was seated in an arm-chair, at one end of a long table placed before him. The grand jury were on his right, some sitting on benches

placed along the wall and others standing. I stood myself about fifteen feet from the judge, who was sitting during the whole time he was delivering his charge; he generally held the book in his hand.

Mr. Harper—(showing a book). Is that the book?

Mr. Cranch. He appeared to be reading from such a book.

Mr. Harper. Did he read the whole, and did he read constantly?

Mr. Cranch. He appeared to me to read the whole charge, but I did not keep my eyes so constantly fixed upon him as to declare positively that he did.

Mr. Harper. Were there variations in his manner of delivering the charge, as if he was at one time reading and at another speaking *ex tempore*?

Mr. Cranch. He delivered some parts with more emphasis than others. He often raised his eyes from the book, but I did not observe that he repeated more than one sentence without recurring to the book; he repeated no more than a man might repeat after running his eyes hastily over a passage.

Mr. Harper. Did he raise his eyes for a longer time than a man might be supposed to do who was reading a composition of his own?

Mr. Cranch. I do not think he did.

Mr. Harper. Do you recollect the latter part of the charge?

Mr. Cranch. I recollect more of the latter part than of the beginning, because I paid more attention to the latter part.

Mr. Harper. Do you recollect any sentiments expressed relating to the weakness of the present Administration, and that they were not employed in promoting the public good, but in preserving ill-gotten power?

Mr. Cranch. No, sir, there was no such expression, as I recollect.

Mr. Harper. Was there any expression at all relative to the present Administration?

Mr. Cranch. Not as an Administration, nor any thing alluding to the Administration separate from the Government of the United States.

Mr. Harper. In what way was the Government alluded to?

Mr. Cranch. By alluding to the repeal of the act of February, 1801, for the establishment of the circuit judges. I recollect no other measure of the General Government which was alluded to, or any allusion to the present Executive.

WEDNESDAY, February 20.

[The testimony on both sides being closed, the argument of the case began, Mr. Early, one of the managers, opening for the prosecution.]

Mr. EARLY.—The relative rights of judges and juries have at some periods of judicial history been so little understood, and the limits of each so indistinctly marked, that the benefits of the institution of jury trial were left much at the mercy of *arbitrary and overbearing judges*. But it was reserved for the honor of modern times to dissipate this uncertainty so baneful to justice, and to fix down the establishment upon its only proper foundation; that of the right to determine, without control, both the law and the fact *in all criminal cases whatsoever*. This right has now been so long practised upon in the United States, and may be considered as so well established, that it is scarcely to be expected we shall witness upon that point any difference of opinion. Still less is it to be expected that we shall witness such difference, when we are discussing principles which apply to cases capital. In such case it is the glory of the laws of this country, that the offence of the accused should be left exclusively to the judgment of those least liable to be swayed by the weight of accusing influence. It is no part of my intention to deny the right of judges to expound the law in charging juries. But it may be safely affirmed that such right is the most delicate they possess, and the exercise of which should be guarded by the utmost caution and humanity.

The accused shall enjoy the right to a “trial by an *impartial* jury.” We charge the respondent with deliberately violating this important provision of the constitution, in arresting from John Fries the privilege of having his case heard and determined by an impartial jury; for that the respondent took upon *himself* substantially to decide the case by prejudging the law applying thereto, at the same time accompanying the opinion thus formed and thus delivered, by certain observations and declarations calculated necessarily to create a prepossession against the case of Fries in the minds of those who

had been summoned to serve upon the jury, thereby making them the reverse of impartial.

These were the acts of a man, who, from his own declarations, appears to have well understood upon what *points the defence would turn*. It was the act of a man, who, it appears, had been well informed of all that passed at the previous trial of Fries; who knew that there was no dispute as to facts, and that the whole of the defence depended upon the discussion and determination of those very principles of law which he had thus prejudged, and upon the application of those authorities which he had thus excluded in the hearing and very presence of those who were to pass upon the life and death of the accused. No argument had been heard from counsel; no opportunity had been afforded to prove that the offence committed did not amount to the crime charged; no defending voice had been raised in behalf of the accused; but, without being heard, and without having had any opportunity to be heard, his case was adjudged *against* him. I say, *adjudged against him without the chance of being heard*. For surely the case was adjudged against him, when the only point upon which it was defensible was determined against him, and that determination publicly announced from the bench. That this was done before the accused could possibly have had a chance of being heard, is placed beyond contradiction by all the testimony. And that the judge knew the point which he thus prejudged, to be the only ground upon which the defence rested, is perfectly clear. For, from his own declarations at the time of announcing the opinion, it appears that he was well acquainted with all that had passed at the previous trial of Fries.

But, sir, we must look further into the progress of this transaction. It was not enough that the poor trembling victim of judicial oppression should thus have his dearest privileges snatched from him, by a prejudication of his case; it was not enough that the impartiality of those who were to compose his jury should be converted into a prepossession against him, by the imposing authority of solemn declarations from the bench; but the small remaining, darling hope of life, was to be smothered by a preclusion of his counsel from arguing the law to the jury. This fact, though sternly denied in the answer of the respondent, has, nevertheless, been established in a manner which must irresistibly force conviction upon the mind. Mr. Lewis affirms it positively. Mr. Dallas confirms it in a manner peculiarly strong. Not being himself present when the opinion was delivered to the bar, he

received from Mr. Lewis a statement of what had passed, and, in an address to the Court afterwards, repeated distinctly this statement, and particularly that part which attributed to the judge a declaration, that, if the counsel had any thing to say upon the law, they must address themselves to the Court, and not to the jury. To this statement no reply was made by the Court, either correcting or denying it. Thus stands the evidence in the affirmative. Opposed to this we have the negative testimony of Messrs. Rawle, Tilghman, and Meredith, who have no recollection of any such declaration. I address myself to those who well know the difference between affirmative and negative testimony. I address myself to those who well know the established rule in the law of evidence, that the testimony of one affirmative witness countervails that of many negative ones; and I am sure that I address myself to those who must feel the complete coincidence of this rule with the dictates of common sense. Upon this ground alone we might safely rest our proposition; but, sir, we will not rest it here. It appears from the testimony of the witnesses on both sides, that almost every observation from the council to the Court, on the second day, was predicated upon the idea that something had been said on the preceding day, restrictive of their privileges. These observations, although addressed to the Court, and carrying this feature prominent in their face, were neither contradicted nor corrected by the Court. This was a strong tacit admission of the correctness of the idea upon which they were bottomed. But, sir, we have not only this tacit admission, but we have in testimony, this strong and impressive declaration from Judge Chase, that “the counsel might be heard in opposition to the opinion of the Court at the hazard of their characters.”

But, Mr. President, we have the positive admission of the respondent, in page 18 of his answer, that certain observations were made by him condemning the use of common law authorities upon the doctrine of treason, and also condemning authorities under the statute of treasons, but prior to the English Revolution. [Here the passage was read.] By a recurrence to page 22 of the answer, it will be found that the respondent admits that these observations of his were made on the first day; yet, sir, nothing of all this is remembered by Messrs. Rawle, Tilghman, or Meredith. How light, then, how extremely light, must their bare want of recollection weigh against the positive affirmative testimony of Messrs. Lewis and Dallas!

Considering my position as uncontrovertibly established, I will proceed to observe that the offence with which Fries stood charged, was the highest possible offence which can be committed in a state of society. The punishment annexed to its commission, was the highest possible punishment known to our laws. The accused was, therefore, entitled to every possible indulgence. In favor of life, not only every possible ground should be occupied by counsel to the jury, but every possible argument listened to and weighed with patience and forbearance; and it should never be forgotten that Judge Chase had such a conduct set as an example before him in a previous trial of the same case. Yes, sir, a brother judge of his, who has since gone to the world of spirits, had set him an example conspicuous for the purity of its excellence, and which should have arrested his career in the commission of this cruel outrage upon all humanity. But Judge Chase predetermines the law, then prohibits the counsel from proving to the jury that the law was not as laid down. This was, in effect, an extinguishment at once of the whole right of jury trial. All the privileges and all the benefits of that institution were swept at once from an American court of justice, and scarcely the external form preserved. The law was predetermined by the judge, and the accused was debarred from pleading it to the jury. Of what avail is it, sir, that the jury should be made judges of law and of fact, when the law is not permitted to be expounded to them? Of what avail is it that the accused should have a trial by jury, when he is prevented from stating and explaining to the jury the only grounds upon which his case is defensible? The right to hear and determine facts is *not more the right* of a jury, than the right to hear and determine the law. To deprive them, then, of the privilege of hearing and determining the law, is as much a violation of their rights, as to deprive them of the privilege of hearing and determining facts. The right of the accused to be heard upon the facts to the jury, is not more his right, than the right of being heard upon the law to the jury. To deprive him, then, of the privilege of being heard upon the law to the jury, is as much a violation of his rights, as to deprive him of the privilege of being heard upon the facts to the jury.

The second, third, and fourth articles, exhibited by the House of Representatives, charge the defendant with a course of conduct upon a particular trial which affords many grounds of accusation. In this case it is true no unfortunate individual was charged with an offence which demanded his life as an expiation; yet, sir, there were other rights involved

equally sacred in the laws of a free country. The liberty and the property of the accused were the price of a conviction. In casting our eyes over the ground upon which the different scenes of the transaction now about to be examined are spread, we are struck with a feature not usual in the history of human concerns. It would seem that even the restraint of appearances was no longer felt. We find the respondent setting out with a conduct, which seemed to prove that the fate of the accused was fixed. We find him pursuing a system of conduct throughout, which wrested from the accused some of his established and most valuable privileges. We find him endeavoring to heap shame and odium on those who occupied the station of advocates, because they would not tamely yield to his unwarrantable invasion of long-established rights.

Mr. President, notwithstanding the labored attempts made by the defendant in his answer to exculpate himself from imputation in compelling Mr. Basset to serve upon the jury, in the trial of Callender; yet, sir, I must be permitted to say that those attempts appear to me to be only the exertions of a mind conscious of impropriety, and seeking to impose upon the understanding of others. The test adopted, by which to try the impartiality of the jurors, in that case may possibly by some be held a correct one; but the manner of applying that test as then practised upon, is what I believe can be accounted for upon no other supposition than that of a determination on the part of the judge to procure the conviction of the accused. Upon what other principle can it be accounted for, that the jurors should be asked whether they had formed and delivered an opinion upon the charges laid in the indictment, when they knew not and were not suffered to know what those charges were? Why else could it be laid down by the judge, that because the individuals called to serve upon the jury did not know what charges were in the indictment, (having never seen it nor heard it read,) that therefore they could not have formed and delivered an opinion upon the subject? And why else did the judge, when this monstrous logic was contradicted by the fact of one of the jurors delivering in open court an opinion upon the whole subject of those charges, without having seen or heard the indictment read; why else did the judge, in the teeth of this damning fact, order the jurors sworn?

Every juror sworn might, like Mr. Basset, have formed and delivered an opinion which concluded the conviction of the accused, and yet because

they did not know that the subject-matter of such opinion constituted the charges in the indictment, having neither seen it nor heard it read, the expression of such opinion created no disqualification. Unworthy evasion! An evasion which prevents the doctrine of disqualification in a juror from receiving any practical operation. An evasion which effectually puts at naught that principle of the constitution so often adverted to in a former part of the argument, that “the accused shall enjoy the right of a trial by an impartial jury.” Upon this point I beg leave to read two authorities. [Mr. Early here cited 3 Bac. Abr. 176, and Co. L. 157.]

But, sir, the scene rises upon us. We have now to examine a part of the transaction for which, I had supposed, human invention might be tortured for a palliation in vain. I allude to the rejection of Mr. Taylor’s testimony. The reason assigned for that rejection was, that the witness could not prove the truth of the whole of *any one charge*. Let us, for a moment, examine the consequences of this doctrine. According to the judge’s own decisions then, as well as his doctrine now, each charge laid in the indictment must have constituted a separate offence. For it is explicitly declared both by Mr. Hay and Mr. Nicholas, that when an application was made to continue the case, because of the absence of some material witnesses, the application was rejected, upon the ground that it did not appear from the affidavit filed that the witnesses, so absent, could prove the truth of all the charges. That proof of the truth of a part only, would be of no avail, and that the whole must be proved to entitle the traverser to an acquittal. Each charge in the indictment, then, must have constituted a *separate offence*; for the charges cannot be made to help each other out. One charge, however, it seems might consist of different facts. This was the case with several in that indictment. It was particularly the case with the very charge, the truth of which Mr. Taylor was called to prove. “The President was a professed aristocrat. He had proved faithful and serviceable to the British interest.” Here was a charge made up of two distinct facts; so distinct in their nature, that the knowledge of their truth might not only rest with different persons, but was extremely likely not to rest with any *one* witness. Put the case of a man charged with any offence—murder, theft, or any other crime you please. There may be a string of facts upon the proof of which the defence may depend; some within the knowledge of one man, some within that of another. Was it ever heard of before, that, because one witness could not prove the existence of all those facts, that, therefore, such witness should not be examined as to

what he did know? Or, if some of the facts depended upon written testimony, was it ever heard of before, that, therefore, a witness should not be examined as to those resting on oral testimony? To these questions no man will answer in the affirmative. Why, then, was an unheard-of and palpably absurd doctrine brought to bear in Callender's case? Was the defence of justification, under the sedition law of the United States, such an anomaly in its nature, that none of the established rules of jurisprudence would apply to it? Was it a thing so *entire* in its nature, that it could not consist of different parts? I have always been taught, and the respondent's answer confirms the principle, that a defence must apply to the whole of a charge. If, then, a charge consist of different parts, surely, so must the defence. But, according to Judge Chase, be the parts ever so many, they shall not be proven, unless the proof can all be made by one witness, or unless it appear that the defendant has proof in reserve to establish all.

The fifth and sixth articles rest upon grounds so extremely simple, and so easily comprehended, that it appears totally unnecessary to fatigue the patience of the honorable Court by dwelling upon them.

The seventh article is as follows:

“That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury that he, the said Samuel Chase, understood ‘that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle County, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was’—but checking himself, as if sensible of the indecorum which he was committing, added, ‘that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter,’ or words to that effect; and that with intention to procure the prosecution of the printer in

question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States, the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of ‘Mirror of the Times and General Advertiser,’) and, by a strict examination of them, to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.”

The respondent stands here charged with a conduct, than which, in my opinion, nothing could be more at war with his official duty—nothing more tarnish his official character. The constitution and laws of this country certainly intended in erecting high judicial tribunals, that those who might be appointed to minister therein, should be impartial dispensers of justice between such as might resort thither for an adjustment of their differences. In public prosecutions more especially was it intended that such dispensation should be made without respect to persons. In these, above all other cases, ought a judge to stand aloof from influence, free from predilection towards one, or prejudice against the other. Most peculiarly here is it his duty to stand firm at his post, resisting the overbearing influence of a powerful public, and protecting the rights of the accused in so unequal a contest. But Judge Chase, disregarding these principles, always held sacred in a land of laws, converts himself into a hunter after accusations. He who, in the humane language of the laws, should be counsel for the accused, becomes himself an accuser. He, whose duty it is impartially to decide between the prosecutor and prosecuted, becomes himself the procurer of prosecutions.

The eighth article charges the respondent with prostituting the judicial character by making a political speech to the grand jury at Baltimore, in the State of Maryland, against the Government of the United States and the Government of Maryland.

There are features in that part of the judge’s official conduct, charged in this article, which place him in a point of view awfully grand. We have heretofore been viewing him as bringing his talents to bear upon

individuals. Here we see his genius rising, in the majesty of its strength, to far higher objects. Here we see him consigning over whole governments to the scourge of his own avenging wrath. Whithersoever he turned his eyes, whether to the State constitution and laws, or to the laws and constitution of the whole Union, they were equally exposed to the whip and the rack.

M. CAMPBELL then rose and spoke as follows.

Mr. President and Gentlemen of the Senate: The scene, presented to the nation by this trial, is more than usually interesting and important. One of the highest officers of the government, called upon by the voice of the people, through their representatives, before the highest tribunal known to our constitution—that same tribunal that sanctioned his elevation—to answer for the abuse of the power with which he had been intrusted! It is a melancholy truth, that derogates much from the dignity of human nature, but it is a truth that has been for ages established by experience, that high and important powers have a tendency to corrupt those on whom they are conferred. Few minds are possessed of sufficient integrity and independence, when elevated above the ordinary level of the great mass of their fellow-citizens, to resist the impulse their high station gives them, to grasp at still greater powers, and prostitute those which they already possess.

Hence it has been the great exertion of all governments, who regard the rights and liberties of the people, and still must continue to be so, to watch over the conduct of the high and confidential officers of State, and guard against their abusing the powers reposed in them. For this purpose the mode of trial by impeachment was resorted to in very early times in that country from which we have derived most of our laws and usages. Near five hundred years ago, the representatives of the people in that nation felt themselves clothed with sufficient authority to check the abuses of power, in the highest officers under the Crown, by calling upon them by impeachment to answer before the House of Lords for their conduct, and punishing them for such acts as were unauthorized, illegal, or oppressive.

It was a wise and politic measure to have charges of this nature tried by the highest tribunal in the nation, that would not be *awed* by the great powers and elevated standing of the accused, nor influenced by the popular voice of the accusers, further than a strict regard to impartial justice would

require. As I conceive, therefore, that pure and unstained impartiality ought to be the characteristic feature in the trial by impeachment, I shall for myself, and I conceive I may in the name of the representatives of the people, utterly disclaim any design or wish that party considerations, or difference in political sentiments, should, in the remotest degree, enter into the investigation, or affect the decision of this question. Yet, in order to ascertain the motives that actuated the respondent, it may become necessary to notice the difference of political sentiments, so far as regarded the accused, and those who are stated to have been injured by his conduct, at the time those transactions took place, that gave origin to this prosecution.

In the view which I propose taking on this subject, I shall in the first place notice the provisions in the constitution relative to impeachment, and endeavor to ascertain the precise object and extent of such provision, so far as the same may relate to the present case.

The first provision in the constitution on this subject, (art. 1st, sec. 3,) declares, that the Senate shall have the sole power to try all impeachments. Here we discover the great wisdom of the framers of the constitution. The highest and most enlightened tribunal in the nation is charged with the protection of the rights and liberties of the citizens against oppression from the officers of Government under the sanction of law; unawed by the power which the officer may possess, or the dignified station he may fill, complete justice may be expected at their hands. The accused is called upon before the same tribunal, and in many instances, before the same men, who sanctioned his official elevation, to answer for abusing the powers with which he had been intrusted. Men who are presumed to have had a favorable opinion of him once, are to be his judges; no inferior or co-ordinate tribunal is to decide on his case, which might from motives of jealousy or interest be prejudiced against him and wish his removal. No, sir, his judges, without the shadow of temptation to influence their conduct, are placed beyond the reach of suspicion.

The next provision in the constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Here the constitution seems to make an evident distinction between such misdemeanors as would authorize a removal from office, and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of common law, and punishable by indictment. So far as the offence committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment, and punishable only by removal from office, and disqualification to hold any office; but so far as the offence is criminal, independent of the office, it is to be tried by indictment, and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As, if an officer take a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. Impeachment, therefore, according to the meaning of the constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation, than of a criminal prosecution. And though impeachable offences are termed in the constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer; and even treason and bribery can only be inquired into by impeachment, so far as the same may be considered as a violation of the duties of the officer, and of the oath the officer takes to support the constitution and laws of the United States, and of his oath of office; and not as to the criminality of those offences independent of the office. This must be inquired into and punished by indictment.

THURSDAY, February 21.

Mr. CAMPBELL, *in continuation.*

I will now proceed, as well as my indisposition will permit, to examine in a brief manner the second part of the subject, containing the several charges founded on the trial of Callender, at Richmond, as stated in the second, third, and fourth articles of the impeachment. I will consider these several articles in the order in which the transactions on which they are founded took place in court. In order to ascertain the motives that actuated the judge in this whole transaction, it will only be necessary to view his conduct as proved, so far as the same relates to this subject, previous to the trial. The

first account we have of the intended prosecution, or I might say persecution, of Callender, is at Annapolis. Here the judge received the famous book called the "Prospect before Us," and upon which the prosecution was founded, and here the determination was formed to convict and punish Callender. The respondent said he would take the book with him to Richmond; that the libellous parts had been marked by Mr. Martin, and that before he returned he would teach the lawyers of Virginia to know the difference between the liberty and licentiousness of the press; and that, if the Commonwealth of Virginia was not totally depraved, if there was a jury of honest men to be found in the State, he would punish Callender before he returned from Richmond. This is the evidence of Mr. Mason, nearly in his own words, and no person will pretend to doubt its correctness. What language could be used that would more clearly show the partiality and predetermination of the judge to punish Callender, and the spirit of persecution by which he was actuated? Again: on his way to Richmond, according to the evidence of Mr. Triplett, the judge reviles the object of his intended vengeance; states his surprise and regret that he had not been hanged in Virginia; remarks that the United States had shown too much lenity to such renegadoes; and after arriving at Richmond, informs the deponent he was afraid they would not be able to get the damned rascal at that court. Thus evincing in every stage of this business that intolerant spirit of oppression and vengeance that seems to have given spring to all his actions. After the indictment is found against Callender, the panel of the petit jury is presented to the judge; he inquires if he had any of the creatures called Democrats on that panel, directs the marshal to examine it, and if there were any such on it, to strike them off. This is the evidence of Mr. Heath, whose character and standing in society are known to many of the members of this honorable Court. And, though his evidence is opposed to the negative declarations of Mr. Randolph, who affirms that he did not present the panel of the jury to the judge, or receive such directions, yet I conceive the Court will give more weight to the affirmative declarations of Mr. Heath, with regard to these facts, than to the negative assertions of Mr. Randolph, who may have forgotten the transaction. This point rests upon the integrity and veracity of Mr. Heath. He could not receive the impression of these facts, unless the transaction had taken place; he could not reasonably be mistaken; the affair was new and extraordinary, and must have arrested his attention; and in this case there is no ground to make

allowance for a treacherous memory, for it is not pretended that the witness, Mr. Heath, has forgot the facts, but that they never existed. If you do not, therefore, believe the statement he makes, it must follow that you admit the witness has wilfully and corruptly stated a falsehood. This, I presume, will not be admitted. But, on the other hand, Mr. Randolph may have forgotten the transaction in the bustle of business, and this will account for the difference in the evidence of the witnesses without impeaching the veracity of either. This mode of reconciling the evidence is agreeable to the rules of law. I take the facts, therefore, as stated by Mr. Heath, to be correct, and they afford an instance of judicial depravity hitherto unequalled and unknown in our country—a direct attempt to pack a jury of the same political sentiments with the judge to try the defendant. This is a faint representation of the previous conduct of the judge relative to this subject, before whom the defendant was about to be tried, or rather before whom he was to be called for certain conviction and punishment, for it ought not to be dignified with the name of a trial. With this view, therefore, of the temper and disposition of the judge, and of his previous conduct on this occasion, we will examine the first important step taken in the trial, in which the designs of the judge begin more clearly to unfold themselves, viz: his refusal to postpone or continue the trial until the next term, on an affidavit regularly filed, stating the absence of material witnesses and the places of their residence, being the second charge in the fourth article.

The next charge which I propose to examine is contained in the second article of the impeachment, and consists in the judge's overruling the objection of John Basset, one of the jury, who wished to be excused from serving on the trial of Callender, because he had made up his mind as to the book from which the words charged to be libellous in the indictment had been drawn. The constitution secures to defendants charged with crimes, the right of a trial by an impartial jury; any thing, therefore, that goes to show that a man has made up an opinion with regard to the guilt or innocence of the accused, or with regard to the matter in question, or decided it in his own mind, proves him to be disqualified to serve as a juror, because it proves he is not impartial, has a bias upon his mind, and cannot be said to be indifferent. The same doctrine is supported by the laws of England. In order to show this, I will refer the Court to 3 Bac. Ab. (new ed.) 756, and also Co. Litt. 158; where it is stated, if a juror has declared his opinion, touching the matter in question, &c., or has done any thing by which it

appears that he cannot be indifferent or impartial, &c., these are principal causes of challenge; and therefore such juror would be disqualified. Here it is manifest, that though declaring an opinion is good cause of challenge to a juror, if it is not necessary he should declare such opinion in order to disqualify him; it is sufficient that he has done something, whether making up an opinion, or doing any act whatever, by which it appears he is not indifferent, is not perfectly impartial.

The next charge to be inquired into, is that stated in the third article, in rejecting the evidence of Colonel Taylor, a material witness in favor of the defendant, on the pretence that he could not prove the truth of the whole of one charge. In this instance the judge acted contrary to all former precedents in courts of justice, and without the shadow of law or reason to justify his conduct. Not a solitary case could be stated by any of the witnesses of a similar conduct in a judge. The rule here adopted, with regard to the admissibility of evidence, would deprive the jury of their undoubted right to decide on the credibility and weight of evidence, as well as on the extent to which it proved the matter in question; would transfer in substance this right to the Court, and thereby shake to its very centre the fabric so justly admired, and held so sacred, *of trial by jury*. It would make it necessary for the party to present to the Court all the evidence relied upon to make out his case. This evidence, the Court or judge would first deliberately examine, compare it with the charges or case to be supported, and if it did not, in his opinion, prove the whole of one charge, or go the whole extent of the case to be established by it, he would reject it, and not permit the jury to hear it. This would strip the jury of the very prerogative that renders this kind of trial so much superior to all others, that of deciding on the weight and credit of evidence.

But it is stated that Judge Griffin concurred with him in opinion, and this is insisted upon by the accused in different parts of his answer, as an excuse for the errors he committed, if, as he states, they were errors. This seems to be a kind of forlorn hope resorted to, when all other expedients fail. To this argument of the judge I would in this place answer, once for all, that it can be no excuse for him, nor any justification of his offences, that another has been equally guilty with himself; and it must strongly prove the weakness of his defence to rely upon this ground. Though Judge Griffin has not yet been called to an account for his conduct on this occasion, that is no reason

why he should not hereafter be made to answer for it. The nation has not said he was innocent, or that he will not be proceeded against for this conduct; and there is no limitation of time that would screen him from the effects of charges of this kind, if they should be brought forward and supported against him hereafter. No ground of excuse therefore can arise from the circumstance of Judge Griffin not having been called upon to answer for his conduct in this respect.

I will now proceed to notice very briefly the conduct of the judge in the subsequent part of this trial. Compelling the defendant's counsel to reduce to writing all questions to be asked the witness, was a direct innovation on the practice in our courts of justice, and tended to embarrass the management of and weaken the defence. It is proved by the testimony of all the witnesses, that no such practice ever prevailed in our courts of justice, for such a purpose as that avowed in this instance; the only cases in which it is required to reduce to writing questions to be asked a witness, and the only cases in which it can be proper or consistent with reason and justice to do so, are those in which an objection is made to a question proposed to be asked, on the ground of its being improper and contrary to the rules of evidence; and in order to ascertain the precise meaning and effect of the question, so as to decide on the objection made to it, it may be proper to require it to be reduced to writing, but it never was before done, so far as we can discover, for the purpose of ascertaining how far the witness could prove the matter in question, and whether he could prove the whole of one charge or not, and thereby decide whether the witness should or should not be examined. According to this rule the judge would first try the cause himself upon the evidence offered, by the questions thus reduced to writing, and if he did not consider such evidence fully sufficient to support the whole of the charge or case to which it was offered, he would reject it, and not permit the jury to hear a word of it, lest they might consider it stronger than he did, and give it sufficient weight to support the case to which it was offered. This mode of proceeding was left to be discovered and adopted by Judge Chase.

Barely to notice the conduct of the respondent, at Newcastle in Delaware, as charged in the seventh article, is sufficient to show that he was there actuated by the same spirit of persecution and oppression that has, as already stated, marked the whole of his conduct during the course of these

transactions. That he should descend from the elevated and dignified station in which he was placed as a judge, to hunt for crimes as a common informer against his fellow-citizens; urge the jury to take notice of, and present certain persons sufficiently designated though not named; and press the attorney for the district to search for evidence among the files of newspapers to support a prosecution, was degrading to the sacred character of a judge, and was perverting the judicial authority to a mere engine of persecution to answer party purposes. Of the same complexion with this is the conduct of the respondent in delivering an inflammatory and disorganizing charge to the grand jury at Baltimore, as stated in the eighth article of the impeachment. This proceeding evinced a mind inflamed by party spirit and political intolerance; it was calculated to disturb the peace of the community, and alarm the people at the measures of Government: to force them by the terror of judicial denunciation to relinquish their own political sentiments and adopt those of the judge. This was the favorite object of this whole proceeding, and to obtain it no means were left untried. It was attempted to excite the fears of the public mind, to destroy the confidence of the people in the administration of their Government. The judicial authority was prostituted to party purposes, and the fountains of justice were corrupted by this poisonous spirit of persecution, that seemed determined to bear down all opposition in order to succeed in a favorite object. Citizens of all descriptions felt alarmed at this new and unusual conduct. All the counsel at the bar, wherever the respondent went, though consisting of the ablest and most enlightened in the nation, were agitated into a general ferment, and the whole community seemed shocked at such outrages upon common sense; for to go to trial was to go to certain conviction. Is this, Mr. President, the character that ought to distinguish the Judiciary of the United States? No, sir. The streams of justice that flow from the American bench ought to be as pure as the sunbeams that light up the morning. The accused should come before the Court, with a well-founded confidence that the law will be administered to him with justice, impartiality, and in mercy. When this is the case, he submits without a murmur to his fate, and hears the sentence of condemnation pronounced against him, with a mind that must approve the justice of the law and the impartiality of those who administer it.

The decision of this cause may form an important era in the annals of our country. Future generations are interested in the event. It may determine a

question all-important to the American people; whether the laws of our country are to govern, or the arbitrary will of those who are intrusted with their administration. Mr. President, we, on this important occasion, behold the rights and liberties of the American people hover round this honorable tribunal, about to be established on a firm basis by the decision you will make, or sent afloat on the ocean of uncertainty, to be tossed to and fro by the capricious breath of usurped power and innovation.

Mr. CLARK addressed the Chair as follows—Mr. President: I rise only to make a few remarks on two of the articles, the fifth and sixth, that the counsel for the respondent may be possessed of all the points we mean to make. I will endeavor, in a few words, to state the practice which we think ought to have been pursued in the case of Callender. The practice in the federal courts is regulated by that in each State. If this position be correct, we contend, that the proper process in the case of Callender was a summons. An act of Virginia, passed in the year 1792, provides that the grand jury “shall present all treasons, murders, felonies, *or other misdemeanors whatsoever*, which shall have been committed or done within the district for which they are impanelled.”

By another act of Virginia, passed in the same year, it is enacted that, “upon presentment made by the grand jury of an offence not capital, the Court shall order the clerk to issue a summons or other proper process against the person or persons so presented, to appear and answer such presentment *at the next Court*, and thereupon hear and determine the same according to law.”

In this last provision, the words, “*or other proper process*,” have a direct application to the previous provision, which enacts that the grand jury shall present all treasons, murders, felonies, “or other misdemeanors.” For treasons, murders, and felonies, we admit that a *capias* is the proper process; and when the law directs *other proper process*, it had reference to a class of crimes where a *capias* was required. It is in vain alleged, that the counsel for Callender made no objection to the process issued. They were not at that time to be considered as his counsel; it was only after he was brought into court that their duty commenced.

Further, whether the proper process was a *capias* or summons, the law of Virginia requires that it shall be returnable to the next Court; and I contend

that this point is established by the English practice. To show which I refer to Hawkins's Pleas of the Crown, where it is stated that a *venire facias*, which is in the nature of a summons, is the proper process, and that it is returnable to the next Court.

It was surely, then, the duty of the judge to be acquainted with the laws of England, however unacquainted he may have been with the laws of Virginia. He cannot, therefore, on this ground, attempt a justification from ignorance. In his answer he informs us that ignorance of the law is no excuse. If it is no excuse in an unlettered individual, shall it constitute the apology of him who was expressly appointed to expound the law and administer justice? And if, on this occasion, he was not acquainted with the law, did it, therefore, become him to proceed with such fatal precipitancy? No sooner was the presentment made than the marshal, before any indictment was brought in, was despatched after Callender. We can only account for this by supposing that it was the intention of the judge to act in conformity to his previous declaration, however jocularly it may have seemed to have been made; and that this was one of the means he had determined to pursue in order to convict Callender, regardless of the dignity of his station or the innocence of the man. Having offered these remarks, I am instructed to say that the case is fully opened on the part of the prosecution.

Argument for the Defence.

MR. HOPKINSON.—MR. President: We cannot remind you, and this honorable Court, as our opponents have so frequently done, that we address you in behalf of the majesty of the people. We appear for an ancient and infirm man, whose better days have been worn out in the service of that country which now degrades him; and who has nothing to promise you for an honorable acquittal but the approbation of your own consciences. We are happy, however, to concur with the honorable Managers in one point; I mean the importance they are disposed to give to this cause. In every relation and respect in which it can be viewed, it is, indeed, of infinite importance. It is important to the respondent to the full amount of his good name and reputation, and of that little portion of that happiness the small residue of his life may afford. It is important to you, Senators and judges,

inasmuch as you value the judgment which posterity shall pass upon the proceedings of this day. It is important to our country, as she estimates her character for sound, dignified, and impartial justice, in the eyes of a judging world. The little, busy vortex that plays immediately round the scene of action, considers this proceeding merely as the trial of Judge Chase, and gazes upon him as the only person interested in the result. This is a false and imperfect view of the case. It is not the trial of Judge Chase alone. It is a trial between him and his country, and that country is as dearly interested as the judge can be, in a fair and impartial investigation of the case, and in a just and honest decision of it. There is yet another dread tribunal to which we should not be inattentive. We should look to it with solemn impressions of respect. It is posterity; the race of men that will come after us. When all the false glare and false importance of the times shall pass away; when things shall settle down into a state of placid tranquillity, and lose that bustling motion that deceives with false appearances; when you, most honorable Senators, who sit here to judge, as well as the respondent who sits here to be judged, shall alike rest in the silence of the tomb, then comes the faithful, the scrutinizing historian, who, without fear or favor, will record this transaction; then comes a just and impartial posterity, who, without regard to persons or to dignities, will decide upon your decision. Then, I trust, the high honor and integrity of this Court will stand recorded in the pure language of deserved praise, and this day will be remembered in the annals of our land, as honorable to the respondent, to his judges, and to the justice of our country.

We have heard, sir, from the honorable Managers who have addressed you, many harsh expressions. I hope, sir, they will do no harm. We have been told of the respondent's unholy sins, which even the heavenly expectation of sincere repentance cannot wash away; we have been told of his volumes of guilt, every page of which calls loudly for punishment. This sort of language but pursues the same spirit of asperity and reproach which was begun in the replication to our answer. But we come here, sir, not to complain of any thing; we come expecting to bear and to forbear much. It does, indeed, seem to me, that the replication filed by the honorable Managers on behalf of the House of Representatives and of all the people, carries with it more acrimony than either the occasion or their dignity demanded. It may be said that they have resorted for it to English precedent, and framed it from the replication filed in the celebrated case of Warren

Hastings. There is, however, no similarity between that case and ours. Precedents might have been found more mild in their character, and more adapted to the circumstances of our case. The impeachment of Hastings was not instituted on a petty catalogue of frivolous occurrences, more calculated to excite ridicule than apprehension, but for the alleged murder of princes and plunder of empires. If, however, the choice of this case as a precedent for our pleadings, has exposed us to some unpleasant expressions, it also furnishes to us abundance of consolation and hope. There, the most splendid talents that ever adorned the British nation, were strained to their utmost exertion to crush the devoted victim of malignant persecution. But in vain; the stern integrity, the enlightened perception, the immovable justice of his judges, stood as a barrier between him and destruction, and safely protected him from the fury of the storm. So, I trust in God, it will be with us.

In England, the impeachment of a judge is a rare occurrence. I recollect but two in half a century. But, in our country, boasting of its superior purity and virtue, and declaiming ever against the vice, venality, and corruption of the Old World, seven judges have been prosecuted criminally in about two years. A melancholy proof either of extreme and unequalled corruption in our Judiciary, or of strange and persecuting times amongst us.

The first proper object of our inquiries in this case is, to ascertain with proper precision what acts or offences of a public officer are the objects of impeachment. This question meets us at the very threshold of the case. If it shall appear that the charges exhibited in these articles of impeachment are not, even if true, the constitutional subjects of impeachment; if it shall turn out on the investigation that the judge has really fallen into error, mistake, or indiscretion, yet if he stands acquitted in proof of any such acts as by the law of the land are impeachable offences, he stands entitled to discharge on his trial. This proceeding by impeachment is a mode of trial created and defined by the constitution of our country; and by this the Court is exclusively bound. To the constitution, then, we must exclusively look to discover what is or is not impeachable. We shall there find the whole proceeding distinctly marked out; and every thing designated and properly distributed necessary in the construction of a court of criminal jurisdiction. We shall find, 1. Who shall originate or present an impeachment. 2. Who shall try it. 3. For what offences it may be used. 4. What is the punishment

on conviction. The first of these points is provided for in the second section of the first article of the constitution, where it is declared that “the House of Representatives shall have the sole power of impeachment.” This power corresponds with that of a grand jury to find a presentment or indictment. In the third section of the same article, the Court is provided before whom the impeachment thus originated shall be tried: “The Senate shall have the sole power to try all impeachments.” And the fourth section of the second article points out and describes the offences intended to be impeachable, and the punishment which is to follow conviction; subject to a limitation in the third section of the first article.

I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offence for which he could not be indicted. It must be by law an indictable offence. One of the gentlemen, indeed, who conduct this prosecution, (Mr. Campbell,) contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity, that a man might be twice punished for the same offence—once by impeachment, and then by indictment. And so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads.

The House of Representatives has the power of impeachment; but for what they are to impeach, in what cases they may exercise this delegated power, depends on other parts of the constitution, and not on their opinion, whim, or caprice. The whole system of impeachment must be taken together, and not in detached parts; and if we find one part of the constitution declaring who shall commence an impeachment, we find other parts declaring who shall try it, and what acts and what persons are constitutional subjects of this mode of trial. The power of impeachment is with the House of Representatives—but only for impeachable offences. They are to proceed against the offence in this way when it is committed, but not to *create* the offence, and make any act criminal and impeachable at their will and pleasure. What is an offence, is a question to be decided by the constitution and the law, not by the opinion of a single branch of the Legislature; and when the offence thus described by the constitution or the law has been committed, then, and not until then, has the House of

Representatives power to impeach the offender. So a grand jury possesses the sole power to indict; but in the exercise of this power they are bound by positive law, and do not assume under this general power to make any thing indictable which they might disapprove. If it were so, we should indeed have a strange, unsettled, and dangerous penal code. No man could walk in safety, but would be at the mercy of the caprice of every grand jury that might be summoned, and that would be crime to-morrow which is innocent to-day.

What part of the constitution then declares any of the acts charged and proved upon Judge Chase, even in the worst aspect, to be impeachable? He has not been guilty of bribery or corruption; he is not charged with them. Has he then been guilty of “*other high crimes and misdemeanors*?” In an instrument so sacred as the constitution, I presume every word must have its full and fair meaning. It is not then only for crimes and misdemeanors that a judge is impeachable, but it must be for *high* crimes and misdemeanors. Although this qualifying adjective “*high*” immediately precedes and is directly attached to the word “*crimes*,” yet, from the evident intention of the constitution and upon a just grammatical construction, it must be also applied to “*misdemeanors*.” Observe, sir, the crimes with which these “other high crimes” are classed in the constitution, and we may learn something of their character. They stand in connection with “*bribery and corruption*,” tried in the same manner and subject to the same penalties. But if we are to lose the force and meaning of the word “*high*” in relation to misdemeanors, and this description of offences must be governed by the mere meaning of the term “*misdemeanors*,” without deriving any grade from the adjective, still my position remains unimpaired, that the offence, whatever it is, which is the ground of impeachment, must be such a one as would support an indictment. “Misdemeanor” is a legal and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words their legal signification. A misdemeanor or a crime, for in their just and proper acceptation they are synonymous terms, is an act committed or omitted, in violation of a *public* law, either forbidding or commanding it. By this test let the conduct of the respondent be tried, and, by it, let him stand justified or condemned.

Does not, sir, the Court, provided by the constitution for the trial of an impeachment, give us some idea of the grade of offences intended for its

jurisdiction? Look around you, sir, upon this awful tribunal of justice—is it not high and dignified, collecting within itself the justice and majesty of the American people? Was such a court created—does such a court sit to scan and punish paltry errors and indiscretions, too insignificant to have a name in the penal code, too paltry for the notice of a court of quarter sessions? This is indeed employing an elephant to remove an atom too minute for the grasp of an insect. Is the Senate of the United States, solemnly convened, and held together in the presence of the nation, to fix a standard of politeness in a judge, and mark the precincts of judicial decorum?

If I am correct in my position that nothing is impeachable that is not also indictable, for what acts then may a man be indicted? May it be on the mere caprice or opinion of any ten, twenty, or one hundred men in the community; or must it not be on some known law of the society in which he resides? It must unquestionably be for some offence, either of omission or commission, against some statute of the United States—or some statute of a particular State, or against the provision of the common law. Against which of these has the respondent offended? What law of any of the descriptions I have mentioned has he violated? By what is he to be judged, by what is he to be justified or condemned, if not by some known law of the country; and if no such law is brought upon his case—if no such violation rises on this day of trial in judgment against him, why stands he here at this bar as a criminal? Whom has he offended? The House of Representatives—and is he impeached for this?

I maintain as a most important and indispensable principle, that no man should be criminally accused, no man can be criminally condemned, but for the violation of some known law by which he was bound to govern himself. Nothing is so necessary to justice and to safety as that the criminal code should be certain and known. Let the judge, as well as the citizen, precisely know the path he is to walk in, and what he may or may not do. Let not the sword tremble over his unconscious head, or the ground be spread with quicksands and destruction, which appear fair and harmless to the eye of the traveller. Can it be pretended there is one rule of justice for a judge and another for a private citizen; and that while the latter is protected from surprise, from the malice or caprice of any man or body of men, and can be brought into legal jeopardy only by the violation of laws before made known to him, the latter is to be exposed to punishment without knowing

his offence, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the opinions of a body of men to be collected four or five years after the transaction? A judge may thus be impeached and removed from office for an act strictly legal, when done, if any House of Representatives, for any indefinite time after, shall for any reason they may act upon, choose to consider such act improper and impeachable. The constitution, sir, never intended to lay the judiciary thus prostrate at the feet of the House of Representatives, the slaves of their will, the victims of their caprice. The judiciary must be protected from prejudice and varying opinion, or it is not worth a farthing. Suppose a grand jury should make a presentment against a man, stating that most truly he had violated no law or committed any known offence; but he had violated their notions of common sense—for this was the standard of impeachment the gentleman who opened gave us—he had shocked their nerves or wounded their sensibility. Would such a presentment be received or listened to for a moment? No, sir. And on the same principle, no judge should be put in jeopardy because the common sense of one hundred and fifty men might approve what is thus condemned, and the rule of right, the objects of punishment or praise, would thus shift about from day to day. Are we to depend upon the House of Representatives for the innocence or criminality of our conduct? Can they create offences at their will and pleasure, and declare that to be a crime in 1804, which was an indiscretion or pardonable error, or perhaps an approved proceeding in 1800? If this gigantic House of Representatives, by the usual vote and the usual forms of legislation, were to direct that any act heretofore not forbidden by law, should hereafter become penal, this declaration of their will would be a mere nullity; would have no force and effect, unless duly sanctioned by the Senate and the approbation of the President. Will they then be allowed, in the exercise of their power of impeachment, to create crimes and inflict the most serious penalties on actions never before suspected to be criminal, when they could not have swelled the same act into an offence in the form of a law? If this be truly the case, if this power of impeachment may be thus extended without limit or control, then indeed is every valuable liberty prostrated at the foot of this omnipotent House of Representatives; and may God preserve us! The President may approve and sign a law, or may make an appointment which to him may seem prudent and beneficial, and it may be the general, nay the universal sentiment that it is so; and it is undeniable

that no law is violated by the act. But some four or five years hence there comes a House of Representatives whose common sense is constructed on a new model, and who either are or affect to be greatly shocked at the atrocity of this act. The President is impeached. In vain he pleads the purity of his intention, the legality of his conduct; in vain he avers that he has violated no law and been guilty of no crime. He will be told, as Judge Chase now is, that the common sense of the House is the standard of guilt, and their opinion of the error of the act conclusive evidence of corruption. We have read, sir, in our younger days, and read with horror, of the Roman Emperor who placed his edicts so high in the air that the keenest eye could not decipher them, and yet severely punished any breach of them. But the power claimed by the House of Representatives to make any thing criminal at their pleasure, at any period after its occurrence, is ten thousand times more dangerous, more tyrannical, more subversive of all liberty and safety. Shall I be called to heavy judgment now for an act which, when done, was forbidden by no law, and received no reproach, because in the course of years there is found a set of men whose common sense condemns the deed! The gentlemen have referred us to this standard, and being under the necessity to acknowledge that the respondent has violated no law of the community, they would on this vague and dangerous ground accuse, try, and condemn him. The code of the Roman tyrant was fixed on the height of a column, where it might be understood with some extraordinary pains; but here, to be safe, we must be able to look into years to come, and to foresee what will be the changing opinions of men or points of decorum for years to come. The rule of our conduct, by which we are to be judged and condemned, lies buried in the bosom of futurity, and in the minds and opinions of men unknown, perhaps unborn.

The gentleman (Mr. Early) who has offered you his observations on these articles of impeachment, appears to have grounded his argument not on the evidence, but on the articles. Supposing, perhaps, that they would be proved, he has taken it for granted that they have been proved, and has shaped his remarks accordingly. Had we filed a general demurrer to these charges, thereby admitting them as stated, the argument of the gentleman might have had the force and application he intended. But, if I mistake not, the respondent has pleaded not guilty, and the case must therefore be decided by the amount of the evidence, and not by the averments of the articles. I admit, indeed, that the honorable Managers are put to some

difficulty in this respect. They are under the necessity of making their election between the articles and the evidence as the foundation of their argument; for they are so totally dissimilar, that they could not take them both; they meet in so few and such immaterial points, that no man can argue from them both for five sentences. This being the situation of the gentleman, he has thought proper to select the articles and the facts therein set forth as the foundation of his argument in defiance of the testimony. In the observations I shall have the honor to submit, I propose to take the evidence as my text and guide, and leave the articles to shift for themselves, under the care and patronage of our honorable opponents.

Upon reading this first article of impeachment against the respondent, after a due degree of horror and indignation at the monstrous tyranny and oppression portrayed in it, the first question that would strike the mind of the inquirer would naturally be, when did this horrid transaction take place—when and where was it that Judge Chase thus persecuted an unfortunate wretch to the very brink of the grave, from which he was snatched by the interference of executive mercy, shocked at the injustice of his condemnation? When were the rights of juries and the privileges of counsel and their clients thus thrown down and prostrated at the feet of a cruel and inexorable judge? What would this inquirer think and believe on being informed that these atrocious outrages upon justice, law, and humanity, were perpetrated five years since? Why and where has the justice of the country slumbered so long? What now awakens it from this lethargic sleep? Why has this monstrous offender so long escaped the punishment of his crimes? To what region of refuge did he fly? But will not surprise be greatly increased when it is told that at the time of the trial of John Fries, this injured and oppressed man,—at the very time when these crimes of the judge were committed, the Congress of the United States, the guardian of our lives and liberties, were actually in session in the very city where the deeds were done, and probably witnessed the whole transaction? I do not expect to be answered here, for I cannot suspect our honorable opponents of so much illiberality, that at that period the administration of our affairs was in the hands of the political friends of the judge, and therefore he was permitted to escape, however atrocious his crimes. Whatever, sir, may have been the character of that Administration, even if a weak and wicked one, as it has been represented, it could have no object in protecting any individual at so great a risk to themselves and their reputation. If Judge Chase had

really violated the law and constitution to come at the blood of Fries, and had done this in the face of the public, the Administration would have put too much at hazard by endeavoring to shelter him. I hope, however, no such reason will be given for the neglect of these charges; and as we most cheerfully and truly confide in the justice of the present Administration, we trust no such distrust will be avowed of the integrity of the former; we feel as safe under trial now as we should have done then, and look without distrust for the same impartial justice from this honorable Court, as we should have expected and received at any time.

This first article, sir, charges, “that unmindful of the solemn duties of his office, and contrary to the sacred obligations by which he stood bound to discharge them faithfully and impartially and without regard to persons, the said Samuel Chase on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, 1800, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust.” This general accusation is followed by three distinct specifications of offence, to wit:

“1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

“2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client:

“3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.”

In the whole of these specifications I am able to discover but one truth; the rest is wholly contradicted and disproved by the evidence. It is true, that

Judge Chase did form and reduce to writing, and, in a limited manner, deliver an opinion on a question of law, on the construction of which the defence of the accused materially depended—but when the article goes on to charge that this opinion tended to prejudice the minds of the jury against the case of John Fries the prisoner, before counsel had been heard in his defence, it is utterly unfounded and untrue. To whom was this opinion delivered? To the counsel for Fries and to the Attorney for the United States; and to no other person. The third copy, and but three were made, never was delivered to the jury or to any other person, and never could produce any prejudice or injury to John Fries—nor indeed was it ever intended to come to the knowledge of the jury, until they had completely heard the discussion of the case by counsel, when they were to have *taken out* with them this opinion of the judge upon the law of the case submitted to them. At that period of the trial when it was not only the right but the duty of the Court to state to the jury their opinion of the law arising on the facts, then, and not until then, was it the intention of the judge to communicate to them this deliberate opinion. Could this be done with any intention to injure or oppress the prisoner? If such was the intention of the act, then, and not otherwise, it was criminal. In inquiring into the nature of this act, I confine myself now to the forming and delivery of this opinion, and to decide its innocence or criminality we should consider it in relation to its *motives*, its *time and manner*, and its *consequences*. If nothing partial, oppressive, or corrupt, is to be found in any of these, I know not in what or whence the criminality is to be established. In deciding, sir, upon the *motive* which prompted the judge to this act, we must look for materials in the testimony: by this we must be governed, and not by the imputations, surmises, and constructions of our opponents, however eloquent and ingenious. The judge and his motives are not only strongly denounced in the article, but have also had the same fate from the mouths of the Managers. I take the evidence for my guide, and I know it will be the guide of this honorable Court.

What then, sir, is the whole amount of the crime of the judge on this occasion? That he, a law judge, had been bold enough to form an opinion—not on John Fries's case, or the facts or circumstances of it, for he knew them not; but on certain abstract points of law, without first consulting and hearing Messrs. Lewis and Dallas. And further, he had not only formed such opinions, but he had the audacity to put them into the hands of these

gentlemen, which, in the article of impeachment, is called “delivering the opinion.” The judge, then, on mature deliberation, from a full consideration both of English and American precedents and decisions, had really made up his mind upon what overt acts would constitute the treason of levying war; and to prevent mistake, he had reduced this opinion to writing, and for the information of the counsel on both sides (no partial selection) he gave a copy of this opinion to each of them, and intended to give another to the jury to take out with them. The jury should have this opinion where they could not mistake it, instead of their memories where it might be misunderstood. Is not this, sir, a fair and just epitome of the facts given in evidence? Is it not the full measure and amount of the judge’s crime and corruption?

We have heard much about the agitation of the bar on this occasion. The particular cause of it has not been clearly explained. It might have been produced by the demeanor of Mr. Lewis, which, from his own account, was violent and indignant, or it might have been the mere bustle produced by the different efforts that were made to get hold of the obnoxious paper which Mr. Lewis cast from him with so much feeling as too foul for his hand; or from a combination of these with other causes. Another circumstance equally immaterial has been dignified with much importance by the attention the Managers have bestowed upon it—I mean the *novelty* of the proceeding. Every witness was asked in solemn form, “Did you ever see the like before?” “How long have you been a practising lawyer?” “How many criminals have you defended?” “Was not this mode of forming and giving opinions by the Court a novelty to you?” Granted—it was a *novelty*—I say granted for argument’s sake—it was a novelty; and what follows? Is it therefore impeachable? Every innovation, however just and beneficial, is subject to the same consequence. But, sir, if this novelty proceeded not from impure intentions, and was not followed by oppressive or injurious consequences, where is its injustice or criminality? There were many other novelties in that trial. It was a novelty that a man named John Fries should commit treason, and be tried and convicted for it. I never heard of precisely the same thing before. It was a novelty that counsel should desert their cause in the abrupt manner in which it was then done. But I presume it will not be pretended that these things were wrong merely because they were novel; much less that a judge is to be convicted of high crimes and to be removed from office for a harmless novelty. The articles charge not the

judge with innovations and novelties in legal forms, but with depriving John Fries and his counsel of their constitutional rights; and if he has not done this, the rest is of no importance now. But what is this strange novelty that excites so much interest and alarm? Is it that a law judge had a law opinion, and was capable of making it up for himself without the assistance of learned counsel? I hope not. I should be sorry to suppose this is a novelty in the United States. Was it then the reducing this opinion to writing, putting it on paper with pen and ink, that makes the dangerous novelty? To have the opinion is nothing; but to write it constitutes the crime. And yet, sir, where is the difference to the prisoner? Except that in the latter case there is more certainty; less chance of misapprehension and mistake on the part of the jury than when it is delivered to them verbally. It should be recollected, sir, and I am sure it is too important to be forgotten by this honorable Court, this written opinion contained all the limitations and discriminations on the law of treason which could serve the prisoner, as well as those which might operate against him. But, sir, I deny that there was so much novelty either in forming this opinion, or in reducing it to writing, as is pretended. Is it uncommon for judges to state their opinions on particular points of law to counsel, even before argument, for the direction of their observations? And was it ever before considered a prejudication of the case, or an encroachment upon the rights of the bar? In criminal courts the practice is constant and universal. Previous to the trial of the cases of treason, after the restoration of Charles II., the judges of England met together, and did form and reduce to writing opinions, not only upon the mode of proceeding upon the trials, but also on all those questions or points of law which they supposed would arise and require their decision in the course of the trials. (See Kelynge's Reports, pp. 1, 2, &c.—11.) Here the judges met in consultation expressly for the purposes now deemed so criminal in Judge Chase, and took to their aid the King's counsel. Our judge did not take to his assistance the Attorney of the United States in forming his opinion; nor did the judges in England deliver to the counsel of the accused the result of their deliberations, but doubtless it would have been received as a favor if they had. In the only two points of difference, therefore, between the two cases, we have most decidedly the advantage.

Suffer me now, sir, to offer you some observations on the second specification of the first article of impeachment. I hope it will not be necessary to trespass greatly on your patience in refuting it. It charges Judge

Chase with “restricting the counsel for the said John Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client.” This charge consists of two parts; it complains of a restriction as to English authorities, and as to American statutes. I will consider them distinctly. First, sir, permit me to remark that these allegations are made to support the general charge of partiality, oppression, and injustice. But what becomes of these pretences when we bear in mind the testimony of Mr. Rawle, the district attorney, and always, and in every situation, a gentleman whose character, in all its relations both public and private, bears the first stamp of respectability, and fears no competition for credit? He has informed this honorable Court that this restriction so grievously complained of, and now the subject of a criminal prosecution, was imposed upon him as well as upon the counsel of Fries. Is this the character or the conduct of partiality or oppression? Does it evince that strong appetite the judge is said to have, to drink the heart’s blood of this unfortunate German, and stain the pure ermine of justice with his gore? I have always understood by partiality in a judge, a favoring bias to one party to the prejudice of the other; but where a restriction is put equally on both sides, I cannot conjecture how it can be resolved into partiality or oppression. It will be seen presently that as far as this restriction could have any operation, it was friendly in that operation to John Fries. But, sir, what was this restriction so much complained of, and now magnified into a high crime? That certain English decisions in the law of treason, made before the Revolution of 1688, should not or ought not to be read to the jury; and pray, sir, what were these decisions? I will take their character from Mr. Lewis himself, and no man is better acquainted with them. He says they were decisions of dependent and corrupt judges, who carried the doctrine of constructive treason to the most dangerous and extravagant lengths. True, they were so—sanguinary, cruel, and tyrannical in the extreme; and could the exclusion of such cases injure John Fries? If cases which extenuated and softened the crime of treason had been rejected, he might indeed have suffered; but how he was or could be injured by keeping from the jury those cases which aggravated his offence, I am really at a loss to learn. The restriction there was on the United States. Had they been adduced by the Attorney-General, no doubt they would have been ably answered by the defendant’s counsel; but the ability of the counsel was not

inferior to Fries's counsel; and if Judge Chase had indeed a design to oppress and injure John Fries, and to convict him on strained constructions of treason, his best policy would surely have been to have suffered these cases to have come forward, and if supported by his authority and the talents of the counsel of the United States, they might have had their influence with the jury, notwithstanding the able refutations they might have received.

May I not now flatter myself, sir, that all the criminality charged upon the respondent, in the second specification of the first article of impeachment, is washed away from the minds of this honorable Court? Under this hope and impression, I will proceed to consider, as briefly as possible, the third and last specification. In this the judge is charged with "debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law as well as on the fact which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give." This charge is absolutely unfounded and untrue, and is, in all its parts, most completely disproved by the evidence. As to debarring counsel from being heard, I need only refer you, sir, to the testimony of Messrs. Tilghman and Meredith, who expressly swear, that Judge Chase, when he threw down the paper containing the opinion the Court had formed on the law, explicitly declared, that, nevertheless, counsel would be heard against that opinion. It is, indeed, true that Mr. Lewis seems, throughout the business, to have been under an impression that nothing would be heard in contradiction to that opinion; and that his professional rights were invaded. But this appears to be a hasty and incorrect inference or conclusion of his own, from the conduct of the Court. He wholly misapprehended the Court, and has charged his misapprehension to their account. This is the usual effect of such precipitate proceedings. The Managers have greatly relied on this circumstance; they urge that Mr. Lewis, through the whole affair, and in all he said concerning it, took for granted and stated that he was debarred from his constitutional privileges. He did so; but he did so under a mistake of his own, not proceeding from the Court. It is not only that no other witness speaks of any such restriction, but expressly negative it and say, some of them at least, that none such was imposed; but Mr. Rawle has further informed you, that it appeared to him throughout the business that

Mr. Lewis had wholly misunderstood the Court and mistook their intention. But, surely, sir, we are not to be condemned because we have been misunderstood; especially as the mistake seems to have been peculiar to Mr. Lewis, and no other witness fell into the same error. I rely most implicitly on Mr. Rawle's testimony, not only from the strength and correctness of his character, but from the unusual pains he took to be accurate in his knowledge of this transaction. His notes are copious, connected, and satisfactory, and although he has no notes of the first day's proceeding, yet he seems to have given an uncommon and cautious attention to every circumstance to which he has testified. This gentleman negatives every idea of any restriction upon the arguments of counsel, and is supported by every witness but Mr. Lewis.

But, sir, there is one circumstance in this second day's proceeding, which has been introduced to show, that the respondent continued the same tyrannical spirit with which he is charged on the first day, and which it may be incumbent on him to remove. I mean the "unkind menace," as it has been termed by one of the witnesses, used to the counsel of Fries, when the judge told them they would proceed in the defence at the hazard or on the responsibility of their character. To ascertain the true nature of the expression, whatever it was, which fell from the Court in this respect, I will refer to the same guide I have endeavored to follow throughout my argument, I mean the evidence. The aspect of this pretended menace will then be changed into a complimentary confidence in the discretion of the counsel, or at least into no more than such a menace as every gentleman of the bar acts under in every case; that is, to manage every cause before a jury with a due regard to their own reputation; to urge nothing as law to the jury, which they are conscious is not law, and to introduce no matter which they know to be either improper or irrelevant. This, in its worst character, will be found to be the whole amount of this terrible menace. What account does Mr. Lewis give of this occurrence? After stating that the Court manifested a *strong desire* that he and his colleague should proceed in the defence of their client; that every restriction, if any had been imposed, was now removed, and that they were at full liberty to address the jury on the law and the fact as they thought proper; the judge said that this would be done "under the direction of the Court, and at the peril of their own character, *if we conduct ourselves with impropriety.*" And was it not so? And where is the criminality of saying so? Mr. Lewis did not consider this as a menace

intended to restrict him in the exercise of the rights just before conceded him by the Court, but rather as an unwarranted suspicion of his sense of propriety; for, says he, "I did not know of any conduct of mine to make this caution necessary."

A very strange and unexpected effort has been made, sir, to raise a prejudice against the respondent on this occasion, by exciting or rather forcing a sympathy for John Fries. We have heard him most pathetically described as the ignorant, the friendless, the innocent John Fries. The ignorant John Fries! Is this the man who undertook to decide that a law which had passed the wisdom of the Congress of the United States, was impolitic and unconstitutional, and who stood so confident of this opinion as to maintain it at the point of the bayonet? He will not thank the gentleman for this compliment, or accept the plea of ignorance as an apology for his crimes. The friendless John Fries! Is this the man who was able to draw round himself a band of bold and determined adherents resolved to defend him and his vile doctrines at the risk of their own lives, and of the lives of all who should dare to oppose? Is this the John Fries who had power and friends enough actually to suspend, for a considerable time, the authority of the United States over a large district of country, to prevent the execution of the laws, and to command and compel the officers appointed to execute the law to abandon the duties of their appointment, and lay the authority of the Government at the feet of this *friendless usurper*? The innocent John Fries! Is this the man against whom a most respectable grand jury of Pennsylvania, in 1799, found a bill of indictment for high treason; and who was afterwards convicted by another jury, equally impartial and respectable, with the approbation and under the direction of a judge, whose humanity and conduct, on that very occasion, have received the most unqualified praise of the honorable Manager who thus sympathizes with Fries? Is this the John Fries, against whom a second grand jury, in 1800, found another bill for the same offence, founded on the same facts, and who was again convicted by a just and conscientious petit jury? Is this *innocent* German the man who, in pursuance of a wicked opposition to the power and laws of the United States, and a mad confidence in his ability to maintain that opposition, rescued the prisoners duly arrested by the officers of the Government, and placed those very officers under duress; who, with arms in his hands and menace on his tongue, arrayed himself in military order and strength, put to hazard the safety and peace of the

country, and threatened us with all the desolation, bloodshed, and horror of a civil war; who, at the moment of his desperate attack, cried out to his infatuated followers, "Come on! I shall probably fall on the first fire, then strike, stab, and kill all you can?" In the fervid imagination of the honorable Manager, the widow and orphans of this man, even before he is dead, are made in hypothesis to cry at the judgment seat of God against the respondent; and his blood, though not a drop of it has been spilt, is seen to stain the pure ermine of justice. I confess, sir, as a Pennsylvanian, whose native State has been disgraced with two rebellions in the short period of four years, my ear was strangely struck to hear the leader of one of them addressed with such friendly tenderness, and honored with such flattering sympathy by the honorable Manager.

It is not unusual, sir, in public prosecutions for the accused to appeal to his general life and conduct in refutation of the charges. How proudly may the respondent make this appeal! He is charged with a violent attempt to violate the laws and constitution of his country, and to destroy the best liberty of his fellow-citizens. Look, sir, to his past life, to the constant course of his opinions and conduct, and the improbability of the charge is manifest. Look to the days of doubt and danger; look to that glorious struggle so long and so doubtfully maintained for that independence we now enjoy; for those rights of self-government you now exercise, and do you not see the respondent among the boldest of the bold, never sinking in hope or in exertion, aided by his talents and encouraged by his spirit; in short, putting his property and his life in issue on the contest, and making the loss of both certain by the active part he assumed, should his country fail of success! And does this man, who thus gave all his possessions, all his energies, all his hopes to his country and to the liberties of the American people, now employ the small and feeble remnant of his days, without interest or object, to pull down and destroy that very fabric of freedom, that very Government, and those very rights he so labored to establish? It is not credible; it cannot be credited, but on proof infinitely stronger than any thing that has been offered to this honorable Court on this occasion. Indiscretions may have been hunted out by the perseverance of persecution; but I trust most confidently that the just, impartial, and dignified sentence of this Court, will completely establish to our country and to the world, that the respondent has fully and honorably justified himself against the charges now exhibited against him; and has discharged his official duties, not only

with the talents that are conceded to him, but with an integrity infinitely more dear to him.

FRIDAY, February 22.

Mr. KEY.—Mr. President, I rise to make some observations on the second, third, and fourth articles of the impeachment. I shall not apologize for the manner in which I shall discharge a duty which I have voluntarily undertaken, but merely regret that indisposition has prevented my giving the subject that attention which it merits. It will be at once perceived that these articles relate to the trial of Callender. Before, however, I go into an examination of the second article, it may be proper to notice the situation in which the judge found himself and the state of the public mind at the time. The sedition law was passed in the year 1799. It immediately arrested the public attention, and strongly agitated the public feelings. In the State of Virginia it was peculiarly obnoxious; many of the most respectable characters considered it as unconstitutional, and as a violation of the liberty of the press; most deemed it impolitic; while some viewed it as a salutary restraint on the licentiousness of the press, more calculated to preserve than to destroy it. In this state of the public mind it became the duty of the respondent, in the ordinary assignment of judicial districts, to go into the district of Virginia, where he was entirely a stranger, to carry the laws into execution. It is scarcely necessary to observe that when laws are considered obnoxious, much of the odium attending them inevitably falls on those who carry them into effect. In May, 1800, Judge Chase went to Richmond to hold a court; and soon after it was in session, the grand jury found a presentment and afterwards a bill against James T. Callender for an infraction of this law, in publishing the book entitled “The Prospect before Us,” which brought into issue its constitutionality. Professional men of talents, carried along by the tide of public opinion, volunteered their services in defence of the accused; and every effort was exhausted to wrest the decision from the respondent. Exceptions were accordingly taken at every stage of the case; and when the jurors were brought to the book, a question arose which forms the foundation of the charge contained in the second article.

If we extract from this article the epithets it contains nothing will remain, and epithets fortunately do not constitute crimes. The offence and fact

charged is, the permitting Mr. Basset to be sworn on the jury with an intention to oppress the traverser, which is not in the least supported by the testimony. The article alleges that Mr. Basset wished to be excused. I appeal to the testimony, whether he did wish or desire to be excused. The observations he made arose entirely from a scruple in his own mind, and not from any objection to serving. Instead of his wishing to be excused, the real fact is that which he said flowed from the peculiar situation in which he stood; and he says that he declared himself willing to serve, provided in law he was competent. The fact, therefore, on which this article rests, is not supported by the testimony, and not being supported, I might here dismiss this branch of the subject without further animadversion.

Suppose we are mistaken in the fact, which we say is proved, that Mr. Basset did not desire to be excused; admit that he did pray to be excused; still, so far as he has himself, on oath, explained the situation of his mind, there was no cause for challenge.

Admit, also, that we are mistaken in the law we have laid down, does it follow as a necessary consequence that the directing Basset to be sworn on the jury, was done with an intent to oppress the traverser? We call for the facts that impeach the motives of Judge Chase. In the opening of this case we were told that the respondent was highly gifted with rich attainments of mind. It was correctly said; and it might have been added that his integrity was equal to his talents. But the observation was made to raise his head at the expense of his heart. I will examine this argument.

The truth is that no judge is liable for an error of judgment. I apprehend this is conceded by the article itself, which states a criminal intent. Now for the evidence. What criminal intention do the honorable Managers draw from it? It is said that the respondent is highly gifted with intellectual powers, and must have known in this instance the law. *Timeo Danaos et dona ferentes*. I dislike the compliment; the best-gifted mortals are frail, and a single erroneous decision may be made by any man.

I will now proceed to the third article, which, when correctly understood, will be found as destitute of impeachable matter as either of the other articles. It is as follows: "That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel

Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.”

In opening the case one of the honorable Managers inquired what human subtilty or ingenuity could devise to extenuate this act of the respondent. Our reply is that it requires no subtilty or ingenuity; that it was correct in point of law, and that the case is so clear, that he who runs may read. The Court must permit me to observe that the article presents an abstract case, not growing out of, or connected with the evidence. This Court, I apprehend, is not sitting here to decide this abstract point, whether in any case it is admissible to prove one fact contained in a particular charge by one witness, and one by another; but to determine whether in this case, where one witness was offered to prove part of one charge, and no other witness offered to the same charge, it was proper to receive testimony offered. I contend that the decision was correct on the case before the Court.

Mr. Robertson says, “The attorney for the United States having concluded, the counsel for the traverser introduced Colonel Taylor as a witness, and he was sworn; but at the moment the oath was administered, the judge called on them, and desired to know what they intended to prove by the witness. They answered, that they intended to examine Colonel Taylor, to prove that Mr. Adams had avowed principles in his presence which justified Mr. Callender in saying that the President was an aristocrat—that he had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Britain.” This was then the object and view with which Colonel Taylor was called on. What is the charge in the articles of impeachment? That the testimony of Colonel Taylor was rejected “on pretence that the said witness could not prove the truth of the whole of one of the charges, contained in the indictment, although the said charge embraced more than one fact.” The charge in the indictment is that the President “was a professed aristocrat; that he proved faithful and serviceable to the British interest:” and Colonel Taylor was called to prove that Mr. Adams had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Britain. Was it competent to Colonel Taylor to give evidence on this point? The best evidence the nature of the case will admit must be adduced. Colonel Taylor then was clearly an

incompetent witness on this point; as there was better evidence, the journals of this honorable body, within the reach of the traverser. It only then remained for Colonel Taylor to prove that the President had avowed principles which showed him to be an aristocrat; which, if proved, would have been altogether immaterial. To prove no other facts was he called upon. Are then counsel to be indulged in consuming the time of courts in the examination of witnesses, who have nothing relevant to offer?

I will now proceed to the fourth article, which contains five distinct specifications of facts charging misconduct on the respondent at Richmond.

This conduct is said to have been evinced, in the first place, “In compelling the prisoner’s counsel to reduce to writing, and submit to the inspection of the Court, for their admission or rejection, all questions which the said counsel meant to propound to the above-named John Taylor, the witness.”

If this was incorrect, I cannot perceive its injustice to Callender, nor its partiality or intemperance. But did the conduct of the Court in this instance correspond with the law and the practice? I apprehend that it did. I understand it to be a clear and admitted principle of law, that the Court is the only competent tribunal to determine the competency, the admissibility, and the relevancy of evidence; when admitted, its credibility is the exclusive province of the jury. I have before stated the reasons which rendered it necessary in this case to know what Colonel Taylor could prove. To understand the object for which he was produced with greater certainty and precision, the judge ordered the questions proposed to be put to be previously reduced to writing. I am not sufficiently acquainted with the practice in the courts of Virginia to say this was not novel, but I may surely venture to affirm that there was nothing criminal in it. I know well that in different States there are different forms of practice. I can only say, that Judge Chase, going from Maryland, where the practice does prevail, would naturally carry to Virginia the knowledge of the practice of the State from which he went.

The *second* specification is in the following words:

“In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and

although it was manifest that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.”

This charge is grounded on the fact of a refusal to postpone the trial on an affidavit. That the Court acted correctly in this instance will appear from this consideration. Nothing is more clear than that, under the common law, all applications for a continuance, on affidavit, are founded on the discretion of the Court. Is it not wonderfully singular that there should have been an application founded on an affidavit, if the law of Virginia, as stated in the 6th article, applied to the case? One thing is clear: either that the Attorney-General and Mr. Hay lost all recollection of the existence of this law of Virginia respecting continuances, or that they considered it inapplicable; for they would not otherwise have founded the application on an affidavit. They would have produced the law and have demanded a continuance. Did they do so? No. If, then, the law officer of the State and Mr. Hay both forgot that it existed, is it surprising that it should be unknown to Mr. Chase? If those gentlemen did recollect the existence of the law, they must surely have been of opinion that it did not apply to the case of Callender, or they would have saved themselves the trouble of filing an affidavit. It will however be shown that it did not apply, and hence their application founded on affidavit.

On the third specification, which charges the respondent with “the use of unusual, rude, and contemptuous expressions towards the prisoner’s counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of the judge did, at the same time, manifestly tend;” I have but a few observations to make. I should indeed have spared many of the remarks I have made, were it not for an ignorance of the peculiar ground on which the honorable Managers mean to rely in their reply, and were it not for the fear that an omission to notice any of the charges preferred, might be considered as an abandonment of our defence as far as related to them.

I have nowhere discovered in the evidence any thing that supports in point of fact the charge against Judge Chase, of falsely insinuating that the prisoner’s counsel wished to excite the public fears and indignation to produce insubordination to law. The judge did say that the counsel used a popular argument, calculated to mislead and deceive the populace; and this is the extent and head of his offending; but there is a wide difference

between this and the charge laid to his door. He told the counsel, and told them truly, that they were availing themselves of a popular argument, calculated to mislead and deceive the people. Attend, I pray you, to the testimony of Mr. Hay. Did not the counsel for the prisoner say they had no hope of exculpating him on the facts? Did they not say they did not argue for Callender? That it was the cause, and not the man, they defended? That they did not expect to convince Judge Chase, or any other federal judge, of the unconstitutionality of the sedition act? Were they not then laboring with their whole talents to catch the popular ear? Did they not expressly declare that they had little hopes of the jury, and that their object was to make an impression on the public mind? And when the judge declared that the constitutionality of the act could not be discussed before the jury, did they not, failing in their object, abandon the defence? The ground which they meant to have taken was withdrawn, and they withdrew with it.

As to the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel, no particular facts appear to be relied on. The term *captious* may be unusual; the phrase *young gentlemen*, which in the opening the honorable Manager metamorphosed into *boys*, but which last word does not by the testimony appear to have been used, may have been obnoxious to the ears of those to whom it was applied. There may not have been manifested in this language the most refined decorum; but let us recollect that our honorable client is not now on his trial for a violation of the decorums of society. Possessed of great ardor of mind and quickness of feeling, he conceives with rapidity, and expresses with energy his ideas. This may be a weakness; but it is a weakness of nature. Had he a colder heart, and weaker head, he might not be exposed to these little indiscretions. But where is the *vade mecum* from which a judge is to derive precedents for his behavior? Courts are instituted, not to polish and refine, but to administer justice between man and man. One judge may possess a more pleasing urbanity of manners than another; but are we to infer that because a man is warm in the expression of his sentiments, he is, therefore, angry? It will not be contended that when the counsel for the traverser spoke of the necessity of the indictment being *verbatim et literatim*, in the witty reply of the judge that they might as well insist that it should be *punctuatim*, there was any violation of decorum manifested. The reply grew out of the occasion, and never was a remark better applied.

I know of no other unusual language, except the expression of *non sequitur*; and surely there was nothing improper in that. We have been told that it is the usual habit of Judge Chase to interrupt counsel when they attempt to lay down as law that which is not law. In this case, he certainly did so; but it does not appear that he departed from his ordinary course; and if he had, where is the rule which, on such occasions, is to govern a judge? Such conduct, as I have before observed on another point, violates no moral obligation, infringes no statutory provision. The judge may not have displayed the urbanity, the suavity, and the patience, which so happily characterize some high characters; but where or when has the absence of these minor qualities been considered as criminal? Some of the witnesses, and among them Colonel Taylor, have described the conduct of the judge as imperious, sarcastic, and witty; but no witness has pronounced it tyrannical or oppressive.

With regard to the fourth specification, which relates to the interruption of counsel, I shall say but little. A judge has a right at all times to interrupt counsel whenever they act improperly. It is the inherent right of courts. When that is laid down as law which is not law, it is not only their right, but it is their duty, to stop them. Such interruptions may be considered vexatious by the counsel that are interrupted; but of such matters the Court only can be the judge. One witness, examined on the frequency of the interruptions of counsel on the trial of Callender, has said that more interruptions occurred in a case before Judge Iredell, whose eulogium has been pronounced by an honorable Manager; and another witness has informed us that it is the habit of Judge Chase frequently to interrupt counsel in civil as well as criminal cases; that the habit arises from the vigor of his mind, and the ardor of his feelings; that this is somewhat embarrassing to counsel, but that a little suavity on their part soon restores the judge to good humor. On this point I have no further observations to make. I will leave it to the good sense of this honorable body to determine how far the conduct of the respondent was, on this occasion, indecorous, and how far, on account of this conduct, he is liable to impeachment.

As to the fifth specification, which is in these words: "In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice." I have no precise idea

of the meaning of the term *indecent solicitude*—solicitude means *mental* anxiety. If we are to understand by solicitude that the judge felt anxiety for the furtherance of justice, that is simply an operation of the mind, and to determine whether it is praiseworthy or reprehensible, some overt act must be shown. For is it possible that, in any interesting case, a judge can sit on the bench without feeling some interest in the issue? This is more than falls to the lot of mortal. No, he must have feelings; and all that can be required is, that he restrain them from breaking out into acts subversive of justice. I will endeavor, on this point, to condense the testimony. It is said that the solicitude of the respondent is evinced by his indecent behavior to the counsel, and by his conduct previous to the trial. A jocular conversation is resorted to; and expressions made in the most unguarded moments are drawn forth in judgment against him. After he had delivered a charge at Annapolis, Mr. Mason came up to him, and asked him what kind of charge he had delivered, whether it was to be considered as legal, religious, moral, or political. To which the judge replied that it was a little of all. Some conversation ensued on the licentiousness of the press, and he observed that when he went to Richmond, if a respectable jury could be found, he would have Callender punished. All this is worked up, as it were by magic, to prove a deliberate purpose on his part to institute a prosecution. That a man of the intelligence of Judge Chase, had he conceived such a project, should thus jocosely, as is proved, and in public have divulged it, is beyond all belief. Let not a casual conversation of this light and sportive kind be tortured into evidence of a deliberate design. No man, the least acquainted with the general character of Judge Chase, will entertain the idea for a minute.

Another circumstance complained of, is, that Judge Chase was provided with a *scored* copy of “The Prospect before Us;” and this is adduced to prove his purpose to oppress Callender. But we have given it in testimony that this copy was scored by Mr. Martin, who handed it to the judge, when he was about going to Richmond, to amuse him on the road, and to make such other use of it as he pleased. What was there improper or indecent in this? Further: the respondent is next hunted through a line of stages on his passage from Dumfries to Richmond; and Mr. Triplet is brought forward to prove that he expressed a wish that the damned rascal had been hanged. Had there been a settled purpose to convict or oppress Callender, would it

not have been manifested by concealment and prudence, instead of being divulged by such an intemperate impulse of feeling?

We next find the respondent at Richmond. And here a gentleman states that having moved the Court for an injunction, he went to the chambers of Judge Chase on the subject, on the morning subsequent to the motion being made, and before the judge had gone to court; that while he was there, Mr. David M. Randolph, the marshal, came in, and showed the judge the panel of jurors for the trial of Callender; that the judge asked him whether there were on it any of the creatures called democrats; and added, if there are, strike them off. Here must be some mistake. The witness must have heard some other person say so. Sure I am that the testimony will show that the statement of Mr. Heath cannot be received as correct. I impute no criminal intention to the witness; this is not my habit; but, for ascertaining the weight which it ought to have, I will collect and compare the several parts of the testimony on this point.

It appears that Mr. Heath was at the judge's chambers but once. Mr. Marshall, the clerk of the Court, called on Judge Chase the same morning that Mr. Heath was there—he cannot recollect whether Mr. Randolph went with him, according to his usual practice, but he is certain, from a conversation he states, that they walked together to court; he met Mr. Heath either in the act of coming out of the judge's room, or exterior to the door; and he heard no such conversation as he relates. What says Mr. Randolph? That no such conversation ever did take place. Here, then, the testimony is directly opposed. But it is said that our testimony is negative, and is therefore outweighed by the positive testimony of Mr. Heath; this, however, is not the fact. Much of our testimony is positive. Mr. Randolph declares that he has never shown the panel of a jury to a judge, except in the case of a grand jury offered to the Court to select a foreman; and he is positive that the panel in the case of Callender was not made out until the morning of the third of July, in court, when his deputies came forward with the names of the jurors they had summoned, on small slips of paper; and in corroboration of this evidence, it appears on the testimony of Mr. Basset, who was sworn on the jury, that he was not summoned until the third of July; and that the marshal sent out his deputies that very morning to summon jurors. We oppose, then, to the simple declaration of Mr. Heath, unaccredited by other

witnesses, the clear and strong evidence of Mr. Randolph, corroborated by that of Mr. Marshall and Mr. Basset.

It does, then, appear to me that none of the alleged facts are so supported as to show an indecent solicitude on the part of the respondent.

Mr. LEE.—May it please this honorable Court: We are now arrived, Mr. President, in the course of the defence, to the fifth article of impeachment. I have, sir, been led to believe, that the present prosecution is brought before this honorable Court as a court of criminal jurisdiction, and that this high Court is bound by the same rules of evidence, the same legal ideas of crime, and the same principles of decision which are observed in the ordinary tribunals of criminal jurisdiction. The articles themselves seem to have been drawn in conformity to this opinion, for they all, except the fifth, charge, in express terms, some criminal intention upon the respondent. This doctrine relative to impeachment is laid down in 4 Black., 259, and in 2 Woodeson, 611. “As to the trial itself, it must of course vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of the alleged crimes. The judgment, therefore, is to be such as is warranted by legal principles and precedents.” The Constitution of the United States appears to consider the subject in the same light. By the third section of the third article, “the trial of all crimes, except in cases of impeachment, shall be by jury;” and by the fourth section of the second article, the nature and extent of the punishment in cases of impeachment is defined. Hence it may be inferred that a person is only impeachable for some criminal offence. With this view, I have examined and re-examined the fifth article of impeachment, to know against what the defence should be made. Looking at it with a legal eye, I find no offence charged to have been committed; and although it may seem strange, it is not the less true, this circumstance has produced the greatest difficulty and embarrassment in what manner the defence should be made.

In conformity to the rule of the Supreme Court and the authority of the case just cited, Judge Chase determined that the laws of the State of

Virginia, which require a summons to be issued in cases of the Commonwealth, did not apply to the courts of the United States. Why, let me again ask, should this section receive the construction contended for by the honorable Managers? It has been shown that the laws of the United States provide fully in regard to the process to be issued by their courts: that, for the furtherance of justice, such a construction is neither necessary nor convenient, and is inconsistent with other parts of the same statute. It is therefore perfectly correct in the Court to bestow no attention upon the laws of Virginia concerning the process to be awarded against Callender. When a presentment was found by the grand jury, it was the duty of the Court to act; it was their duty to award a proper process for arresting the offender. This is not only warranted by the principles and reasons already adduced, but is inferrible from various passages of the laws of Congress, particularly from the 19th and 20th sections of the statute passed 30th April, 1790, 1st vol. page 108.

I will now proceed to make some observations upon the sixth article of impeachment: “And whereas it is provided by the 24th section of the aforesaid act, entitled ‘An act to establish the judicial courts of the United States,’ that the laws of the several States, except where the constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the Court next succeeding that during which such presentment shall be made; yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the Court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.”

The charge in this article against the respondent is in substance that he, with intent to oppress and procure the conviction of Callender, ruled him to trial during the term at which he was presented and indicted, contrary to the laws of Virginia, which it is alleged have provided that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the next succeeding Court.

This article it is admitted does contain an accusation of crime; but I hope I shall be able to satisfy this honorable Court, that in this instance no crime or offence was committed. I shall undertake to show that no error in law was committed, and that if the judge had done otherwise he would have been more liable to censure than he now is. If this be made to appear, as a supposed illegality of his conduct is the foundation of the charge, there will remain nothing to support the charge.

The accused judge had sworn to support the Constitution of the United States, and to administer justice without respect to persons, and to perform all the duties of his office according to the laws of the United States. If in ruling Callender to trial at the same term at which he was indicted, he acted according to law, the judge performed his duty, and ought not to be charged with oppression.

The article may be understood as affirming, that there exists some law of Virginia which positively prohibits the trial of a misdemeanor at the same term at which the indictment is found. No such law has been produced, and I must be allowed to deny that any such law of Virginia exists. When the party appears and answers the presentment, the trial may immediately take place. When the party appears and answers an indictment, the trial may immediately take place, *if* so ruled by the Court, who are vested with a discretion unfettered by any positive statute. The defence of this article may therefore be placed on two grounds, either of which will be sufficient. 1st. There is no law of Virginia which prohibits the trial of a misdemeanor at the same term the indictment is found. And, 2dly. If there be such a law, the same is not binding on the courts of the United States, in respect to offences against the United States.

In cases where bail is requirable, to delay the trial may be used to the oppression of the accused. It is therefore enjoined by the constitution and by the laws that there shall be no delay. If the honorable judge, who stands accused of trying Callender too soon, had deferred the trial to another term, that is to say six months, and the traverser could not have given bail, he would have been imprisoned six months without a trial. After he was convicted, the sentence of imprisonment pronounced by the same judge was only an imprisonment of about nine months. He had acted, therefore, not only according to law, but with humanity, in bringing the traverser to trial at the same term at which he was indicted. If the trial had been postponed to

another term, and Callender in the mean time had been imprisoned, such a conduct in the Court would have given cause of complaint against the judge, who would then have been accused of postponing the trial of an innocent man, for the purpose of oppression. What in such a case ought the judge to have done? Exactly what he did. Obeying the constitution and the laws of the United States, he brought the traverser to a speedy and public trial.

It is, may it please the honorable Court, upon these grounds that the respondent stands justified in his conduct, in relation to the charge contained in the sixth article of impeachment.

In the distribution of the articles of impeachment among the counsel of the respondent, he assigned to me the 5th and 6th, and I humbly indulge the hope that the defence which has been made will be deemed satisfactory. But before I conclude, I hope I may be allowed shortly to advert to some of the remarks which have fallen from the honorable Managers in respect to this part of the accusation.

The honorable Managers have attempted to show a difference between a presentment and an indictment, and that until the indictment was found, a capias ought not to have been issued, even if it were lawful to issue it upon an indictment. That there is no such distinction, I appeal to those passages of the acts of Congress to which reference has been already made. I appeal to the reason of the thing and to the nature of a presentment. It is a species of indictment, an informal indictment; it is an accusation of a grand jury. There are cases where it would be improper in a court to wait until a presentment shall be put in the form of an indictment. Circumstances may be such that the offender would escape if process was not issued upon the presentment.

It has been objected that the judge misconducted himself towards the counsel during the trial of Callender in various instances, which it has been argued proceeded from a desire to convict and punish the traverser, howsoever innocent. I will observe with great deference, that if in the opinion of some gentlemen the judge did not act with becoming politeness to the counsel, it is not a high crime or misdemeanor that may be examined or tried in this honorable Court. But I trust, upon a view of the circumstances as they have been given in evidence, that this Court will be

of opinion that the respondent behaved to the counsel with sufficient propriety. One of the counsel, Mr. Wirt, offered to the Court a syllogism, to which the honorable judge promptly replied in a technical phrase of logic, and this excited in the audience some diversion. When another of the counsel, Mr. Nicholas, was speaking on the favorite topic of the right of the jury to consider the constitutionality of the sedition law, he was not interrupted by the judge. But Mr. Nicholas has been proved to have been always civil, always respectful to a court of justice, consequently the Court would be civil to him. A third counsel, Mr. Hay, who was extremely desirous, as he has himself testified, to make an oration, not only for the purpose of satisfying the jury but the audience that a jury had a right to judge of the constitutionality of the sedition law, was interrupted by the judge, who denied his position. Mr. Hay had stated other matters during the trial which appeared to the judge to be erroneous. He had stated that a jury in this case of Callender, was the proper tribunal to assess the fine, in which he had been corrected by the Court; that one of the jurors, Mr. Basset, was not qualified to serve, &c. His zeal in the cause of liberty and the constitution made him pertinacious in some things which the judge pronounced to be errors. It was no wonder then that such an advocate was stopped and often interrupted by the Court. If any thing was done amiss by the judge during the trial, it was his desiring Mr. Hay to proceed in his own way, and promising to interrupt him no more let him say what he would; but this circumstance plainly evinces that the interruptions did not arise from corrupt motives. It may truly be said that Judge Chase, in his behavior to counsel, was "all things to all men." To the logical Mr. Wirt, he was logical; to the polite Mr. Nicholas, he was polite; to the zealous and pertinacious Mr. Hay, he was warm and determined. If the counsel had conducted themselves with propriety towards the Court there would have been no interruptions; but when the judge found that the opinions of the bench were slighted, and that the conduct of the bar had a tendency to mislead and influence the public mind against a statute of Congress, he endeavored to turn their sentiments and reasoning into ridicule, and he produced by his wit a considerable degree of merriment at their expense, of which no doubt Colonel John Taylor, who has proved it for the prosecutors, was, from his natural temper, a full partaker.

You are now about to set an example in a case of impeachment which will have a most important influence in our country. It will be an example to

the tribunals in the several States who like you possess the power of trying impeachments, and who may learn from you by what rules the doctrine of impeachment is to be regulated. It will be a polar star to guide in prosecutions of this kind. You are about to set an example to the ordinary tribunals of justice in every corner of the United States. They will know how this high Court has done justice between the House of Representatives of the American nation and a single individual, and hence they may learn how to do justice to the most weak and friendless individual, when accused in their courts by the most powerful. An upright and independent judiciary is all-important in society. Let your example be as bright in its justice as it will be extensive in its influence. If the people shall find that their confidential servants, the House of Representatives, have brought forward an accusation against another of their servants for high crimes and misdemeanors in his exalted office, which after a fair and patient hearing has not been supported by evidence, it will afford them pleasure to hear of his honorable acquittal, and such, may it please this honorable Court, will be, I trust, the result of your deliberations.

SATURDAY, February 23.

Mr. MARTIN.—Mr. President: Did I *only* appear in defence of a friend, with whom I have been in habits of intimacy for nearly thirty years, I should feel less anxiety on the present occasion, though that circumstance would be a sufficient inducement; but I am, at this time, actuated by superior motives. I consider this cause not only of importance to the respondent and his accusers, but to my fellow-citizens in general, (whose eyes are now fixed upon us,) and to their posterity, for the decision at this time will establish a most important precedent as to future cases of impeachment.

My observations thus far have been principally with a view to establish the true construction of our constitution, as relates to the doctrine of impeachment. I now, Mr. President, will proceed to the particular case before this honorable Court; and, in the first place, I agree with the honorable Managers, that there is a manifest difference even between the credibility of witnesses, and the credibility of testimony, for, I admit, if witnesses are equally credible, and some swear that words were uttered, or acts were done, and others, that they did not hear the words, or that they did

not see the acts done, the presumption is certainly in favor of the positive, and against the negative testimony. But this must be admitted with considerable restrictions.

If immediately after a transaction, there is a full and clear memory of the words spoken, or the acts done, there is great reason to credit the testimony; but, even in that case, if there are a number of persons equally respectable, having equal opportunity to hear and see, and who were attentive to what took place, and none of them heard or saw what is testified by a single witness, there would be great reason to suspect the affirmative witness to be mistaken; more so if the transactions had happened for some years antecedent to the examination.

But, as to *Heath*, we do not contradict him *merely by negative testimony*; we contradict him by a series of positive facts which my honorable colleague (Mr. Key) has detailed, proved by characters, whose *veracity cannot be doubted*, which positive facts incontestably show that what he swore never could have taken place. And, here again, permit me, sir, to make a further observation, that, where a person is charged *criminally* for words he is supposed to have uttered, those words ought to be proved *with precision*. Every witness on *this* occasion, who hath been examined as to expressions used by my honorable client, either on the one or the other charge, which are held as exceptionable, declares he cannot pretend to recollect the express words uttered by the judge, but only to state what at this distance of time he can consider the amount of what was said. Nay, Messrs. Lewis and Dallas declare further, that they cannot pretend to say with accuracy, what part of the conversation, of which they give testimony, took place on the first or the second day, or in what order. Such kind of testimony, therefore, ought to be received with great caution, and not to be considered as conclusive.

Having laid down these general principles as to the relative rights and duties of the Court, the bar, and the jury, I shall proceed with my honorable client to the State of Pennsylvania.

It was known that John Fries, charged with treason, had, on a former trial, been found guilty, and that a new trial had been granted upon a suggestion, which I hope will not become a precedent, will never be a rule for decisions. When I say this, I mean not to detract from the merit of that

highly-respectable character who presided, and who granted the new trial. His conduct flowed, I am convinced, from his humanity; his was the error of the heart, not of the head. It was an honest, nay, an amiable error. My honorable client knew, when he arrived at Philadelphia, that the trial of Fries was to take place that term. He has been acknowledged by the honorable Managers, to be a gentleman of the highest legal talents. In this they have only done him justice; and have been as prodigal of their praise as his warmest friends could have wished. It would have given me great pleasure if they had been as just in expressing their sense of his integrity. He had been in the practice of the law for forty years, and also a judge for a number of years, and for about six years, I believe, presided in the criminal court of Baltimore County, where, during that time, there were more criminal trials probably than in any other court in America. I believe I speak moderately, when I say, that I have attended, on behalf of the State, at least five thousand criminal trials in that court. From those circumstances it is to be presumed that he was not deficient in knowledge of what related to criminal proceedings; but would he have acted the part of an upright judge, if he had not endeavored to make himself master of the law of treason, when a case of that nature was about to come before him; particularly the law of treason, as it related to levying war against the United States, or in adhering to those who levied war against them, which is the only kind of treason that our constitution acknowledges; although I have heard, I must own, of *treason* against the *principles* of the constitution, and *treason* against the *sovereignty* of the people—words well enough suited to a popular harangue, or a newspaper essay, but not for a court of justice.

When Judge Chase arrived at Philadelphia he had the advantage of perusing the notes of Judge Peters and the district attorney, relating to the former trial; he thereby became well acquainted with all the points at that time made by the counsel for Fries; and Mr. Lewis has sworn, that all the points which were intended to have been made before Judge Chase, had been made at the former trial. Why then should the Court either wish, or be obliged to hear counsel again on the law? In two previous cases the law had been settled. Judge Patterson, a gentleman of the first abilities, mild and amiable, whom no person will charge of being of a vindictive, oppressive disposition, and who certainly has more suavity of manners than my honorable client had, after a most patient and full hearing, where eminent counsel attended, decided the law as it was decided by the respondent.

Judge Iredell, whose encomium has been most justly given us by the Managers, a gentleman of great legal talents, than whom no worthier man has left this for a better world; and who, while living, honored me with his friendship, after having heard Messrs. Lewis and Dallas, and after full and patient investigation, gave, in the case of Fries himself, a similar decision; in both which opinions Judge Peters perfectly coincided. Under these circumstances, Judge Chase, who had no doubt of the propriety of those decisions, to prevent waste of time when there was so much business to transact, and to facilitate the business, thought it best to inform the counsel on each side, that the Court considered the law to be settled, and in what manner. For which purpose they delivered to the clerk three copies of their opinion, one for the counsel on each side, the third to be given to the jury, when they left the bar. On this subject, Mr. Lewis, in his testimony, said it was to be given to the jury when the counsel of the United States had opened, or after he had closed the pleadings, but he believed the last. Mr. Rawle is clear that it was to be given to them, when the case was finished, to take out with them.

No gentleman on behalf of the impeachment has denied the correctness of this opinion. But the criminality of the judge is, we are told, not in the opinion itself, but in the *manner* and the *time* in which it was given.

Was there any thing improper that the opinion should be reduced to *writing*? Why are opinions given? Surely to regulate the conduct of those to whom given; for this purpose they ought to be perfectly understood, and in no degree subject to misconception; delivering the opinion, *in writing*, greatly facilitates these objects; if, therefore, it was *proper* to give an opinion, it was *meritorious* to reduce it to writing, and Judge Chase, in so doing, most certainly acted with the strictest propriety. And, unless a court of justice is bound to sit and hear counsel on points of law, where they themselves have no doubts, before they give their opinion, my honorable client could not be incorrect in delivering it at the time when it was delivered. If the opinion was *proper*, how, I pray, could any *injury* be done to Fries by its being delivered? The honorable Managers say, it was intended to influence the jury. In the first place, this assertion is not supported by the evidence. When the paper was thrown on the clerk's table, not one word was said of its contents; nor did the Court declare any opinion on Fries's case. They only determined the indictment correct in point of

form, and not liable to be quashed. They determined that the overt acts stated were overt acts of treason, if Fries had committed them, but whether Fries had committed those acts remained for the jury to determine upon the evidence; as to that part of the case the Court gave no opinion. But the honorable Managers have told us that Judge Chase must have known what were the facts in the case, because they had been disclosed in the former trial. And I pray you, sir, if he had the knowledge, could it *alter the law in the case*, or render the declaration of what the law was *more improper*? But, as a new trial was granted, the judge could not know what additional evidence might be brought forward to vary the case from its former appearance.

But if the opinion had been publicly read and known, how could it have *injured* Fries? He was to have an *impartial* trial. What is the meaning of these expressions? It is a trial according to law and fact, in which, if he is proved innocent, he shall be acquitted; if guilty, convicted. If, then, the opinion was agreeable to law, it could not prevent, it could not interfere with his having an impartial trial. If in any case a person is acquitted, when the facts are clearly proved, and the law is against him, it must be because he has had a *partial*, not an *impartial trial*.

Well, be it so, and let us consider the trial of Fries as if it had been conducted on that principle. The judges, with their minds like this white sheet of paper, were to sit still and suffer the counsel to scrawl thereon whatever characters they pleased, to blot and to blur it, until they were perfectly satisfied. After this ceremony, the judges, examining the impressions thus made upon the antecedent clean sheet, were from these, and these *only*, to form their opinion of the law; and this opinion, having been thus formed from nothing but what occurred *during* the trial, and *after* the jury were sworn, would not be called a prejudicated opinion, and therefore, I presume, would be perfectly satisfactory to the honorable Managers. So far we should have done very well as it related to the trial of Fries. But next day another criminal is to be tried for a *similar* offence; Messrs. Lewis and Dallas are not his defenders. Getman has selected Mr. Tilghman for his counsel. How, I pray you, are the judges to be qualified to preside with propriety in this trial? Yesterday they gave a solemn determination in Fries's case upon the *same* question of law which now must come forward in the case of Getman. Mr. Tilghman was not then

heard. The opinion then given is, as *to Mr. Tilghman and his client*, as much a prejudicated opinion, an opinion as contaminating to the hands of a lawyer to receive, and as highly criminal for a court to give, as was the opinion given by my honorable client. What can be done? The minds of the judges are *no longer a pure unsullied sheet of paper*. Yesterday, in the trial of Fries, they had been scrawled upon and sullied by Lewis and Dallas; the impressions still remain. I, sir, can think of no remedy in this difficulty, except that the judges should be supplied with a reasonable quantity of *India rubber*, or something which will answer in its place, with which they might wipe off and erase every impression which had been made the day before by Lewis and Dallas, during the trial of Fries; and thus *once more* take their seats on the bench for the trial of Getman, with minds again like clean sheets of white paper, ready to be again scrawled over, again to be blotted and blurred at the pleasure of Mr. Tilghman, and from these scrawls, blots, and blurs, and from these *alone*, to take their impressions as to the law, and form their decision as to Getman's case, without regarding, or even *remembering* the decision they had given the day before; and in this manner to proceed in every case that might come before them successively in their judicial capacity.

I shall conclude what relates to this article by observing that the conduct of Fries's counsel to the Court on that trial was such as nothing can excuse. It can only be palliated by the reflection, that for his crimes he was liable to suffer death. Feelings of humanity and compassion, independent of interest, might excite in their bosoms an earnest anxiety to save his life; this may serve to mitigate censure; but even those feelings, however amiable, ought not to be gratified at the expense of national justice, nor by an endeavor to stamp upon judges of uprightness and integrity the dishonorable charge of partiality and oppression. I fear, sir, I have been tedious on this article; but it will be considered that, whatever may be my own sentiments of the futility of any part of these charges, I cannot determine how far this honorable Court may correspond with me in sentiment; nor can I do otherwise than treat, as of consequence, any charge brought forward by the honorable House of Representatives, or not consider it as being of importance.

The second article goes on to charge Judge Chase with overruling the objection of John Basset, who wished to be excused from serving on the

jury in the trial of Callender, and causing him to be sworn, and to serve on the said jury by whose verdict Callender was convicted.

This article requires a discussion of the law relating to challenges of jurors, and whether Mr. Basset was legally sworn on that jury. And here again, as well as in the case of Fries, I meet with the most perfect novelties, for except in those trials I never heard of jurors, when called to be sworn, examined on oath whether they had formed, or formed or delivered, or whether they had formed and delivered an opinion on the subject about to be tried. And here also let me observe, that there is no just grounds for the charge that Judge Chase from partiality administered the oath differently in Callender's case from the manner in which he administered it to the jurors in the case of Fries; for Mr. Rawle, referring to his notes taken at the time, has told us that in the case of Fries, one or two of the first jurors were only asked whether they had formed an opinion, after which the question was put whether he had formed *or* delivered an opinion, but ultimately the question asked was, whether they had formed *and* delivered an opinion, which question was put to the greater part of the jurors; so that the interrogatory *ultimately* fixed upon in the case of Fries, is the same which was put to all the jurors who were interrogated in the case of Callender.

I have, Mr. President, been in the practice of the law for thirty years. Before the Revolution I attended, two or three years, the two counties on the Eastern Shore of Virginia—Sussex County in Delaware, and Somerset and Worcester in Maryland; since the Revolution I have constantly attended the general courts on the Western and Eastern Shores of Maryland, and the civil and criminal courts of Baltimore County, and for about six years several other counties in Maryland. In the whole course of my practice, I have never known a single case, either civil or criminal, in which the jurors have been, when called to the book, demanded to answer upon oath either of the aforesaid questions which the defendant's counsel requested to be put to them.

If either party choose to challenge a juror for favor, on account of declarations made by the juror, the only ground for it is that he has used expressions showing his determination to decide for one party or the other without regard to truth and justice. In which case the party makes his objection to the particular juror, specifying the expressions uttered by the juror indicative of such improper determination, and produces witnesses to

establish his objection; for the juror cannot be examined on oath to substantiate the charge; and, unless by mutual consent, the objection made must be decided, not by the Court, but by triers. And the only matter to be decided is, whether the juror has made any declaration of a design to give a verdict one way or the other, whether right or wrong; for if the juror made the declarations from his knowledge of the facts in the case, this would be no cause of challenge, nor any objection to his being sworn on the jury. And as the juror himself against whom such objection is made cannot be examined on oath, it follows, of course, he cannot be challenged for having formed an opinion, but only for having delivered it, as third persons cannot know of an opinion being formed but by its having been delivered. And, as I have observed already, even the delivery of an opinion is no cause of challenge, if it appears to have been founded upon the juror's knowledge of facts, and not from partiality. In consequence of this principle of law, it can be no objection against a juror being sworn, even though he should have the most perfect knowledge of every fact relative to the issue, to try which he is about to be sworn; on the contrary, the principal reason assigned why trials ought to be by jurors from the vicinage, is the presumption that they will be best acquainted with the facts which will be put in issue for their decision.

I now come, Mr. President, to the third article, wherein my honorable client is criminally charged for the rejection of the evidence proposed to be derived from Colonel John Taylor.

In this part of the case the facts are admitted. The next question of law, therefore, which presents itself for discussion is, whether or not Col. Taylor's evidence ought to have been received, or was properly rejected. Here again I must observe that the honorable Managers, to support their charge, resort to principles which are to me, to the last extremity, strange and novel. We are told that the Court have no right to order questions which are meant to be put to a witness to be reduced to writing. Nay, that the Court have no right to know what evidence is meant to be given by the witnesses, or its connection with other testimony, or its bearing on the cause, but to receive it drop by drop, as the counsel think proper to deal it out. In answer to these extraordinary ideas which we have had thus introduced, I must be permitted to assert that the Court have, in my opinion, an undoubted *right* to require of the counsel that they should open their case, explain the nature of the evidence meant to be given, and on the

production of a witness, state what they expect to prove by such witness. In the course of my practice it has been the usual method of proceeding for counsel to conduct themselves in this manner, and on this subject McNally, in his rules of evidence, page 14, expressly lays it down as a *rule*, “that counsel ought not to call a witness without first opening to the Court the nature of the evidence they intend to examine into. This has been *often solemnly adjudged*, though *not strictly adhered to in practice*.” And in page second he gives us as the *first* rule, “that no evidence *ought to be admitted to any point* but that on which the issue is joined.” But how is a court to prevent, and it is only the Court which can prevent, evidence being admitted which is not pertinent to the point on which the issue is joined, unless they are first informed what evidence is meant to be given? It is then upon the authority of McNally established that the Court have the legal right to know what counsel mean to prove by a witness; and having that right, they may exercise it whenever, in their discretion, they may think it necessary.

Let us now examine the set of words to which Colonel Taylor’s evidence was meant to apply; they were without any innuendo, as follows: “He was a professed aristocrat; he had proved faithful and serviceable to the British interest.”

This sentence consists of two separate distinct clauses or parts; the first, that “he was a professed aristocrat;” the second, that “he had proved faithful and serviceable to the British interest.” I ask this honorable Court if either of these clauses or parts, of themselves, and without an innuendo, carry with them any charge of criminality, or any thing libellous? To say that a man is an aristocrat, a democrat, or a republican, is not of itself charging the person with any thing criminal, nor is it slanderous, unless indeed the charge is accompanied with an innuendo, stating that, by the epithet so *used*, something very bad was intended; and *that* government would indeed merit contempt in which a person should be punished upon such a charge. So, also, to say that a man had been faithful and serviceable to the British interest charges him with nothing criminal, and therefore cannot be slanderous, because the British and the American interest in many instances have been and may be the same.

There may be a variety of instances in which the interest of two nations may concur. There have been many in which the interest of America and of

Britain did concur; many also in which the interest of America and France have combined. In the first instance a man may have been faithful and serviceable to Britain, in the other to France, without the violation of any duty to the United States—without having been guilty of the least criminality.

The sentence then taken altogether, connecting the two clauses, does not of itself import any thing criminal, and consequently is not slanderous, if it remained without any innuendo; and if it was free from an innuendo, being not slanderous, would not require any evidence relative thereto. Nay, it would be no part of the charge put in issue, for in legal construction it is only such part of the publication stated in an indictment which is slanderous; that is the point in issue.

As to the second question, to wit: “Whether Mr. Adams, while Vice President, had expressed his disapprobation of the funding system?” the question could not be in any degree relevant to the one or the other clause in the sentence. Whether Mr. Adams expressed his disapprobation, while he was Vice President, of the funding system, or not, could in no respect go to prove or disapprove his being a professed aristocrat, or his having sacrificed the interest of the United States to the interest of Great Britain. The Court, therefore, considering this question totally irrelevant to the “point in issue,” did as was their duty to do, they refused to suffer it to be put to the witness.

So much for the two first questions. We now come to the third, respecting the votes of Mr. Adams, when Vice President, against the bill for the sequestration of British debts, and the bill for suspending intercourse with Great Britain. For the conduct of my honorable client in refusing to permit this question to be put to Colonel Taylor, two reasons may be assigned; the first, that if the fact was as stated, it could not be proved by Colonel Taylor. The second, that if the fact was established it would be totally immaterial to the issue; Colonel Taylor’s evidence was not the best which the nature of the case admitted. I will not say that the traverser, in order to prove this vote, was under the necessity of procuring a copy from the Journal of the Senate, properly authenticated by their clerk, but he certainly ought at least to have produced a printed copy of the votes and proceedings of the Senate, as published by them. One thing at least is certain, that the traverser could not, consistently with rules of law, give parol evidence to establish the vote of Mr. Adams, and therefore that Colonel Taylor could not be legally

examined on that subject. But I will go further in defence of my client, and will say, that if they had had the best possible evidence of the fact, if they had had an attested copy from the records of the Senate, the judge would have departed from his duty if he had permitted the evidence which was wished to have been obtained from Colonel Taylor to have been given to the jury. Ought any evidence to be given to a jury which is not proper and pertinent to prove the *fact in issue*, or to prove some fact from which the fact in issue *ought* legally to be *inferred*—evidence not relevant to the point before the Court and jury? Was not, as to this part of the charge, the fact in issue, whether Mr. Adams had swerved from his duty by intentionally prostrating the interest and welfare of his country to the interest and welfare of Great Britain? Should not a charge of so atrocious a nature be proved by some direct act of this criminal sacrifice of the interests of the United States to the interest of Great Britain, or by the proof of some other act from which such criminal sacrifice must and ought on principles of law to be clearly and necessarily inferred? And what was the proof proposed to be offered for the purpose? That upon the question whether British debts should be sequestered, and whether our intercourse with Great Britain should be suspended, after full discussion one-half the members of the Senate voted in favor of those measures, and one-half of the Senate against them; and that in this situation Mr. Adams, thinking them of too hazardous a nature, and such as might involve our country in a war, did not choose to take upon himself so great a responsibility as to give his casting voice in the affirmative.

I shall now, sir, proceed to the fourth article, which charges the respondent's conduct to have been marked during the whole course of the trial by manifest injustice, partiality, and intemperance.

From the evidence it certainly appears that Judge Chase prevented the counsel from arguing to the jury that the sedition law was unconstitutional; and this seems to have given rise to a great portion of the altercation and ill-humor between the Court and the bench.

I admit that the constitution gives to a criminal the right of having counsel; but the constitution has not defined the rights or duties of counsel, or to what extent they are to exercise them. One thing, however, is certain; that they have no constitutional right to impose upon the Court or mislead the jury.

When Callender's counsel contended that if the jury have a right to decide questions of law, then the constitution being the supreme law of the land, the jury must of course have the power of deciding on the *constitutionality* of a law; the judge might well say it was a *non sequitur*.

What has been allowed to the jurors as their incidental right on the general issue? Not to decide whether there is an existing law, or whether a law is in force, but to declare the true construction of an *existing* law, and whether the case at issue comes within the true construction of such law.

But those who contend that the jury have a right to determine the constitutionality of a law, insist not for the power of the jury to decide its true construction and whether the prisoner's case comes within it, but to decide whether what is produced as law is not void, a mere nullity, a dead letter; or in other words, whether such a law is in existence. The maddest enthusiasts for the rights of jurors, their most zealous advocates, have never contended for such a right before the cases of Fries and Callender. Whether a law exists, whether a law has been enacted, whether a law has been repealed, whether a law has become obsolete or is in force? The decision of these questions hath always been allowed the exclusive right of the Court. The power of the Court to decide exclusively upon these questions hath never been before controverted. Nay, the very right claimed on behalf of jurors, that they may determine what is the true construction of the law, and whether the case is within its provisions, of itself necessarily presupposes, and is predicated upon the *existence of a law*, the *construction or meaning of which* they are to determine. It has indeed been seriously questioned, and that by gentlemen of great abilities, whether even the Judiciary have a right to declare a law, passed by the Legislature, to be contrary to the constitution and, therefore, void! I shall not enter into an examination of that question, but I have no hesitation in saying that a jury have no such right, that it never was intended they should have such right, and that if they had the right, we might as well be without a constitution.

The first specific instance of my client's unjust, partial, and intemperate conduct, which is stated in this fourth article is, that he compelled the traverser's counsel to reduce to writing the questions which they meant to propound to Colonel Taylor. The correctness of this procedure will depend on the question whether the Court had by law such a power, for if such a power was possessed by them, it is to be presumed that they, on that

occasion, exercised it according to their best discretion, nor can it be inferred that their conduct was criminal, because the procedure was *novel* in Virginia. There are cases in which the practice of a court may be considered the law of the court; but these are not in any manner analogous to the case in question; nor do I find the *practice* of the State courts is obligatory “in any case of this kind on the courts of the United States.” My honorable client did not consider what was usual in Virginia, but what was correct and proper; he knew that the law authorized him to make this demand. In Maryland, where he imbibed his legal knowledge, and where at the bar and on the bench he had carried it into practice, nothing was more common than for questions to be reduced to writing at the request of counsel, or at the request of the Court. If counsel doubt of the propriety of the evidence meant to be drawn from the witness, or the correctness of the question meant to be propounded to him, they have a right to request it to be reduced to writing. So also, if the Court, without whose approbation no testimony can be given to a jury, and whose duty it is to prevent improper testimony to be given, has reason to suspect an intention to introduce such evidence, they have a right, and they ought to require the questions to be reduced to writing, that there may be no misapprehension of the tendency of the question, and that they may more deliberately decide whether it is proper to be put to the witness. And in this case, the counsel were not required to reduce their questions to writing in the first instance, or before they had stated what they had meant to prove, as hath been suggested. When Colonel Taylor was called and sworn, the Court desired to be informed what they meant to prove by him. McNally is an authority that in so doing they acted legally. The counsel stated the facts, to prove which Colonel Taylor was called; upon which, the Court doubting the admissibility of the testimony directed the question to be reduced to writing for their consideration. It cannot for a moment be seriously contended, but that the Court had a right so to do. As my respectable colleague (Mr. Key) has observed, the practice of this honorable Court during this trial, hath perfectly sanctioned that part of my client’s conduct. If at any time a question has been put, the propriety of which hath been doubted, it has been directed to be reduced to writing. It is true, that this has been, principally, when an objection has been made by the counsel; but there can be no doubt, that if any honorable member of this Court had apprehended the question to be improper, the Court would have had a right, and would have directed the question to be propounded in

writing for their consideration. The propriety, the principle, in each case is the same. On this part of the charge I need not dwell any longer.

The *next instance* of the judge's conduct specified in this article is his refusal to continue Callender's case to the next term, notwithstanding the affidavit filed, and the applications made. On this subject, I shall not make many observations as to the law; but I may venture to assert that the conduct of Judge Chase in this instance also appears to have been free from any corrupt or oppressive motive or design; no part of his conduct on this occasion has been produced to show that he entertained a disposition to prevent Callender from obtaining the testimony of his witnesses, or deprive him of the necessary time to procure their attendance. Let it be recollected that the first affidavit prepared and proposed to be filed in order to obtain a continuance of the cause was a general affidavit. By the laws of England a general affidavit is not sufficient to entitle the party to a continuance, and upon principles of law as adopted in England and the United States, at least in Maryland, a supplemental affidavit cannot in a case of this nature be received.

If, then, Judge Chase had wished that Callender should have been, at all events, prevented from a continuance of his cause, he would have suffered them to file their general affidavit.

Why should capital cases, rather than inferior crimes, be tried at the first court? The honorable Managers admit that it is the general rule not to continue, but to try at the first term, capital cases. Surely if indulgence, if delay is necessary in any case, it is in a capital case, where life is at risk; where an injury, if done, is irretrievable!

There are many reasons which show the propriety that prosecutions of every kind should be decided with as little delay as possible. One of the principles as to criminal jurisprudence, as Governor Claiborne has justly observed, is, that though punishments should be mild, yet they ought to be *speedy*; by having an immediate decision there is a great certainty that the criminal shall not elude justice by flight.

The next specification, in this article, of improper conduct in the judge, is, that he "used *unusual, rude, and contemptuous expressions* towards the prisoner's counsel; and insinuated that they wished to excite the public fears and indignation, and to produce that insubordination to the law, to which

the conduct of the judge did at the same time manifestly tend.” As to this part of the charge, there is but little of a legal nature contained in it, I shall, therefore, hastily pass over it. If true, it seems to be rather a violation of the principles of politeness, than of the principles of law; rather the want of decorum, than the commission of a *high crime and misdemeanor*. I will readily agree that my honorable client has more of the “*fortiter in re*,” than the “*suaviter in modo*,” and that his character may in some respects be considered to bear a stronger resemblance to that of Lord Thurlow than to that of Lord Chesterfield; yet Lord Thurlow has ever been esteemed a great legal character, and an enlightened judge.

But let me ask this honorable Court whether there is not great reason to believe that the sentiments my honorable client expressed with respect to the conduct of the counsel, and their object, was just and correct? What was the conduct of Callender’s counsel? Was it not such as immediately tended to inflame the minds of the bystanders, and to excite their indignation against the Court, and highly insulting to the judges? In the first place, they endeavored to obtain a continuance of the cause to the next court, merely with an intention to procure delay, and to prevent the cause being tried before Judge Chase, acknowledging that they had no hopes or expectation from *any testimony* to save their client if the law was determined to be constitutional; and yet they brought forward their client to swear just what they pleased, in order to procure this delay, with respect to the necessity of witnesses, whose testimony they acknowledged they were conscious could be of no service to them, and yet they wished the bystanders to consider the Court acting highly *improper* for not granting that continuance? Was this even to serve Callender? No, they avow they did not appear to serve him, but to serve *the cause*. Sir, it appears from their own evidence that Callender would have submitted to the Court, but for their interference; that they volunteered on the occasion not for *him*, but for *their cause*; and yet the volunteers wanted the Court to give them to another term to prepare themselves, and made Callender swear what they pleased to effect their purpose. They said they were not well acquainted with the law upon libels, and therefore wanted time to examine the subject; but surely when persons undertake to volunteer their services on any subject, they ought to be masters of it, and are entitled to no indulgence of delay. And as they declare they had formed the determination, on the first instance of an indictment under the sedition law, to come forward and volunteer their services for the

sake not of the man, but of their cause, common decency to the Court, and a proper respect for themselves, ought to have dictated to them in the interim to have made themselves fully acquainted with all the law relative to that subject in which they had thus determined officiously to interpose.

When my honorable client went from Baltimore to Richmond, to hold the circuit court, he knew how violently that State was opposed to the enforcement of this law; but he equally knew that it was his duty to carry it into execution, without regard to the sentiments of any portion of the community, or however disagreeable it might be to them. Under these circumstances he went to Richmond, and found the counsel, from the first step in this cause, attempting, as he could not but consider it, to inflame the audience and excite their indignation against him. My honorable client, who well knows mankind, and has been accustomed to popular assemblies, appears to have been anxious, as his best security, to keep the bystanders in good humor, and to amuse them at the expense of the very persons who were endeavoring to excite the irascibility of the audience against him. Hence the mirth, the humor, the facetiousness, by which his conduct was marked during the trial; and which, most fortunately, was attended with the happy consequence he hoped from it, for it is admitted that he kept the bystanders in great good humor, and excited peals of laughter at the expense of the counsel, as the witness very justly concludes, for he says, "the counsel did not appear to join in the laugh." And this, sir, most satisfactorily accounts for the more than usual exertion of his facetious talents on the trial of Callender; and I doubt not was the real cause of that exertion.

But the judge is also charged with great rudeness in the manner in which he replied in one part of the argument to Mr. Wirt, just at a time when that gentleman had finished a syllogism, by replying that it was a *non sequitur*. I will state the transaction: Mr. Wirt having, as he supposed, established the position, that the jury had a right to decide the law as well as the fact, he proceeded to state that the constitution was the supreme law of the land, and, therefore, that since the jury had a right to decide the law, and the constitution was also the law, the jury must certainly have a right to decide the constitutionality of a law made under it; and this conclusion was, as he declared, perfectly syllogistic. As Mr. Wirt had assumed the character of a *logician* in his argument, nothing could be more natural than for the judge, in his answer, to assume the *same character*; he therefore replied, like a

logician, “A *non sequitur*, sir”—the correct answer to a syllogism which is rather lame in its conclusion. But it seems this answer was accompanied by a *certain bow*. As *bows*, sir, according to the manner they are *made*, may, like *words*, according to the manner they are *uttered*, convey very different meanings; and as it is as difficult to determine the merit or demerit of a *bow* without having seen it, as it is the expression of words without having *heard* them; to discover, therefore, whether there was any thing *rude* or *improper* in this *bow*, I could have wished that the witness, who complained so much of its effect, had given us a *fac simile* of it. Had we been favored not only with the answer, but also with a complete *fac simile* of the *bow*, we might have been enabled to have judged of the propriety of my honorable client’s conduct in this instance. But it seems this *bow*, together with the “*non sequitur*,” entirely discomfited poor Mr. Wirt, and down he sat “and never word spake more!” If so, it was a saving of time. But we have no proof that Mr. Wirt meant to have proceeded any further in the argument, even had he not been encountered with this formidable bow and non sequitur. And the presumption is, that having condensed the whole force of his argument into a syllogistic form, and, finding his syllogism did not produce the conviction intended, he took his seat without wishing to spend more of his breath in what, after the failure of his logical talents, he no doubt considered a fruitless attempt. Mr. Nicholas followed Mr. Wirt. He is a gentleman mild and polite in his manners; he was treated by the Court with politeness. He did not *persist* in addressing the jury contrary to the decisions of the Court; he, therefore, met with no interruptions.

But, sir, there is another charge which has been made against my honorable client, to justify that part of the article which accuses him of *rudeness*. It is said that speaking of Callender’s counsel, or addressing himself to them, he called them “*young gentlemen*.” To me it appears astonishing that these expressions, if used by the judge, should be thought reproachful to the counsel, or a proper subject of a criminal charge; and it gave me real pleasure to find that Mr. Nicholas, whose whole conduct marks him as a gentleman, did not consider them as offensive. He has observed that he was young at the time, and whoever has seen him as a witness, must be convinced of the truth of his assertion. But we are told that Mr. Wirt was at that time about thirty years of age, had been a married man, and was then a widower. It doth not appear that Judge Chase knew of these circumstances; but if he had, considering that Mr. Wirt was a widower, he

certainly erred on the right side, if it was an error, in calling *him* a *young* gentleman. But, sir, let it be considered that my honorable client has been stated by the honorable Managers, to be nearly threescore and ten, let also his great legal attainments be considered, and let me ask, if any person can think his addressing gentlemen, so much inferior to himself in age and knowledge, by the epithet of “young gentlemen,” offensive to them, much less criminal as to the public? But as another instance of his rudeness we are told, that, addressing himself to Mr. Wirt, who observed that “he was going on,” the judge replied, “No, sir, I am going on, therefore sit down, sir.” This address was made by the judge to Mr. Wirt, when he (the judge) was about to give a long opinion to him and the counsel employed with him, which opinion, upon Mr. Wirt’s sitting down, the Court did give; and pray, sir, was there the least impropriety in a situation of that nature, that the Court should desire the counsel to be silent and to take their seats?

Before Judge Chase went from Baltimore to hold the circuit court at Richmond, he knew that the sedition law had been violated in Virginia. I had myself put into his hands “The Prospect before Us.” He felt it his duty to enforce the laws of his country. What, sir, is a judge in one part of the United States to permit the breach of our laws to go unpunished because they are there unpopular, and in another part to carry them into execution, because there they may be thought wise and salutary? And would you really wish your judges, instead of acting from principle, to court only the applause of their auditors? Would you wish them to be what Sir Michael Foster has so correctly stated, the most contemptible of all characters, popular judges; judges who look forward, in all their decisions, not for the applause of the wise and good, of their own consciences, of their God, but of the rabble, or any prevailing party? I flatter myself that this honorable Senate will never, by their decision, sanction such principles! Our Government is not, as we say, tyrannical, nor acting on whim or caprice. We boast of it as being a Government of laws. But how can it be such, unless the laws, while they exist, are sacredly and impartially, without regard to popularity, carried into execution? What, sir, shall judges discriminate? Shall they be permitted to say, “This law I will execute, and that I will not; because in the one case I may be benefited, in the other I might make myself enemies?” And would you really wish to live under a Government where your laws were thus administered? Would you really wish for such unprincipled, such time-serving judges? No, sir, you would not. You will

with me say, “Give me the judge who will firmly, boldly, nay, even *sternly*, perform his duty, equally uninfluenced, equally unintimidated by the “*Instantis vultus tyranni*,” or the “*ardor civium prava jubentium*!” Such are the judges we ought to have; such I hope we have, and shall have. Our property, our liberty, our lives, can only be protected and secured by such judges. With this honorable Court it remains, whether we shall have such judges!”

MONDAY, February 25.

Mr. HARPER.—It was greatly to be desired, Mr. President, and might have been confidently expected, that in a case every way so important, where it so greatly concerns the public happiness that the decision should command the public confidence, nothing would be presented to the view of this honorable Court in aid of the prosecution, except the law which ought to govern the decision, and the proofs relied on for supporting the allegations.

But it has not so seemed good to the honorable Managers. They have thought proper to introduce into the discussion, the political opinions and party connections of the respondent, for the purpose of throwing a shade of doubt over his motives and of establishing inferences unfavorable to his character. How far this conduct ought to be commended, it is not for me to decide. My confidence in the justice and discernment of this honorable Court forbids me to apprehend that it can be successful.

But since these opinions and connections have been introduced, permit me to use them for a different purpose.

The duty imposed on judges is at all times delicate, and in criminal cases, where life or liberty may be affected, where reputation, dearer than both, depends on the issue, this duty becomes peculiarly arduous and painful to an honorable and generous mind. But if there be a situation more delicate, more embarrassing than every other to such a mind, it is that of a judge sitting on the trial of a person who, from political opposition, or any other cause, may have excited hostile or angry feelings in his mind. It is then that he most fears to trust himself. It is then that he most dreads the influence of his passions in misleading his judgment. It is then that he feels the strongest alarm for his reputation, lest he should possibly afford ground for the suspicion that he had gratified his resentments under the semblance of

executing the law. Hence he constantly leans towards the side of the accused, and requires the clearest conviction before he condemns. Hence he rejects all doubtful or contradictory testimony, lays out of the case all little indiscretions and slight shades of suspicion; and is rigid in requiring from the prosecutors the unequivocal proof of unequivocal offences. That his enemy is in his power, is always a reason for the utmost forbearance. The fear that he may possibly be misled by his passions, is always a reason for acquittal, where doubt can exist.

Need I invoke these noble and generous sentiments in the breasts of this honorable Court? No! my heart tells me I need not. I see on those benches distinguished soldiers and eminent statesmen, who have triumphed alike in the fields of politics and war, and who always disdained to tarnish their laurels by the blood or humiliation of a vanquished foe.

If, then, the person now arraigned at your bar be connected with a political party in opposition to any of those who sit as his judges; if it were possible that, in promoting the views of that party, he may have excited feelings of anger or resentment in the mind of any member of this honorable tribunal; if it were possible that any portion of the angry passions engendered by the conflicts of party could find a place within these hallowed walls, and could attach itself to him who stands upon his trial at this bar, the existence of such a possibility would furnish every member of this honorable Court with the strongest motives that can operate on a generous and noble mind, for leaning constantly to the side of the accused, and for pronouncing in favor of an acquittal, wherever there remains a doubt of guilt.

Attempts have also been made to enlist the sympathy of this honorable Court on the side of the prosecution, and for this purpose, a criminal twice convicted, who did not hesitate to risk civil bloodshed in support of political theories, and is now indebted for his life to the clemency of that Government against whose laws he armed his ignorant and misguided neighbors, is presented to view, decked out in all the ornaments which rhetoric can bestow. We, Mr. President, disclaim the aids, and protest against the interference of rhetoric and sympathy. However proper in other situations, they ought to be excluded from courts of justice, whose decisions should be governed by truth and not by feeling.

But if sympathy could find a place in this tribunal, what object more fit to awake it than that now presented at your bar? An aged patriot and statesman, bearing on his head the frost of seventy winters, and broken by the infirmities brought upon him by the labors and exertions of half a century, is arraigned as an offender, and compelled to employ, in defending himself against a criminal prosecution, the few and short intervals of ease allowed to him by sickness. Placed at the bar of a court, after having sat with honor for sixteen years on the bench, he is doomed to hear the most opprobrious epithets applied to his name by those whose predecessors were accustomed to look up to him with admiration and respect, and whose fathers would have been proud to have been numbered among his pupils. His footsteps are hunted from place to place, to find indiscretions which may be exaggerated into crimes. The jests which, flowing from the gayety and openness of his temper, were uttered in the confidence of private conversation; the expressions of warmth produced by the natural impetuosity of his character, are detailed by companions converted into spies and informers, and are adduced as proofs of criminal intention.

This cup, so full of bitterness for one who has been accustomed for forty years to fill the most honorable stations in his country, he drinks to the dregs without complaining. In this sad reverse, he supports himself with a calmness, a fortitude, and a resigned dignity which melt the hearts of those who are not his enemies, and extort the respect of those who are.

If sympathy must be excited, here let it find a nobler object. If from generous breasts it cannot be excluded, let it be turned towards

“A brave man struggling with the storms of Fate,”

and greatly supporting himself under a pressure of evils the most afflicting that an elevated mind can know.

Not content with endeavoring to blow up a flame of party spirit against the respondent, and to engage sympathy in the ungracious, and to her unnatural, task of aiding a criminal prosecution, the honorable Managers have resorted to a principle as novel in our laws and jurisprudence as it is subversive of the constitutional independence of the judicial department, and dangerous to the personal rights and safety of every man holding an office under this Government. They have contended “that an impeachment is not a criminal prosecution, but an inquiry in the nature of an inquest of office, to ascertain whether a person holding an office be properly qualified for his situation; or, whether it may not be expedient to remove him.” But if this principle be correct—if an impeachment be not indeed a criminal prosecution, but a mere inquest of office—if a conviction and removal on impeachment be indeed not a punishment, but the mere withdrawal of a favor of office granted—I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment is not to depend on his guilt or innocence of some crime alleged against him, but on some reason of State policy or expediency, which may be thought by the House of Representatives, and two-thirds of the Senate, to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of the public examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by a reference to general political considerations, and in the usual mode of political discussion? No! Mr. President! This principle of the honorable Managers, so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case, which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service, after it was found that no offence against any law of the land could be proved, will not, cannot avail. Every thing by which we are surrounded informs us that we are in a court of law. Every thing that we have been three weeks employed in doing

reminds us that we are engaged not in a mere inquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable Court, in this case, on questions of evidence—decisions by which this Court has solemnly declared, that it holds itself bound by those principles of law which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance that this cause will be determined on no newly discovered notions of political expediency, or State policy, but on the well settled and well known principles of law and the constitution.

Having taken this view of these preliminary points, I now proceed, Mr. President, to consider the various charges against our honorable client, in the order in which they have been stated by the prosecutors. It is not my design to go over the same ground which has been so recently trodden by my able colleagues. The task assigned to me, is to range rapidly over the first six articles; to present some views of the subject, which the multiplicity of the matter induced my learned colleagues to omit; and then to discuss at large the law and the facts, under the seventh and eighth articles, which have not yet been touched.

Let the charge, Mr. President, be carefully examined, and it will be found to have no object in view but to convince the people of Maryland, by arguments drawn from reason and experience, of the danger of adopting a change in their State constitution, which had been submitted to their consideration, and the object of which was to abolish all their supreme courts of law; to introduce a system entirely new and untried; and above all, to destroy the independent tenure of judicial office, secured to them by their existing constitution; and to leave the judges dependent on the Executive for their continuance in office, and on the Legislature for their support. The respondent, who had contributed largely to the formation and establishment of the State constitution, was greatly alarmed at these changes. He considered them as of the most destructive tendency to the liberty and happiness of the State to which he belonged, and he resolved to take this opportunity of warning his fellow-citizens against them. This is the whole scope of his address to the grand jury, to show the importance of an independent judiciary, the dangerous tendency of changes already made,

and the mischiefs which would result from taking this additional step in the career of innovation. He did, indeed, advert to the act of Congress for repealing the circuit court law, and remarked that it had shaken to its foundation the independence of the Federal judiciary; but the manifest and sole object of this was, to show that the spirit of innovation had gone forth, and ought to be carefully watched; that the public respect for great constitutional principles had begun to be weakened; and that by how much the security which might have been derived from an independent Federal judiciary had been diminished, by so much the more vigilantly it behooved us to guard our State institutions. No other object can be discovered in the charge, or inferred from its general tenor, or from the language in which it is expressed; neither is there any evidence which has the most remote tendency to show that he had any other object in view. And was not this an object which a citizen of this country might lawfully pursue? Is it not lawful for an aged patriot of the Revolution to warn his fellow-citizens of dangers, by which he supposes their liberties and happiness to be threatened? Or will it be contended that a citizen is deprived of these rights because he is a judge? That his office takes from him the liberty of speech which belongs to every citizen, and is justly considered as one of our most invaluable privileges? I trust not. And if there could be any doubt on this point, I would remove it by referring to a recent instance of two judges of the Supreme Court of Maryland, who, in a late political contest, entered the lists as champions for the rival candidates, and travelled over a whole county, making political speeches in opposition to each other. Yet these gentlemen justly possess the confidence and respect of the public; their conduct in this instance has never been considered as a violation of duty; and he who espoused the interest of the successful candidate has been far from receiving any marks of displeasure from the Government of this country.

If, therefore, a judge retain this right, notwithstanding his official character; if it still be lawful for him to express his opinions of public measures, to oppose by argument such as are still pending, and to exert himself for obtaining the repeal, by constitutional means, of such as have been adopted, I ask what law forbids him to exercise these rights by a charge from the bench? In what part of our laws or constitution is it written that a judge shall not speak on politics to a grand jury?—shall not advance, in a charge from the bench, those arguments against a public measure which it must be admitted he might properly employ on any other occasion? Such

conduct may perhaps be ill-judged, indiscreet, or ill-timed. I am ready to admit that it is so; for I am one of those who have always thought that political subjects ought never to be mentioned in courts of justice. But is it contrary to law? Admitting it to be indecorous and improper, which I do not admit, is every breach of decorum and propriety a crime? The rules of decorum and propriety forbid us to sing a song on the floor of Congress, or to whistle in a church. These would be acts of very great indecorum, but I know of no law by which they could be punished as crimes. Will they who contend that it is contrary to law for a judge to speak of politics to a grand jury, be pleased to point out the law of the land which forbids it? They cannot do so. There is no such law. Neither is there any constitutional provision or principle, or any custom of this country, which condemns this practice.

And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law, and to make it for a particular case which has already occurred? What, sir, is the great distinction between legislative and judicial functions? Is it not that the former is to make the law for future cases; and that the latter is to declare it as to cases which have already occurred? Is it not one of the fundamental principles of our Constitution, and an essential ingredient of free government, that the legislative and judicial powers shall be kept distinct and separate? That the power of making the general law for future cases shall never be blended in the same hands, with that of declaring and applying it to particular and present cases? Does not the union of these two powers in the same hands constitute the worst of despotisms? What, sir, is the peculiar and distinguishing characteristic of despotism? It consists in this, sir, that a man may be punished for an act which, when he did it, was not forbidden by law. While, on the other hand, it is the essence of freedom, that no act can be treated as a crime, unless there be a precise law forbidding it at the time when it was done.

It is this line which separates liberty from slavery; and if the respondent be condemned to punishment for an act, which far from being forbidden by any law of the land, is sanctioned by the custom of this country for more than twenty years past, then we have the form of free government, but the substance of despotism.

Let the gentlemen, before they establish this principle, recollect that it is a two-edged sword. Let them remember that power must often change hands in popular governments; and that after every struggle the victorious party come into power, with resentments to gratify by the destruction of their vanquished opponents, with a thirst of vengeance to be slaked in their blood. Let them remember that principles and precedents, by which actions innocent when they were done, may be converted into crimes, are the most convenient and effectual instruments of revenge and destruction with which a victorious party can be furnished. Let them beware how they give their sanction to principles which may soon be turned against themselves; how they forge bolts which may soon be hurled on their own heads. In a popular government, where power is so fluctuating, where constitutional principles are therefore so important for the protection of the weaker party against the violence of the stronger, it above all things behoves the party actually in power to adhere to the principles of justice and law, lest by departing from them they furnish at once the provocation and the weapons for their own destruction.

This charge, therefore, fails like the rest; and what remains of the accusation? It has dwindled into nothing. It has been scattered by the rays of truth, like the mists of the morning before the effulgence of the rising sun. Touched by the spear of investigation, it has lost its gigantic and terrifying form, and has shrunk into a toad. Every part of our honorable client's conduct has been surveyed; all his motives have been severely scrutinized; all his actions have been brought to the test of law and the constitution; his words and even his jocular conversations, have been passed in strict review; and the ingenuity and industry of the honorable Managers have proved unable to detect one illegal act, one proof, or one fair presumption of improper motive.

TUESDAY, February 26.

The Court opened at about half past ten o'clock, A.M.; the Managers, the House of Representatives, and the counsel of the respondent having taken their seats.

Mr. NICHOLSON, as one of the Managers, addressed the Court in reply to the counsel of the accused. He said the House of Representatives having

impeached Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; the evidence on their part having been adduced, and that on behalf of the accused, and the arguments of his counsel having been fully and patiently heard, it now became his duty to reply in support of the impeachment. To me, Mr. President, this duty is an unpleasant one. Upon all occasions and under all circumstances, the office of a public accuser is the most painful that can be imposed on us; but it is more peculiarly so when the object of accusation appears before us covered with age and infirmities. I think I speak the sentiment of my brother Managers of the House of Representatives, when I say, that this impeachment never would have been instituted, that it never would have arrived at its present crisis, if we had not believed that the best interests of our common country required that the conduct complained of should not go unpunished. There is no nation on earth, sir, in which the freedom of man and the consequent happiness of society are not inseparably interwoven with the full, free and impartial administration of justice.

“Una salus ambobus erit commune periculum.”

It was to preserve this unity of safety, to avert this common danger, that we thought ourselves bound by the most solemn obligation to bring these charges before the highest tribunal of the nation. We may in vain make laws to secure our property, to protect our liberty, and to guard our lives, if those to whom we appeal, and to whose decrees we are bound to submit, shall prove unfaithful in the discharge of their duty. If our laws are not faithfully administered; if the holy sanctuary of our courts is to be invaded by party feeling; if justice shall suffer her pure garment to be stained by the foul venom of political bigotry, we may indeed boast that we live in a land of freedom, but the boast will be vain and illusory.

In this point of view, therefore, this cause may justly be called an important one. I need not however urge its importance to the Court, for the feelings of every honorable member will speak its importance more forcibly than any thing that I can utter. But I do trust that those frequent appeals which you have heard, those frequent instances in which you have been reminded that posterity will pass between the accused, his accusers, and his judges, will have no influence on your minds. A desire to secure the approbation of posterity is an honorable feeling, pervading every human

breast, and is most inseparable from our nature: but to secure the approbation of posterity, we must take care to pursue the dictates of our own consciences, and, by doing justice here, trust to posterity to do us justice too.

Our country, it is true, are now looking on with anxious solicitude for the event of this cause; but the sentence which they shall pass will not depend upon the judgment given here. To the world and to posterity the conviction of the accused, by this Court, will not establish his guilt; and I thank God, as the case has been put in issue between us, his acquittal will not prove his innocence. The facts in the cause, sir, those facts which we have proved by the most undeniable evidence, and upon which your judgment must be given; those facts will be presented to the eyes of the world and of posterity, and upon those only will they decide. If it should ever be the fortune of my humble name to descend to posterity, by the vote which I gave for instituting this impeachment, and by my conduct in discharging the great duty now committed to me, I cheerfully consent to be tried. To this awful tribunal I willingly submit. If the judge is guilty, posterity will heap on him all that odium which his guilt deserves; if he is innocent, let that odium be turned upon his accusers.

Because Sidney and Russell bled upon a scaffold, have their names been less the objects of veneration with posterity? and because Scroggs and Jeffries escaped the punishment due to their crimes, have they therefore been less the objects of universal execration? No, sir; and the honorable counsel (Mr. Hopkinson) who first addressed you on behalf of the accused, gave us himself a memorable example of the poor respect which posterity will feel for the decisions of those who have gone before them. That honorable gentleman told you that Warren Hastings was impeached for the murder of princes and the plunder of empires, and yet he was acquitted. But, is there any who hears me, that believes he was innocent? If we read the history of that trial; if we look to the facts charged, and listen to the unexampled eloquence by which they were supported, our only wonder will be, that he was not condemned. Sir, it has been said that those plundered millions were the best witnesses to prove his innocence; and I greatly fear that the day will come when the crying blood of those murdered princes will be the best witnesses to prove his guilt. The most splendid action in

Edmund Burke's life was his accusation of Warren Hastings; the foulest stain upon the national justice of England was his acquittal.

We have been charged, sir, by one of the honorable counsel (Mr. Harper) with having endeavored to enlist on our side the sympathies of the Court. Permit me to ask, what sympathy have we endeavored to excite? What feelings have we endeavored to engage? To what passion have we addressed ourselves? None, sir. We came here to demand justice. The constitution has placed in your hands the power of punishing guilt; we have proved the guilt of the person accused, and at your hands we demand his punishment. To your consciences and your understandings we appeal, and not to your feelings. These have been assailed by our adversaries. They have exhibited their client to you, covered, as they say, with the frost of seventy winters, and have endeavored to hide the magnitude of his crimes, in the length of his years, and the infirmity of his health. In attempting to excite your compassion, they have wished to drown the voice of justice, and have addressed you not as judges but as men. I do trust, however, that if any sympathy is to be excited, it will be neither for the accused, nor his accusers. Let your feelings be turned toward the nation! Let your sympathy be awakened for those who are to come after you, for by the sentence which you pronounce in this case, it must ultimately be determined whether justice shall hereafter be impartially administered, or whether the rights of the citizen are to be prostrated at the feet of overbearing and tyrannical judges. We, who are engaged in this prosecution, feel that our fathers handed down to us a glorious birthright, and we appear at this bar to demand that it be transmitted to our children unimpaired and unpolluted. Do the nation justice, and you will do justice to us, to yourselves, and to posterity. We were also told by the honorable counsel for the accused, that when we found the accusation shrunk from the testimony, and that the case could no longer be supported, we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution, but a mere inquest of office. For myself I am free to declare, that I heard no such position taken. If declarations of this kind have been made, in the name of the Managers, I here disclaim them. We do contend that this is a criminal prosecution, for offences committed in the discharge of high official duties, and we now support it, not merely for the purpose of removing an individual from office, but in order that the punishment inflicted on him may deter others from pursuing the baneful example which has been set them.

Nor do we mean to take another ground which the counsel for the accused have thought proper to assign us, for we never entertained the most distant idea that any citizen might be impeached. It was with no little surprise that I heard such doctrines ascribed to us, and I was astonished to hear the Attorney-General of Maryland combating positions which we had not laid down, and searching for argument to prove that which we should not have hesitated to admit.

But, sir, there is one principle upon which all the counsel for the accused have relied, upon which they have all dwelt with great force, and to the maintenance of which they have directed all their powers, that we cannot assent to; we mean to contend against it, because we believe it to be totally untenable, and because it is of the first importance in the decision of the question now under discussion. We do not contend that, to sustain an impeachment, it is not necessary to show that the offences charged are of such a nature as to subject the party to an indictment, for the learned counsel have said that the person now accused is not guilty, because the misdemeanors charged against him are not of a nature for which he might be indicted in a court of law.

To show how entirely groundless this position is, I need only pursue that course which has been pointed out to us by the respondent himself, and his counsel. I might refer to English authorities of the highest respectability, to show that officers of the British Government have been impeached for offences not indictable under any law whatever. But I feel no disposition to resort to foreign precedents. In my judgment, the Constitution of the United States ought to be expounded upon its own principles, and that foreign aid ought never to be called in. Our constitution was fashioned after none other in the known world, and if we understand the language in which it is written, we require no assistance in giving it a true exposition. As we speak the English language, we may, indeed, refer to English authorities for definitions, as we should refer to English dictionaries for the meaning of English words; but upon this, as upon all occasions, where the principles of our Government are to be developed, I trust that the Constitution of the United States will stand upon its own foundation, unsupported by foreign aid, and that the construction given to it will be, not an English construction, but one purely and entirely American.

The constitution declares, that “the judges both of the supreme and inferior courts shall hold their commissions during good behavior.” The plain and correct inference to be drawn from this language is, that a judge is to hold his office so long as he demeans himself well in it; and whenever he shall not demean himself well, he shall be removed. I therefore contend that a judge would be liable to impeachment under the constitution, even without the insertion of that clause which declares, that “all civil officers of the United States shall be removed for the commission of treason, bribery, and other high crimes and misdemeanors.” The nature of the tenure by which a judge holds his office is such that, for any act of misbehavior in office, he is liable to removal. These acts of misbehavior may be of various kinds, some of which may, indeed, be punishable under our laws by indictment; but there may be others which the law-makers may not have pointed out, involving such a flagrant breach of duty in a judge, either in doing that which he ought not to have done, or in omitting to do that which he ought to have done, that no man of common understanding would hesitate to say he ought to be impeached for it.

The words “good behavior” are borrowed from the English laws, and if I were inclined to rest this case on English authorities, I could easily show that, in England, these words have been construed to mean much more than we contend for. The expression *durante se bene gesserit*, I believe, first occurs in a statute of Henry VIII. providing for the appointment of a *custos rotulorum*, and clerk of the peace for the several counties in England. The statute recites, that ignorant and unlearned persons had, by unfair means, procured themselves to be appointed to these offices, to the great injury of the community, and provides that the *custos* shall hold his office until removed, and the clerk of the peace shall hold his office *durante se bene gesserit*. The reason for making the tenure to be during good behavior, was, that the office had been held by incapable persons, who were too ignorant to discharge the duties; and it was certainly the intention of the Legislature that such persons should be removed whenever their incapacity was discovered. Under this statute, therefore, I think it clear that the officer holding his office during good behavior, might be removed for any improper exercise of his powers, whether arising from ignorance, corruption, passion, or any other cause. To this extent, however, we do not wish to go. We do not charge the judge with incapacity. His learning and his ability are acknowledged on all hands; but we charge him with gross

impropriety of conduct in the discharge of his official duties, and as he cannot pretend ignorance, we insist that his malconduct arose from a worse cause.

It has been alleged by the counsel for the accused, that my honorable colleagues have argued this case upon the articles and not upon the evidence; and this allegation contains an admission, that if the articles are proved, the guilt of the party is established. It shall be my endeavor to show that there is no material variance between the charges as laid in the articles, and the evidence brought to support them; but that they are amply and fully proved by the very best testimony which could be adduced.

One of the learned counsel in commenting upon the first article, declared that he discovered but a single truth in it, which was, that the judge had formed and reduced to writing an opinion upon the law; and that gentleman, as well as the Attorney-General of Maryland, labored with great zeal and with much display of talent, to convince the Senate that there could be nothing wrong in this. Unfortunately for these learned gentlemen, even that truth is not to be found in it, for by recurring to the article it will be found that the judge is not charged for having formed an opinion, or for having reduced that opinion to writing, but for “having delivered an opinion in writing on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the prisoner before counsel had been heard in his defence.”

In this we find no charge against him for having formed an opinion, or for having reduced it to writing, and certainly the learned counsel might have spared themselves the trouble of proving what I am sure every member of the Court was fully convinced of before, that there was no impropriety in a judge’s forming an opinion on any subject whatever, whether legal or philosophical. It is not, however, usual for skilful advocates to attempt to draw the attention from the material points in dispute, for the purpose of fixing it on others of little or no importance. Such has been the course pursued by our adversaries. But, Mr. President, the real charge is, that Samuel Chase did, upon the trial of John Fries for treason, endeavor to prejudice the minds of the jury against him, by delivering an opinion to them upon the law before his counsel were heard; and this too in a case of life and death, where the jury had an ample, uncontrollable right, to decide as well the law as the fact. It is the right and

duty of judges to inform their minds upon all questions of law whatsoever, but it is an unwarrantable proceeding, it is an unauthorized assumption of power in them, to deliver that opinion to the jury in a criminal cause before the jury is sworn, and before the counsel of the prisoner have been heard in his defence.

Much has been said with a view to convince the Court that the opinion thus delivered was a correct one, and it has therefore been argued that his conduct was perfectly justifiable. For my own part, I consider it totally immaterial in the present case whether the doctrine of treason, as laid down by the judge, was correct or not; for even if it were correct, the time and manner of delivering it, and the persons to whom it was delivered, form the substance of the charge against him. It is a misdemeanor, a high misdemeanor in a judge, wantonly to give an opinion upon any case which is to come before him, previously to the swearing of the jury, and the offence is made much greater by the opinion being publicly declared in the presence of the jury, who ought to come to the trial of every cause with minds wholly free from prepossession against either party.

Although the judge has said in his answer, that no gentleman of established reputation for legal knowledge would deliberately give a contrary opinion, yet I have not the slightest apprehension that any little reputation which I may possess, can in any manner be affected by my expressing, as I now do, my entire conviction that the doctrine of treason, as laid down in Fries's case, is wholly repugnant to the spirit and meaning of the constitution. It is not my intention at this time to enter into an argument to prove this, for I have before said that I consider it quite immaterial in the present discussion; but I will offer some few observations, to demonstrate to the Senate that there was nothing very unreasonable in the wish expressed by Mr. Lewis and Mr. Dallas, to show that the constitution was susceptible of another construction.

The constitution declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." John Fries was indicted for *levying war* against the United States, and the facts I believe were, that he, with some others, did, in a forcible manner, rescue some prisoners from the marshal of Pennsylvania. This was called a resistance to a law of the United States, and, by construction, was determined at the former trial to be the treason of

levying war. It was in opposition to this construction of the constitution that Mr. Lewis and Mr. Dallas wished to be heard. It was certainly not a very extravagant wish on their part, for it ought to be recollected that we are a young nation, and it is deeply interesting to us all that the Constitution of the United States should not receive a construction unwarranted by its letter. After the decisions had taken place in the courts upon the Western insurrection, (I mean in the cases of Vigol and Mitchell,) Congress had passed an act declaring that to resist a law of the United States should be deemed a high misdemeanor, punishable by fine and imprisonment; and they had before provided, by the act of 1789, that to rescue prisoners from the custody of the marshal should also be punishable by fine and imprisonment. Mr. Lewis and Mr. Dallas were desirous of showing that Fries's case came within the provisions of these laws, and that his offence was not of such a nature as to forfeit his life. They also wished to have an opportunity of proving that the terms *levying war* ought not to receive the same construction here as in England. To convince the Senate that they were not singular in their ideas, and that the construction given by the Court has not been unanimously assented to, I shall take the liberty of referring to an author of merited reputation, to whom I believe our adversaries will not refuse their respect. Judge Tucker of Virginia, in his valuable edition of Blackstone's Commentaries, in the appendix to the fourth volume, under the title of *treason*, after reciting that part of the constitution relating to the subject, observes:

[Here the opinions of Judge Tucker were read.]

Such we find are the opinions of Judge Tucker, an able and upright lawyer, who thinks that the constitution ought to be construed agreeably to the plain import of its language, and ought not to be involved in technical abstruseness. In that series of publications entitled the Federalist, written at the commencement of the present Government, by some of the ablest men in this nation, for the purpose of defending the constitution, it is matter of boast, that treason was fully defined, and not left to wild and arbitrary construction. But what avails the definition, if the constructive treasons of England are to be drawn in as precedents for us?

I before stated that I did not mean to enter into an argument against the correctness of the Court's opinion; nor have I done so, but have offered these remarks to show that it was not unreasonable in Mr. Lewis and Mr.

Dallas to wish that another construction of the constitution might be received. The counsel for Judge Chase seem to think it monstrous that they should have wished to argue the point after the law had been settled by three former decisions, which had taken place in the course of four years. Let it be remembered that Sir Matthew Hale doubted, after the lapse of one hundred and fifty years from the first of these constructive treasons, and after, for aught I know, one hundred and fifty cases had been decided. Mr. President, far from thinking their conduct on that occasion extraordinary, I, as a free man of America, most cheerfully accord them my thanks for the stand they made; and I do hope and trust, that if ever a similar case should occur, in which the same doctrine of constructive treasons shall be urged to a jury, men like Mr. Lewis and Mr. Dallas will be found, men of exalted talents and extensive learning, who will be bold enough to assert the rights of the citizen, and save the constitution of their country from destruction.

Another justification of a peculiar nature is set up in defence of Judge Chase, by a statement made in Keelyng's Reports. It is there said that "after the *happy* restoration of King Charles the Second, Sir Orlando Bridgman, chief justice of the King's Bench, and some six or eight others, judges, prosecutors, and King's solicitors, assembled for the purpose of determining in what manner the *regicides* should be tried, and they settled many points which it was supposed would occur upon the trials." This, sir, is an unfortunate period to refer to for justification of the conduct of judges in our day. Never was there a moment of such fawning servility; never was there a period of such unbounded licentiousness. The hope of reward or the fear of punishment brought almost every man crouching at the footstool of the throne, and all united in singing hosannas to the King, and crying aloud for the crucifixion of the miserable regicides. This conspiracy (which has been quoted) against the wretched victims whose sacrifice was resolved on, was headed by that most servile of all servile tools, Sir Orlando Bridgman. His character and those of his brother judges who conspired with him, may be recollected from the charge which he gave to the grand jury on that occasion. It will be found in the fourth volume of State Trials, and it will there be seen how flamingly he talked of the *divine right of Kings*, whom he called *God's vicegerents* on earth; their persons he said were too *sacred* for their conduct to be inquired into: *they held their power from God, and were accountable to him alone: it was treason in their subjects to inquire into the propriety of what they did*; with much more of the same cast. These are the

times, these the men, and this is the conduct now introduced for the justification of Judge Chase. If they will afford him a justification he is welcome to it for me. They were woful times indeed; one would have thought the Parliament which the King found in session upon his return, was submissive enough; but he was not satisfied, and finding the whole nation ready to bow at his nod, he ordered a new one elected, and they proved so compliant to all his wishes, that he continued them for eighteen years. This sufficiently proves the servile spirit of those whom the King thought proper to employ on this noted occasion, and it is not much to Mr. Keelyng's honor that he was one of them. The points which they did settle were of an extraordinary nature, and one of them was read a few days since by one of the counsel (Mr. Key) to show that Basset was a good juror in Callender's trial.

If, however, this famous precedent had been made in the best of times, it does not apply to the present case. For these judges, bad as they were, yet had modesty enough to keep their opinions to themselves, till after the trials had commenced, and did not deliver them until the occasions arose which called for them. Judge Chase, we have fully proved, delivered his opinion beforehand, publicly, and in the hearing of the jury, so that the authority of Mr. Justice Keelyng and Sir Orlando Bridgman does not justify him. He outstripped even them.

Having thus, as I conceive, fully established the first specification contained in this article, and having answered the only colorable excuses advanced in favor of the judge, I shall proceed to the second specification. This is a charge against him for "restricting Fries's counsel from recurring to such English authorities as they believed apposite, and from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client."

I must therefore be permitted to insist that Fries's counsel were prohibited from recurring to English authorities, and from citing certain statutes of the United States. It is fully proved by Mr. Lewis, and corroborated by Mr. Dallas. The latter was not in Court when the conversation took place; but coming in immediately after, he was informed of it by Mr. Lewis, and then stated to the Court what Mr. Lewis had told him. The Court did not deny it, and certainly it is to be presumed, if Mr. Lewis had made an erroneous statement of facts to Mr. Dallas, and they had

been repeated by Mr. Dallas, the Court would have contradicted them. This was not done, and both these gentlemen now swear that they were prohibited.

An attempt, however, is made to shelter the judge from this part of the accusation, by saying that he declared counsel would be heard although this opinion was given. Sir, this is another evasion. The opinion itself carries with it internal, uncontrovertible evidence of the determination of the Court that the counsel should not address the jury. What is the principal ground of the defence? what is the leading reason urged for giving this extraordinary opinion before the jury was sworn? It was, as the judge says, and as his counsel have argued, to save time. They state that there were more than one hundred civil causes then depending, that the delay of business in Pennsylvania had been long a subject of complaint, and the judge was anxious to make Fries's trial a short one, in order that they might have time to proceed with the other business. Now suffer me to inquire how time was to be saved; how the trial of Fries was to be shortened, if his counsel were to be allowed to address the jury on the law which the Court had already decided? Was not the opinion of the Court given for the express purpose of preventing them from addressing the jury; or, if not for this, let me ask for what purpose it was given? Was it to prejudice the minds of the jury; to close their ears and their understandings against any arguments which might be offered them? Gentlemen say no. Was it to save time? This was impossible, because the time was still to be occupied by the counsel being permitted to address the jury. Why then, let me ask, was the opinion given? The answer is ready. It was intended to produce both these effects. The minds of the jury were to be preoccupied by the imposing authority of the Court, and in this manner it was expected to deter the counsel from addressing them on the law. Nothing, therefore, can be clearer, than that the counsel were prevented from addressing the jury, and that the judge "*endeavored* (in the language of the article) to wrest from the jury their right to hear argument, and determine upon the question of law." But it is said that the right of the jury to decide the law does not give them a dispensing power over the law, and that therefore they are bound by the opinion of the Court. Nor does the right of the *Court* to decide the law give *them* a dispensing power over the law. The jury have a right to decide the law, and are not bound by the opinion of the Court. In order to enable them to decide correctly they have a right to hear argument, and any attempt to

prevent this, is an attempt to wrest from them their right to decide the law, and is a high misdemeanor.

We are told, however, that if any thing wrong was done on the first day, ample atonement was made on the second. It is true that the judge exhibited some appearance of a wish that the counsel would proceed on the second day, but Mr. Lewis well remarked, that although the papers were withdrawn, the impression which had been made on the minds of the jurors could not be removed. What sort of an atonement, too, was this? It carried insult with it; and the language in which it was made had a still greater tendency to strengthen the impression made the day before. The counsel were publicly informed they might proceed as they pleased, *but it must be at the hazard of their characters*, under the direction of the Court. Is there a man of reputation on earth, possessed of the smallest spark of feeling, that would consent to disgrace himself by addressing a jury under such circumstances? This alone, if nothing else had taken place, was sufficient to drive them from the defence of their client; and if they thought that their abandoning him might eventually save his life, they were fully justified in doing so.

The learned advocates for the judge have talked highly of the independence of the judiciary, and have asked what inducements any judge could have to act as we have charged Judge Chase with acting. Are there then no inducements for a judge to swerve from his duty? Has he no feelings to gratify, and is it impossible for him to become a partisan? Does his character as a judge divest him of his ambition as a man? Is he so incorruptible that temptation cannot assail him? Look through the annals of other nations—read the history of England for the last forty years. Judicial independence has been for a long time as well secured there as here; and yet how many instances shall we find in that country of prosecutions in which the feelings of the Ministry had been engaged, and in which their influence over the judges has been too flagrant to be mistaken? In Ireland, miserable Ireland, a still more gloomy prospect presents itself. They, too, have boasted an independent judiciary; but an overruling influence has crumbled it into ruins. The demon of destruction has entered their courts of justice, and spread desolation over the land. Execution has followed execution, until the oppressed, degraded, and insulted nation has been made to tremble through every nerve, and to bleed at every pore. Let us then be warned by the fate of

Ireland. In State prosecutions her judges look to the Castle; although they cannot be put down, they may be elevated. Some of our judges have been elevated to places of high political importance; splendid embassies have been given to them. I will not say that they were given or accepted with improper views; but they have been given, and surely they hold out inducement enough for a judge to bend to the ruling party. It is our duty to prevent party spirit from entering into our courts of justice. Let us nip the evil in the bud, or it may grow to an enormous tree, bearing destruction upon every branch. You have now an opportunity of doing it, and I trust you will not suffer it to escape you. I therefore hope that you will not only remove Judge Chase from the high office which he now fills, but that by your judgment you will for ever hereafter disqualify him from holding any office of profit or trust under the Government of the United States.

Mr. RODNEY.—Mr. President, and Gentlemen of the Senate: The present trial exhibits a spectacle truly solemn and impressive. A man who holds one of the highest judicial offices under the Government, who, from the period of the Revolution, has filled many of the most important public situations, and whose hairs have been bleached in the service of his country, is charged before this dignified tribunal, by the Representatives of the American people, with the commission of acts in violation of his duty as a judge, and of the laws and constitution of the land.

On one hand, the character of an aged and respectable individual, which may be dearer to him than the small remnant of his life, is involved in your decision; on the other, the most precious rights of free citizens, and the dearest interests of society.

The mind which could contemplate, unmoved, such a scene, cannot feel for the welfare of the people, or the honor of the nation, and must be equally insensible to the finer sympathies of life, and the practice of its charities and affections.

The public anxiety manifested by this deeply interesting trial must be evident to all—a trial of the first importance, because of the first impression—a trial not confined to a single act in the conduct of the accused, but embracing a variety of transactions at different periods of his life—a trial which departs from the ordinary mode of decision, whose novelty and magnitude have excited so much interest and attention that it seems to have

superseded for the moment, not only every other grave object or pursuit, but every other fashionable amusement or dissipation.

The task of prosecuting is always very unpleasant, and to me extremely painful; but my rule has ever been not to suffer private considerations or personal feelings to stand in the way of a firm and independent discharge of public duty.

To this exalted tribunal I look with confidence for a display of that dignified impartiality, which will do credit to their elevated situation, and reflect honor on their country. You will raise yourselves, I am convinced, above the common level of human prejudices, personal or political, and will suffer no considerations but those which are perfectly correct to be blended with your inquiries or mingled with your decisions.

Party, it is true, is a spirit of so subtle a nature as to diffuse itself almost imperceptibly over the human mind; it frequently pervades the system without being felt, and sometimes warps the judgment when least suspected. Against the influence of this spirit I need scarcely caution the judges whom I have the honor to address. It cannot approach within the pale of this Court, or enter their hallowed walls.

I have marked, Mr. President, in the questions which you have so correctly put to the witnesses in the course of their examination, that singleness of eye, which looks to the discovery of truth alone, without reference to the party whose case it may affect; whilst your conduct in maintaining that order and decorum suitable to the solemnity of the occasion has exhibited an example worthy of imitation.

I have observed, with heartfelt pleasure and honest pride, the unwearied and impartial attention paid by the members of this Court during the progress of this momentous cause. To my mind it presages a decision worthy of themselves, and serviceable to their country, and is a sure pledge that their determination will be honest, upright, and independent.

If, after a fair and full inquiry into the facts, illustrated by the arguments for and against the accused, and a careful examination of the law, commented on by those whose duty it is to support the impeachment, and those who are opposed to it, the Senate shall be of opinion that the charges have not been substantiated, and pronounce a verdict of acquittal, believe

me, sir, I, as a citizen faithful, obedient, and affectionate to the laws of my country, shall most cheerfully acquiesce in the decision. But I do confidently trust that it will not take place, on the principles or the precedent established in the case of Warren Hastings, the Governor of Bengal, that plunderer of India, that destroyer of the people of Asia, that devastator of the East, whose crimes were without number, and whose enormities exceeded calculation. What fields have been dyed, what streams have been tinged with the innocent blood of victims sacrificed on the altar of his avarice or his ambition! An obligation however solemn, a treaty however sacred, interposed but a weak and feeble barrier to the views of his personal or political aggrandizement. Even a zenana, the sacred retreat of women, holy and consecrated to the fairest work of the creation, by the religious customs of that country, has been violated whenever the silver and the gold, the jewels and the diamonds, were sufficient objects to attract his attention or gratify his rapacity.

The House of Representatives, so far from deserving blame, in my humble opinion, merit commendation for the reluctance with which they proceeded to accusation, and for the care, caution, and dignity which have marked their steps. I have frequently heard an unbecoming zeal reprobated in a prosecutor; but never before did I hear from the lips of a counsel for an offender, a complaint of delay and remissness in charging his client with guilt. What a striking contrast does their conduct furnish, compared with that of the defendant! They betrayed no thirst for prosecution, but an unwillingness to accuse; no eager appetite for conviction, but an anxious desire that impartial justice should take place between the public and an individual, whom irresistible evidence had compelled them to present before the highest judicial authority of the nation. Not, it is true, for the murder of despotic princes whose will was the law, and whose laws perhaps were as sanguinary as those of Draco; nor for the plunder of empires, swayed by an iron sceptre as oppressive as the dominion of Hastings. Far other crimes are laid to his charge. The defendant, a citizen of this free land, sworn to support our mild constitution and our equal laws, and bound by his oath of office to administer justice impartially, having a perfect knowledge of his duty, (for of ignorance the whole world will acquit him,) stands charged with plundering, in the holy habit of a judge, a jury of his country of their most sacred rights, and injured and insulted freemen of their constitutional privileges.

He was indeed providentially prevented from imbruing his hands in the blood of poor Fries, but he stands accused of shedding, with unfeeling severity, the life-blood of the constitution itself.

Such are the crimes for which he is arraigned at your bar, and which one of the gentlemen has been pleased to term petty offences. In the dark catalogue of criminal enormities, perhaps few are to be found of a deeper dye. If I were an advocate of the doctrines of constructive and cumulative treasons, of which the learned judge appears to have been a great admirer and a zealous supporter, I would say that he himself was guilty of judicial treason against the constitution of the country and majesty of the people.

The independence of the Judiciary, the political tocsin of the day, and the *alarm bell of the night*, has been rung through every change in our ears. They have played upon this chord until its vibrations produce no effect. The sound is rather calculated to stun us into an insensibility against real attacks, for the poor hobby has been literally rode to death. To the rational independence of the Judiciary, I am, and ever have been a firm and uniform friend. But I am no advocate for the inviolability of judges more than of kings. In this country I am afraid the doctrine has been carried to such an extravagant length, that the Judiciary may justly be considered like a spoiled child. They are here placed almost beyond the reach of the people, though not beyond the immediate power and influence of the Executive. I wish not to see them the slaves of any administration, but the faithful and impartial executors of justice. My desire is that the laws, like the providence of the Deity, should shed their protecting influence equally over all.

It will be allowed that the hopes of an individual are as powerful inducements to action as his fears. Whether the Executive can depress or exalt him, his influence is equally great. Whether he can punish his errors or reward his faults, his dominion is the same. We all know that an associate judge may sigh for promotion, and may be created a Chief Justice, whilst experience teaches us, that more than one Chief Justice has been appointed a Minister Plenipotentiary. These facts are staring us in the face, when we talk of judges being independent of the Government.

What has been the natural effect of such conduct? Have the judges stood aloof during the political tempests which have agitated the country—or

have they united in the *Io triumphe* which the votaries and idolaters of power have sung to those who were seated in the car of Government? Have they made no offerings at the shrine of party; have they not preached political sermons from the bench, in which they have joined chorus with the anonymous scribblers of the day and the infuriate instruments of faction? Let a recurrence to past events decide.

I wish to be understood as speaking on these topics in the abstract, and not with a view of imputing improper motives to those concerned in the arrangements which have taken place.

The people of the United States, on the other hand, have no offices of profit and emolument to bestow. They have no post immediately in their power to give, except a station in the House of Representatives, which a judge would not accept from their hands. But, let me ask, was there no vacancy in the gift of the Executive, to which the defendant could aspire, and to which his conduct might furnish him with a passport or a letter of introduction?

Some observations have been made on the independence of the judges in England. In that country they are removable by an address of both Houses of Parliament. By what a slight tenure, by what a slender thread, are their offices held! The voice, nay, the whisper, or the breath of the Minister for the time being, may remove them, and yet they have generally manifested a spirit of real independence, even in the season of alarm and terror, of which I fear our judges at a similar period cannot boast. But in that country, a seat on the bench is considered as a place of rest, and they look not beyond it. There the judges are not made Envoys Extraordinary or Ministers Plenipotentiary.

We ought not to be imposed upon by names in this country. Give any human being judicial power for life, and annex to the exercise of it the kingly maxim “that he can do no wrong,”—you may call him a judge or justice, no matter what is the appellation—and you transform him into a despot, regardless of all law but his own sovereign will and pleasure.

Suffer me at this place to notice the remarks of the learned counsel who spoke yesterday, (Mr. Harper,) with so much sensibility and feeling for his client, on the change of parties in popular governments, and the proscriptions, persecutions, and punishments, too frequently inflicted by

those who are triumphant, on the fallen victims of their authority; when acts, innocent in themselves, because against no known law, have been converted into crimes to gratify the vindictive passions of the victorious against those whom the fortune of political war has placed within their power. No man can deprecate more sincerely than I do, such a state of things. To the situation of affairs in this country, I presume these remarks cannot have the most distant application. If they were made with reference to the present Administration, to the Executive or Legislative Departments of the Government, the allusion may, perhaps, have the light support of visionary imagination, but has no substantial foundation in reality. It may be fancy, but is not fact.

The illustrious Chief Magistrate of the Union^[22] has furnished a precedent, by his liberal and enlightened conduct, of which the lamentable annals of mankind afford no example. Under his wise and his mild guidance, what auspicious beams of public sunshine have been diffused over the whole face of the country! until, to the discontented few, the language of the Latin poet might justly be applied—

“O fortunati nimium sua si bona norint.”

This enlightened policy has been adopted in conjunction with the luminous constellation of distinguished worthies, by whom he is surrounded; whose exalted character and talents add to the usefulness, the dignity, and splendor of his measures, and increase to an extent almost incalculable the general sum of the happiness of this great and independent nation.

Turning our eyes to those who have exercised the high and responsible functions of legislation, we find their acts equally deserving commendation. Their proceedings are calculated to excite at once the envy and the admiration of their opposers and the world. They breathe not the fell spirit of resentment and persecution. To their honor be it spoken, that, instead of enlarging the circle of offence, they have reduced the scale of criminality. They have abolished an odious, and, I believe, an unconstitutional sedition law, which had been executed with a rigor and severity perfectly congenial with the passionate policy which gave it birth. The decrees under it, if not written in the blood of the sufferers, were written in their tears. A more

dreadful engine of persecution and oppression cannot well be conceived. With this instrument in their hands, they could have smote their enemies and shielded themselves. It would have been a sword and a buckler, but they disdained the idea.

Actuated by the best motives, with the honest view of purifying the fountain of justice, and restoring the characters of the American bench, they are now engaged in the unpleasant, but indispensable task of bringing to exemplary punishment a judge who has offended against the letter and the spirit of the constitution, and the well-known statutes of Congress; who has violated the bounden duties of his office, and that high legislative act, which, to the sanction of a law, added the solemnity and obligation of an oath.

In this important undertaking they are contending not for themselves, but for posterity; not for those in power, but those whom power has forsaken. Against all the wild theories of new-fangled opinions and the monstrous iniquity of exploded doctrines, they wish to teach a lesson of instruction to future judges that, when intoxicated by the spirit of party, they may recollect the scale of power may one day turn, and preserve the scales of justice equal.

It appears that Fries had been tried in the year 1799, before Judges Iredell and Peters, and convicted of the crime of high treason. His counsel afterwards moved for a new trial, on the ground that one of the jury had been prejudiced against him—that he had not in fact been an impartial juror in the case. The Court, consisting of the same judges, upon argument, ordered a new trial to be had. A new trial, according to the best authorities, is “a rehearing of the cause before another jury, but with as little prejudice to either party as if it had never been heard before.” In this light Judge Chase should have considered it. He ought to have gone to Pennsylvania with a mind totally unprejudiced, and viewed every circumstance of the case with the utmost impartiality. The very circumstance which produced the second trial ought to have put him sufficiently on his guard. When a new trial has been directed, to use the language of the respondent in his answer, “solely on the ground that one of the jury” (a single man out of twelve) “after he was summoned, but before he was sworn on the trial, had made some declarations unfavorable to the prisoner,” how ought an impartial judge to have felt and to have acted? Mr. Chase, let it be

recollected, presided in a court composed of but two members. With this lesson before his eyes, we find the respondent forming an opinion in his closet on the law of treason, applicable to the case of poor Fries, and not satisfied with making up his own mind on this subject, he took care to bind the judgment of his associate, by obtaining his approbation of that opinion, which he reduced to writing for the purpose. This irregular and reprehensible measure was adopted before the hour of trial arrived, when the man whose life was at stake was to be heard on a subject that involved his existence. This bold step in the path to conviction, has been defended on plausible grounds, and by subtle refinements.

The respondent in his answer and the learned counsel in their defence, have endeavored to prove that this conduct was not only right, but perfectly proper and correct. Among the various pretexts eagerly laid hold of to justify this novel procedure, they urge as a reason for prejudging and despatching a capital case, the multiplicity of civil business pending in the same court! I will forbear to inquire into the facts on this point, though I believe there is not a spark of testimony to prove the allegation to its full extent, because, if the docket had been loaded with civil suits, it would form no excuse for hurrying through a criminal trial, on the issue of which the life of a fellow-citizen depended. That cause must be bad indeed that requires to be propped by such miserable expedients. When I first read this passage in the answer, it struck me with astonishment, and excited a burst of indignation which it is my duty to repress. “A multitude of civil business is depending, and therefore I must make up my mind conclusively on the law in a capital case, before the proper season arrives, without hearing a single word from the prisoner or his counsel in defence!” The learned judge certainly did not reflect on the effect of such an excuse, which instead of palliating his conduct, aggravates it. That he was in a great hurry, every part of his conduct proves. From the opinion, a copy of which is annexed to his answer, it would appear that he did not intend to make it public, at least until after the jury had been sworn and Fries was on his trial. In that we find these expressions: “The Court heard the indictment read on the arraignment of the prisoner some days past, *and just now on his trial*, and they attended to the overt acts stated in the indictment.”

This honorable Court will recollect that the whole current of the testimony proves, and the defendant in his answer admits, that he delivered

the papers containing this *ex parte* opinion before Fries's trial commenced. Such was his eagerness to despatch the case, with a view, he says, of reaching expeditiously the civil list. As if gifted with the spirit of intuition and with an infallible judgment, he seems not to have proceeded on the principle of *castigatque auditque*, but to have improved even upon that model, considering it not necessary for him to hear arguments at any stage of a cause, for the purpose of forming a correct opinion. His counsel ask us whether it be a fault in a judge to have a profound knowledge of the law, which will enable him to decide promptly any question that may occur; and the respondent said, on Fries's trial, that "he had an opinion in point of law as to every case which could be brought before the Court, or else he was not fit to sit there." Yet, when Callender's trial was progressing, we find this same judge, upon a common point of practice relative to a challenge to the jury, calling out for Coke on Littleton to be brought into court before he could make up his mind on the subject.

The aid of precedent has been called in to justify this wide departure from principle, and it is contended that the opinion was correct in point of law. My honorable friend (Mr. Randolph) has detected and exposed the fallacy of this species of justification. I will remark that a great and respectable character (Lord Mansfield) has observed, that he is a most unrighteous and wicked judge who decides without hearing both sides—even when he decides correctly—because his judgment is the effect of chance or accident, and not the result of a fair, full, and impartial investigation. Precedents, let me observe, do not make the law, they are merely evidence of it; nor is the law to be absolutely decided by precedents, *judicandum est legibus, non exemplis*. "If a judge conceives that a judgment given by a former court is erroneous, he ought not in conscience to give the like judgment, he being sworn to judge according to law," says Lord Chief Justice Vaughan. But Judge Chase declares that, had he differed in opinion from former precedents, even in a capital case, he should have held himself bound by them. But here let me ask, what are those precedents to which he subscribes? It is not my intention to go at full length into the discussion of them, or comment at large on the law of treason. My object is, on this interesting occasion, to enter a solemn protest against doctrines which would entail on us all the constructive treasons of another country, and to assign in a few words the reasons of my opinion. I am not to be deterred from my duty by the assertion that no counsel of eminence would

controvert the principles laid down by the respondent in his *ex parte* opinion, more especially when characters of such high standing at the bar as Mr. Lewis and Mr. Dallas, have honorably and conscientiously opposed such monstrous doctrines. The Western insurrection in Pennsylvania was materially different from the momentary disturbances in the counties of Bucks and Northampton. The precedents which arose from one could not be applicable to the other, and the cases of Mitchell and Vigol, which have been cited, are readily distinguished from that of Fries.

In the first, the combination was formed and organized to seize *all* records and papers, and to destroy *all* offices, to expel *all* officers in the whole survey. The insurgents traversed the country armed, seized papers, attacked offices, and drove officers out of the country.

They seized and imprisoned the marshal, who escaped and returned to Philadelphia by a circuitous route.

They assembled at Cooche's fort, consulted on the attack upon Colonel Neville's house, marched thither in military array, summoned him to surrender by a flag, set fire to his house, and destroyed his records. They assembled at Braddock's field; deliberated on taking the garrison at Pittsburg; marched thither with that avowed object; but finding the garrison prepared for defence they filed off.

They assembled after the proclamation, and after the militia were ordered to march. They avowed an intention to resist. They compelled the Government to negotiate. The leaders, Bradford and Marshal, fled on the approach of the army, and the insurgents generally accepted the terms of amnesty, as in a case of treason. The army was, however, maintained for some time in the country.

In the last, the people were illiterate, ignorant of the laws and language. They did not conspire to act themselves, but to prevent *particular* inferior officers from acting, by making the assessments in *particular* townships.

They acted like a mob, in obstructing the progress of the officers by threats, hooting, &c., and once they took an officer's tax list or papers, but immediately returned them.

They assembled expressly to release or rescue a *particular* set of prisoners whom they called their neighbors.

They rescued the prisoners, and withdrew without injuring or attempting to injure the marshal, or the tax officers who were at Bethlehem.

They never suggested the idea of resisting the army. They dispersed as soon as the proclamation was issued, and they never met afterwards.

The distinctions are striking and obvious.

In the insurrection of 1794, the object was general; in the riot of 1799, it was particular.

In 1794, the insurgents *acted* as assailants; the rioters of 1799 stood on the defensive, and only obstructed the officers in attempting to act.

In 1794, the design of attacking a fort and resisting the army was deliberately formed, and overt acts committed to carry it into effect; in 1799, the idea of attacking or resisting the military power of the Government never was suggested.

In 1794, the sedition act had not provided for combinations to impede the execution of a particular law. In 1799 that act was in existence.

In 1794, the outrage extended to the seizure of the marshal to prevent his executing any process. In 1799, it was confined to the release of a particular set of friends and neighbors.

The precedents, therefore, of Mitchell and Vigol, which have been so much relied upon, did not, I humbly submit, apply to the case of poor Fries. But the defendant has dwelt much on the opinion expressed by Judge Iredell, in his charge to the petit jury on the former trial of Fries, notwithstanding the verdict was set aside, which was given on that occasion, and Judge Chase should have proceeded on the second trial, as little prejudiced by any opinions on the former, as if such trial had never taken place. It appears from the testimony of Mr. Dallas, that so confident was he of the broad difference between the cases of 1794 and 1799, that in the first trial he did not advert to the former, little suspecting that they would be considered as precedents for the latter. When he found, by the charge of Judge Iredell, that he did unexpectedly rely upon them, his intention was, in the second trial, to direct his arguments to the manifest distinctions between them. In this, however, he was disappointed by the arbitrary conduct of the defendant. Under these circumstances, can this case

be considered binding and obligatory; or, is a single precedent to make the law, and absolutely prevent counsel from controverting it?

The case of Fries was succeeded by that of Callender. There is seldom one act of crying injustice without being followed by another. It is the misfortune, if not the fault, of the respondent, that his conduct compels us to unfold more than one solitary case, in which he grossly violated his duty and the laws of the land.

Callender had written a book, which I never saw until since the commencement of this trial—a wretched performance, which ought never to have excited in the breasts of the honest supporters of the late Administration any passion but contempt. They should have applied to it the memorable declaration of one who once figured in political life, “a wise and virtuous Administration is not to be battered down by mere paper shot.” The respondent, it appears, was furnished by one of his present counsel, (Mr. Martin,) when in the act of setting off for the district of Virginia, with a copy of this formidable work, which threatened destruction, in his opinion, to the Federal fabric. The book was ready scored to his hands, so that, with a single glance, he might discover the fatal passages. With this volume for a “*vade mecum*, or travelling companion,” he proceeded to Richmond to hold a circuit court. Soon after his arrival a presentment was made and an indictment found against Callender. The miserable object of persecution was hunted up and down the country. At length he was discovered by the marshal and brought into court. To the indictment he pleaded not guilty, and able and eminent counsel appeared to defend him.

Callender not being prepared with the testimony necessary to substantiate his defence, an affidavit was filed in due form, which stated ample grounds to postpone the trial of the cause, and upon which the Court ought certainly to have granted a continuance.

What are the objections raised against the motion to postpone, founded on this affidavit, and the reasons urged in support of the respondent’s refusal to put off the trial? They are truly singular. One is a refined technical objection to the form of the affidavit, because it does not state in strict legal language that Callender expected to be able to procure at a future time the attendance of the witnesses. But he states facts which prove on the face of them, that by postponing the trial he could obtain the benefit of their

testimony, for he mentions the places of their residence, all of them within the United States. I say the case is stronger than if, *secundum formam*, he had sworn that he could procure their attendance. When he tells where they lived, the Court must have been satisfied on this point. However, the respondent assigns a curious reason to be sure, for his conduct. If the witnesses who were absent were actually before the Court, and were to prove all that Callender had stated or expected, it would riot have justified all the libellous passages that had been selected from the book and thrown into the indictment. How was Judge Chase to know but that Callender had testimony as to those points on which his absent witnesses would not have deposed?

The respondent, it seems, was willing to postpone it for a particular period, provided he would be present at the trial. Nay, he would go all the way to Delaware, and return again to accomplish an object he seems to have had so much at heart. In my humble opinion this part of the Judge's conduct proves stronger than almost any other of his acts, the motives which influenced him. If I were to select any one circumstance to prove that his intentions were improper, I would lay my hand on this. "I will not postpone this important trial until the next term, because, according to the arrangement, I shall not then be on this bench, but I will agree to delay it for a shorter period, and travel three or four hundred miles in order to accommodate Mr. Callender with my presence on the trial." Did any lawyer ever hear of such conduct? Did they ever hear of a court adjourning to a particular time, to try a single solitary case of a common misdemeanor?

I do respectfully submit, for the reasons assigned, that the conduct of the learned judge, in refusing to postpone the trial of Callender, was a most manifest violation of the principles of law, and was attended with such circumstances as render it highly improbable that it proceeded from a mere error in judgment.

From Virginia, flushed with success and elated with his triumph over Callender, the respondent hastened to Delaware. The night preceding the day on which the respondent was to hold the court, he lodged at the village of Christiana, about five miles distant from the court-house. From this place he rode into Newcastle the next morning with Dr. William McMechin, who was summoned as a grand juror to the court, and it is in evidence, was actually sworn on the panel. This is the very man, who, it is represented,

gave the respondent the information relative to the seditious printer. As a grand juror it was his duty to communicate to his fellows any offences against the laws of the land which had come to his knowledge, and it was the duty of the grand jury to present every criminal act punishable by the laws of the United States. We are bound to pronounce that Mr. McMechin put the rest of the grand jury, for he was sworn so to do, in complete possession of all the information which he communicated to the respondent. With these circumstances, the respondent was perfectly well acquainted. He saw with his own eyes the very man impanelled on the inquest who had opened the budget to him, and knew it was his duty to unfold the intelligence to his brethren. The respondent proceeds to deliver an appropriate charge to the jury—a charge free from all those blemishes which stain a subsequent performance of the same kind. He presented to their view in chaste and eloquent language the proper subjects for their inquiry. In my humble opinion it may have been equalled but never excelled. I considered it, according to my poor judgment at the time, a perfect model; the most finished piece in style and substance that I ever heard addressed to a grand jury. Had he stopped here he would have been an object of praise rather than complaint. Had he been contented with discharging his official duty, he would have been entitled to our thanks, rather than merited an accusation.

The grand jury retire to their chamber, and after some time return to the box. To the credit of the then marshal of the Delaware district, I must observe, that he had manifested on that occasion, (as I know him uniformly to have done, even when the storm of party raged with the greatest violence,) in the selection of his jurors, an independence becoming the responsible station which he filled. They were not men of pliant tempers, nor were they carefully culled from the ruling sect, but chosen without respect to party, from the most respectable of both sides. It gives me great pleasure to speak of such conduct, because I wish to hold it up as an example. The grand jury were asked by the clerk in the usual form, “Have you any bills or presentments to make?” Their foreman respectfully answered they “had not.” On this, the judge could no longer bridle his temper. He had anticipated perhaps a treat from the prosecution of an obnoxious printer, and expected to regale his palate with a favorite dish. Provoked by disappointment, his passion burst into a flame, and he condescended to stoop from his bench, for the purpose of seizing on his

prey. It was at this period he betrayed emotions so highly reprehensible, and so very unsuitable to the dignity of his situation. In a tone, well adapted to the exceptionable language, he observed to the grand inquest, "What! no bills or presentments?" This was matter of astonishment to him, and he proceeded to make the observations so correctly described by Mr. Read, the District Attorney of Delaware, a gentleman of irreproachable life and manners, whose character is not only unimpeached but unimpeachable, and Mr. Lea, one of the grand jury themselves, to whom part of the observations were addressed, a merchant of established reputation, and as a man respected by all who are acquainted with him. Sir, after the observations I have made on positive and negative testimony, I will not stop to demonstrate that every thing stated by Mr. Read and Mr. Lea was said, though not recollected by some other witnesses. I will barely mention that all the extra-judicial remarks of the respondent were addressed to the grand jury or to the district attorney. They must, therefore, naturally be presumed to have paid the strictest and closest attention to all that fell from the learned judge, and we have produced one of the grand inquest themselves, and the district attorney, to prove the language he used. I feel confident, under these circumstances, that implicit credit will be given to them. I am also convinced that the statement made by the respondent is scarcely more favorable to his cause. The grand jury repeat, to the interrogatory put to them by the respondent, the answer which they gave to the previous question of the clerk, and request additionally that they may be discharged, as many of them were farmers, and it was hay harvest, a very busy season with them. But no matter for that, the business of the persecution, for I will not say prosecution, must go on if possible. The judge would not discharge the grand jury on the first day, agreeably to general practice, as proved by Judge Bedford, though pressed so to do. He proceeds to give them information of the seditious temper which had manifested itself in the State, and particularly in Newcastle County: a county, which, suffer me to say, is well known from its old and unshaken patriotism from the Revolution to the present day. But he did not stop here; he proceeds to mention a seditious printer, point out the place where he lived, and the borough of Wilmington, justly celebrated for its uniform attachment to the cause of republicanism, and, according to his own answer, to specify the title of his paper, and just as his name was escaping from his lips, a returning sense of propriety checked his speech. Sensible how deeply he had committed himself already,

he paused for reflection. But he had gone too far to effect a safe and honorable retreat. He calls on the district attorney to know if a file of the papers cannot be had. Some officious person offers to procure them, and the respondent directs the district attorney to examine them and lay them before the grand jury, who are ordered to attend the next morning. They do accordingly attend, the file of the papers is laid before them and examined. Behold, after all his exertions, the respondent had his labor for his pains; after all this noise and bustle *montes parturiunt*, and not even *ridiculus mus nascitur*. The grand jury return once more to the box without any bills or presentments, and the learned judge with admirable address covers his defeat.

The conduct of the learned judge at the circuit court in Maryland, furnishes, I consider, one of the strongest articles of impeachment. I had intended to have dilated very much at length on this charge, but the fatigue of yesterday has really indisposed me, and I have already trespassed too much on your time.

Every member of this Court must have been sensible of the impropriety of the respondent's conduct on that occasion. Every reflecting man must be decidedly opposed to the idea of blending political discussion with the legal observations which ought to proceed from the bench. A party harangue little comports with the temperate and learned charges to be delivered by the president of a court. The character of an electioneering partisan, whose rostrum is a stump, or whose stage is the head of a hogshead, is utterly inconsistent and incompatible with that of a grave and upright judge. The duty of a judge is to expound the laws, and not to exercise the office of a censor over them, and much less to disgrace himself by reprobating them in a manner calculated to excite groundless alarm and apprehensions in the minds of the people, and to alienate their affections from the Government. Every man in his individual capacity possesses the undoubted right to advocate the political principles which he believes most beneficial to his country. The respondent as an individual is entitled to this privilege in common with his fellow-citizens, and to the free exercise of his splendid talents in such a case. But does this justify him as a judge in his judicial character, and from the judgment seat, to preach political sermons, and impose his private dogmas on the people, under the garb of administering the laws? Sophistry may for a moment confound two things perfectly

distinct in their nature and effect, but the mist vanishes before the light of argument.

It will be conceded that there yet exist State jealousies against the General Government, the acts of which are closely watched and scrutinized. When the Constitution of the United States was framed, it was the legitimate offspring of a liberal spirit of accommodation, which reconciled jarring interests, *discordia semina rerum*. It requires the patriotic exertion of every good man to preserve and to promote a reciprocal cordiality between the General and State Governments. The officers particularly of each should manifest a respect and reverence which would inspire at once confidence and attachment. What language can express the criminality of the respondent, when from the bench of the United States he undertook to thunder anathemas against the act of the Legislature of an individual State? Was this a part of his duty, or was it not? Can there be a doubt, sir, but that it was a gross violation of his duty, and that the respondent well knew it at the time? Yet such were his unbridled passions and his uncontrolled prejudices, that, regardless of the station which he held, and the dignified post which he occupied, he did not hesitate to commit the character of the United States by conduct which must have irritated the audience against the government of Maryland and its officers. If ever a *mobocracy* take place in this country, it will be brought about by such instruments and such conduct. Let those clothed with the laws become the violators of them, let the judges of the United States issue fulminations against the measures of individual States, and the judges of the different States retaliate, by declaiming against the acts of the General Government, and the consequences are easily foreseen.

When a poor miserable object like Callender, without character and without influence, censures the measures of our Administration, or reprobates an unconstitutional law, the respondent considered him guilty of a crime and deserving of punishment. But a man elevated to the bench may declaim in the strongest language against any measure or law of the United States, or of an individual State with perfect impunity! Recollect, sir, that if the defendant be justified in reprobating a single law of the United States, he has the right to reprobate them all indiscriminately. It is without question the duty of a judge to inculcate a respect and a reverence for the laws of the land. But, sir, the respondent, so far as he was able, has endeavored to

excite the indignation of the people against them, and to terrify them into an opposition to measures which he has chosen from the bench to denounce, by the dread of a *mobocracy* and other alarming stories unworthy the columns of a common newspaper, and scarcely equalled since the days of the Rye House, and of Titus Oates.

WEDNESDAY, February 27.

Mr. RANDOLPH.—Mr. President: The course which has been pursued by my learned colleagues and right excellent friends leaves but a barren field in which to glean after them. I shall, therefore, present you with the most condensed view that I can take of the subject, endeavoring, as far as possible, to avoid the ground which has been already trodden; and should I fail in this attempt, I hope to be pardoned, as having been absent during a great part of this discussion. Very far indeed is it from my intention, by tiresome repetitions, yet more to weary the patience of the Court, and prolong that decision which is anxiously awaited by all. I was not present when the defence was opened, in a style so honorable to himself, by the junior counsel of the respondent, (Mr. Hopkinson.) I was then ill abed. I regret the loss of the very able argument which he is said to have urged against the first article. God forbid that the time shall ever come with me when merit shall be disparaged because found in an adversary. Report speaks fairly of the gentleman's performance, and I am willing to credit her to the utmost extent.

Suffer me to say a few words on the general doctrine of impeachment, on which the wildest opinions have been advanced—unsupported by the constitution, inconsistent with reason, and at war with each other. It has been contended that an offence, to be impeachable, must be indictable. For what then I pray you was it that this provision of impeachment found its way into the constitution? Could it not have said, at once, that any civil officer of the United States, convicted on an indictment, should (*ipso facto*) be removed from office? This would be coming at the thing by a short and obvious way. If the constitution did not contemplate a distinction between an impeachable and an indictable offence, whence this cumbrous and expensive process, which has cost us so much labor, and so much anxiety to the nation? Whence this idle parade, this wanton waste of time and treasure, when the ready intervention of a court and jury alone was wanting to rectify

the evil? In addition to the instances adduced by my right worthy friend, (Mr. Nicholson,) who first addressed the Court yesterday, permit me to cite a few others by way of illustration. The President of the United States has a qualified negative on all bills passed by the two Houses of Congress, that he may arrest the passage of a law framed in a moment of legislative delirium. Let us suppose it exercised, indiscriminately, on every act presented for his acceptance. This surely would be an abuse of his constitutional power, richly deserving impeachment; and yet no man will pretend to say it is an indictable offence. The President is authorized by the constitution to return any bill presented for his approbation, not exceeding ten days, Sundays excepted, within which period he may return it to the House wherein it originated, stating his reasons for disapproving it. Now let us suppose that, at a session like the present, which must necessarily terminate on the third of March, (and that day falls this year on a Sunday,) the President should keep back until the last hour of an expiring Congress, every bill offered to him for signature during the ten preceding days, (and these are always the greater part of the laws passed at any session of the Legislature,) and should then return them, stating his objections, whether good or bad is altogether immaterial. It is true that a vote of two-thirds of each branch may enact a law in despite of Executive opposition; but, in the case I have stated, it would be physically impossible for Congress to exercise its constitutional power. Indeed, over the bills presented to the President within nine days preceding its dissolution, the Legislature might be deprived of even the shadow of control, since the Executive is not bound to make any return of them whatever. Now, I ask whether such misconduct in the President be an indictable offence? And yet is there a man who hears me who will deny that it would be a flagrant abuse, under pretence of exercise of his constitutional authority, for which he ought to be impeached, removed, and disqualified? Sir, this doctrine, that impeachable and indictable are convertible terms, is almost too absurd for argument. Nothing but the high authority by which it is urged, and the dignified theatre where it is advanced, could induce me to treat it seriously. Strip it of technical jargon, and what is it but a monstrous pretension that the officers of Government, so long as they steer clear of your penal statutes—so long as they keep without the letter of the law—may, to the whole length of the tether of the constitution, abuse that power, which they are bound to exercise with a sound discretion, and under a high responsibility for the general good?

Mr. President, through every stage of this transaction you perceive every symptom of guilt—trepidation, remorse, and self-abasement. Look at the consultation at Rawle’s, who was followed home by the judges as soon as the Court rose. Recollect the conversation which ensued, and the conduct of the Court on the following day, when the respondent is said to have atoned for his misbehavior; although, in the same breath, you are told there was no offence to expiate. Do you recognize in that procedure an honorable and manly acknowledgment of unintentional error, which, from a sense of justice, the respondent was anxious to rectify? Or do you behold the sullen perverseness of guilt, half ashamed to confess its offences, yet trembling at their consequences?—now soothing, now threatening its adversary—every characteristic of conscious crime? Sir, I blush for the picture which the gentleman has drawn of his client; and I ask you, Mr. President, if such a character is fit to preside in a court of justice?—a man whose violent temper and arbitrary disposition perpetually drives him into acts of tyranny and usurpation, from which, when vigorously opposed, he must disgracefully recede; equally ready to take an untenable position, or meanly to abandon it. To-day, haughty, violent, imperious; to-morrow, humble, penitent, and submissive; prostrating the dignity of his awful function at the feet of an advocate, over whom, but the day before, he had attempted to domineer. Is this a character to dispense law and justice to this nation? No, sir! It demands men of far different stamp—firm, indeed, but temperate; mild, though unyielding; neither a blustering bravo, nor a timid poltroon. I speak not of private character; with it I have nothing to do. It is the official conduct only that concerns me. I have no hesitation in saying that such men are not fit to preside in your judiciary; and that the greatest abilities, when joined to such tempers, serve but still more to disqualify their possessors.

I must here reiterate my regret at losing the argument of the gentleman who opened the defence. I understand him to have said, (speaking of Fries,) “Could that man be ‘innocent,’ who had been twice convicted of treason? Could he be ‘illiterate,’ who pretended to expound the constitution? Could he be ‘friendless,’ who had arrayed his numerous followers in opposition to the laws of his country?” Sir, this is a very pretty specimen of antithesis; but, unfortunately for itself, it proves too much, whilst, as to the question before the Court, it proves nothing. Does the gentleman believe the London mob, in 1780, to have been among the most influential men in England? or, because their discontents grew out of religion, that they were more deeply

read in canon law than any other body of men in that kingdom? They far surpassed the Northampton rioters in depth and intricacy of research. They undertook to expound the Constitution of the Church of England. But, unfortunately for this gentleman, the guilt or innocence of his honorable client is in nowise affected by the guilt or innocence of this poor German and his comrades. The respondent stands charged with a departure from the principles of the constitution and the established forms of law, in conducting the trial which was to ascertain the guilt or innocence of John Fries. What has this to do with his character? How does that affect the question? Guilty or innocent, he was entitled to a fair and impartial trial, according to the known usage and forms of law; for, be it remembered in such cases, *form* is *substance*. It is the denial of this sacred right, which the constitution equally secures to the most hardened offender as to persecuted virtue—this daring outrage on the free principles of our criminal jurisprudence, that constitutes the respondent's crime. If Fries was innocent, what language can sufficiently reprobate the conduct of the judge? An innocent man, by his procurement, iniquitously consigned to an ignominious death. If guilty, he ought to have expiated his guilt upon a gibbet. But what was the fact? The President of the United States, in consequence of the arbitrary and unprecedented conduct of the Court, was, in a manner, *compelled* to pardon him. The public mind would never have brooked the execution of any man thus tried and condemned. By the misdemeanor of the respondent, then, to rescue the administration of justice from the foulest imputation, to make some atonement for the offended majesty of the constitution, the Executive was reduced to the necessity of turning loose upon the country, again to sow the seeds of disaffection and revolt, a man represented by the adverse counsel to be every way desperate and daring—a traitor and a rebel. Upon what other principle, sir, can you account for the President's application to the prisoner's counsel, and his subsequent pardon? I repeat, Mr. President, that it is wholly immaterial to the question before you, whether John Fries was or was not a traitor. Either alternative is fatal to the respondent. He is charged with oppression and injustice on the trial, and you have not only the clearest testimony of the fact, but it is in proof before you that such was the President's motive in issuing the pardon. He must have believed that the sentence was in itself unjust, (which serves but to aggravate the respondent's guilt,) or he must have acted (as I am unwilling to concede he appears to have done) on the

ground that, however deserving of punishment, the prisoner had been unfairly tried, and his condemnation illegally obtained. Whichsoever of these positions be *true*, the defence set up on behalf of the respondent is *false*. What have you seen? A man condemned to death, unheard, by a prejudiced jury and an unrighteous judge, thirsting for his blood; the Executive demanding to hear that defence, to which the Court would not listen, and extending the arm of its protection to snatch the victim from the oppressor's grasp. And will you now turn this man loose upon society, armed with the terrors of the law and secure in impunity, to perpetrate similar offences?

But our opponents have not only resorted to the practice in civil cases, which here is totally inapplicable, but they have brought forward English precedents before the Revolution, and decisions of the court of *Star Chamber*! Precedents drawn from the worst periods of their history, from hard, unconstitutional times—decisions from the most flagitious tribunals, whose very name has passed into a proverb of corrupt, unfeeling tyranny. For an account of this Star Chamber I would refer you to John, Lord Somers, of whom it has been said, not with more elegance than justice, that, “like a chapel in a palace, he alone remained unpolluted, whilst all around was profanation and uproar.”

“We had a privy council in England (says this great constitutional lawyer) with great and mixed powers; *we suffered under it long and much*. All the rolls of Parliament are full of complaints and remedies; but none of them effectual till Charles the First's time. *The Star Chamber was but a spawn of our council*, and was called so only because it sat in the usual council chamber. It was set up as a formal court in the third year of Henry VIII., *in very soft words*, ‘to punish great riots, to restrain offenders too big for ordinary justice; or, in modern phrase, to preserve the peace.’ ‘*But in a little time it made the nation tremble*. The privy council came at last *to make laws by proclamation, and the Star Chamber ruined those that would not obey*. At last they fell together.” (Hatsell's Precedents, vol. 4, page 65, Note.) Is this the court whose adjudications are to justify the decisions of an American tribunal in the nineteenth century? And in a case of *treason*, too? Is this vile and detestable tribunal (whose decisions, even in England, are scarce suffered to be drawn into precedent) to furnish rules of conduct for the courts of this great confederate Republic? Yes, sir, you have not only

been obliged to listen to Star Chamber doctrines, but you have been referred to one most arbitrary magistrate to justify the oppressions of another. I allude to Chief Justice Keelyng. Who he was may be seen in the same volume of Hatsell, page 113.

“On the 16th of October, 1667, the House being informed, ‘that there have been some innovations of late in trials of men for their lives and deaths;’ [the very offences charged upon the respondent;] ‘and in some particular cases restraints have been put upon juries, in the inquiries’—this matter is referred to a committee. On the 18th of November, this committee are empowered to receive information against the Lord Chief Justice Keelyng, for any other misdemeanors besides those concerning juries. And on the 11th of December, 1667, this committee report several resolutions against the Lord Chief Justice Keelyng, of illegal and arbitrary proceedings in his office.” The first of these resolutions is: “That the proceedings of the Lord Chief Justice, in the cases now reported are innovations in the trial of men for their lives and liberties: and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government.” The respondent’s own case. The second resolution is, “that in the place of judicature”—[how does this bear upon the eighth article?] “the Lord Chief Justice hath undervalued, vilified, and contemned Magna Charta, the great preserver of our lives, freedom, and property.” And the authority of this infamous judge, the minion of Charles II.,—of judges in the most corrupt period of English history, from the restoration of that king to the revolution, is relied upon by his counsel to absolve the respondent from guilt. Permit me to do their client more justice. I do believe that the man who is held up here as a revolutionary patriot, of 1776, although in a moment of human infirmity he hath imitated their crimes, would blush to be justified by their example. For his sake I rejoice in that visitation of God which hath saved him this last degradation: from seeing his defence rested upon the authority of those infamous times, and yet more infamous men, with whom, with all his weakness and all his infirmities upon him, he would yet (I am persuaded) disdain a comparison. Yes, I do feel relieved that he hath been spared the disgraceful spectacle of beholding himself defended by his friends on principles more unjust and iniquitous, if possible, than have ever been imputed to him by his enemies: that he hath not been reduced to see those very decisions, prior to the revolution, cited in

his defence, which he himself denied to a fellow-creature put in jeopardy of life! The benefit of these decisions (it seems) can be taken only by the powerful oppressor—they offer no shelter to his victim. I thank God, sir, that I have indeed studied at the feet of far different Gamaliels from the honorable Attorney-General of Maryland, or those by whom, it would appear, he has been brought up; that I have drawn my notions of justice and constitutional law from a far different source—not from the tribunals of Harry VIII., nor the tools and parasites of the house of Stuart, but from the principles, the history, and the lives of those illustrious patriots and their disciples, who brought the Star Chamber to ruin, and its abettors to the block.

But I cannot consider the able Attorney-General of Maryland quite sincere in the doctrine which he has advanced. He shines indeed a luminary in this defence. Mr. President, there is an obliquity in human nature that too often disposes us rather to applaud the brilliant, though pernicious ingenuity that can “make the worse appear the better reason,” than the humble but useful efforts of a mind engaged in an honest search after truth. There is something fascinating in such a display of the powers of the human mind. The vanity of the whole species soothes itself with the excellence of an individual. We yield to the illusions of self-love—“we lay the flattering unction to our souls”—and are cheated and abused. It is under this perverse bias of our nature that I render to the honorable Attorney-General of Maryland the willing tribute of my admiration. But, he will pardon me, I cannot suppose him serious. I will not do him the injustice to believe that to a noble motive, to long habits of political and social intercourse, a friendship of thirty years’ standing, he has refused what he himself tells you is done, every day, nay in nine hundred and ninety-nine cases in a thousand, by persons of his profession, for a mercenary consideration. What has he said? “That, in defence of their clients, lawyers are in the daily habit of laying down as law what they know not to be law.” Mr. President, when I see a man of his unrivalled resources reduced to the miserable shift of Star Chamber doctrines and precedents before the revolution—and, conscious, no doubt, of the actual weakness of his defence, calling to his aid all the force of wit, ingenuity, repartee, pleasantry, and good humor, what inference must I draw? and what must be the conclusion of this honorable Court?

On the subject of Mr. Taylor's testimony, its rejection is attempted to be defended by a solitary precedent, *in a civil case*, drawn from a reporter, who, I am informed by gentlemen of the first professional character, is far from being considered as very good authority. I mean McNally. In support of this article I might urge as well the admissions of the honorable Attorney-General of Maryland, as the universal practice of our courts. What said Mr. Robertson—and what said the Chief Justice of the United States, on whose evidence I specially rely? He never knew such a case occur before. He never heard a similar objection advanced by any court, until that instance. And this is the cautious and guarded language of a man placed in the delicate situation of being compelled to give testimony against a brother judge. What more could you expect from a person thus circumstanced? What does it prove but that the respondent was the first man to raise, to invent such an objection to a witness? Can any one doubt Mr. Marshall's thorough acquaintance with our laws? Can it be pretended that any man is better versed in their theory or practice? And yet in all his extensive reading, in his long and extensive practice, in the many trials of which he has been spectator, and the yet greater number at which he has assisted, he had never witnessed such a case. It was reserved for the respondent to exhibit, for the first, and I trust, for the last time, this fatal novelty, this new and horrible doctrine that threatens at one blow all that is valuable in our criminal jurisprudence.

Against the fourth article the Attorney-General of Maryland hath adduced a similar and doubtful authority, in defence of his client. And here again I bottom myself upon the testimony of the same great man, yet more illustrious for his abilities than for the high station that he fills, eminent as it is. He declares that he has never known a similar requisition made by any court; that where the propriety of questions verbally propounded, has been denied, or for the sake of precision, (where they were intricate,) they have been reduced to writing, at the request or order of the Court; but in the first instance, and before they had been stated verbally, *never*, within the compass of his experience. And what inference can any candid, unprejudiced mind draw from these repeated, and, until then, unprecedented acts of interference by the judge, on behalf of the prosecution, but that, instead of an umpire, he was a partisan?

With regard to his deportment toward the counsel, I shall call the attention of the Court not to the statement made by themselves—because I question it in the slightest degree? God forbid—I know those able and honorable men too well—but because I would deprive our opponents of their almost sole argument—the personal irritation which they allege those witnesses must have felt. Waiving then any remarks on their testimony, powerful as it is, I again ask you, what said the Chief Justice? And, if I may say so, *what did he look?* He felt all the delicacy of his situation, and as he could not approve, he declined giving any opinion on the demeanor of his associate. What does Mr. Robertson say? In substance, every thing that has been deposed by other witnesses: “That the judge always spoke in the first person singular.” And here I will remark, that the short hand report which this gentleman made of the trial, and which he has given in evidence, was published, in the first instance, as a defence of Mr. Chase against alleged misrepresentations of his conduct on that occasion. It cannot be considered, therefore, as an *unfavorable* view of the transaction, at least so far as the respondent is concerned. What says Mr. Gooch? That the judge was very ‘*yearnest*’ with the counsel; that they were much abashed; that he set them down; that they appeared alternately red and pale; that he exhibited their confusion to the mirth of all the bystanders: and Colonel Taylor tells you, “that the conduct of the judge had the full effect it seemed intended to produce—to abash the counsel for the prisoner, and turn them into ridicule, for that every body laughed but themselves.”

But the ingenious Attorney-General of Maryland, whose fruitful invention is never without resource, has endeavored to persuade you, that this conduct was not merely justifiable, but even meritorious. That the design of the counsel was to irritate and inflame the people; and the respondent, dreading a riot, had no object but to keep the audience in a good humor; and that, by a seasonable exertion of his acknowledged wit and pleasantry, he completely succeeded in turning their weapons upon themselves, and totally defeated their purpose. This apology reflects credit on the inventive faculty of him who makes it, and yet what is it but an admission of the charge? Look to the evidence. You will see nothing to support the twist which has been attempted to be given to it—no apprehension of disorder and confusion but what grew out of the insufferable tyranny and insolence of the judge. Where was the respondent at this time? In some obscure corner of the Union—some remote district

notorious for disaffection, infamous for its spirit of insurrection, far removed from the protection of State or Federal authority? No, sir, he was in the enlightened capital of Virginia, a country never disgraced by rebellion—unless the epithet be applied by some squeamish politician to our glorious revolutionary struggle—a State whose soil has never been stained by insubordination to law. No, sir, he was sitting within a stone's throw of the residence of the Governor of Virginia, a man of whom I shall say nothing. Let the exalted stations he has more than filled, the high public trusts on which he has seemed rather to confer honor than receive it, his unshaken constancy in the worst of times, the dismay and confusion of his enemies, whose vain aspersions have passed him like the idle wind—let the confidence of a united people speak his eulogium. The respondent was sitting within musket-shot of a cantonment of Federal troops. Why were these troops placed there at that time, and why were they kept there for some time afterwards, belongs not to my present purpose. It is enough to say that they were a part of our famous provisional army—“*fruges consumere nati*”—to ascertain their readiness to protect, in any outrage on the law or constitution, (then practised, or meditated,) the government that maintained them in dissolute idleness. Governor Monroe was more interested in the respondent's safety than he himself appears to have been. He trembled lest the indignation of the people should get the better of their good sense, and hurry them into some act of violence, that would cast an odium on the State, and afford matter of triumph to her enemies. That the respondent's object was to goad her citizens to some outrage, which might justify the humiliation that was preparing for her, there is too much reason to believe, and that he would have succeeded, but for the intervention and influence of that excellent man, and the persuasions of the counsel themselves, whom the Attorney-General of Maryland would represent as endeavoring to excite public commotion, that he may find some shelter for the enormities of his client.

But our doctrine, it is said, goes to prostrate the rights of the accused—where?—at the feet of juries. There may they for ever lie, but never at the foot of a judge. The gentleman from South Carolina (I beg his pardon) deprecates the placing of criminal law solely in the power of juries. He would not have the life of a man depend on their decision of a point of law. But it is the glorious attribute of jury trial, that the question of guilty or not guilty, involving both law and fact, *that* law as well as *that* fact the jury

alone is competent to determine. It is the necessary consequence of the general verdict which they are required to find. The very able and learned Attorney-General of Maryland indeed says that this is an incidental *power*, rather than a *right* of the jury. But, sir, what is that power which no man may question, but a right? For, whether incidental or direct, the exercise of it is final and complete, if in favor of the accused; and the power of the Court to award him a new trial is further protection to the prisoner against abuse. There is no specific power given, in so many words, by the constitution, to Congress, to punish robberies of the mail; but it is incidental to the right of establishing post offices and post roads, and necessary to carry the specified power into effect. This curious distinction between "*right and power, direct and incidental,*" is an *ignis fatuus* of the learned gentleman's composition to bewilder and mislead us from our object, that we may be lost and led astray over a wide moor of absurdities. The right of the jury is not the less, whether immediate, or derivative; as Congress possess the power to pass all laws necessary to carry any delegated power into effect, in like manner juries possess every power necessary to the general verdict which they have a right to give. The violation on the part of the judge of the incidental power, as much subjects him to punishment, as if he had invaded the original right over the fact, to which it is appendant. What would he say to a robber of the mail claiming impunity because the power to make the offence penal was incidental, and not specified in the constitution? But, say gentlemen, we admit the *power* in the jury, we only deny the *right*: and in this tissue of self-contradictions they declare, that whilst a jury is bound by the exposition of the law, as laid down by the Court, yet they have not the right to determine whether the facts come within the law. Can there be a greater absurdity?

"Whilst the jury have no right to decide the law, they must decide whether the facts come within the law!" If the jury is tied down by the Court's construction of the law, is it not plain that *they* do *not* decide whether the fact is, or is not, embraced by the law? but that whilst they find naked fact, it is the *Court* that decides whether that fact does, or does not, come within the law? Gracious God! is it come to this? Are the great principles for which our forefathers contended, and many of yourselves have bled, now to be frittered away by technical sophistry? Is the same doctrine to be established here in capital offences—in cases of treason—that Lord Mansfield attempted to impose on the people of England as the

law of libel, and which they would not endure? Shall principles of criminal law which they have scouted, even in cases not capital, be established here for the decision of capital offences? that whilst the jury finds the facts, their application to the law shall depend solely on the will of the Court? I deny the gentleman's law; and assert that, as an American citizen, I would refuse to be bound by it. A man is charged with having committed certain treasonable acts. The constitution has defined treason to consist "in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." But the Court, assuming to themselves a more than Papal infallibility—the exclusive exposition and construction of the constitution—tell me, as a juror, to surrender into their hands my conscience and my understanding; that, as a levying of war is treason, so is the picking up of a pin a levying of war; that I, an unlearned layman, must not presume to expound the holy scripture of the constitution, but must leave that to the elect; and, if the fact of his having picked up the pin be proved to my satisfaction, I am bound to find the prisoner guilty of levying war against his country—to convict him of treason. Sir, the parallel runs on all-fours; for there is nothing to uphold this monstrous judicial assumption, but that which supported the pretensions of the Roman Pontiff—the willing obedience of ignorant superstition. If the jury is contumacious, if, whilst they confess their entire conviction of the truth of the fact charged in the indictment, they deny the legal doctrine and acquit the prisoner, the Court is without redress. They may bully and look big—there is no help. Put the case of murder. A killing with malice aforethought is charged upon the prisoner—there is no dispute about facts—it is admitted that the party arraigned did kill the deceased. Shall I, a juror, contenting myself with deciding a fact that nobody disputes, surrender to the Court the question of law, should they attempt to usurp it, (as that killing with a particular weapon is a killing with malice prepense,) and find a man guilty of murder whom I believe to have acted in self-defence?—in defence of life, or, what is dearer than life, of reputation? No, sir; I will not find him guilty, although all the courts in the universe should instruct me to do so. I will look to the great precept, "do as you would be done by," and say, "I would have done so too, and, therefore, I will not say, that man ought not so to have done." And what is there, sir, in the words, "*levying of war*" more unintelligible than in the words, "*malice prepense*?" The first, being altogether a matter of fact, would appear more exclusively the province of the jury than the last, which

rather partakes of a question of opinion. If you leave the law in criminal cases to the jury, (as well as the fact,) you are safe; but if your decision should sanction the opposite doctrine, you set all our liberties, fixed by the decisions of ages, afloat on an ocean of uncertainty and contention. We have no beacon, no compass, no polar star to direct our course. If you suffer the rights of a jury to be thus invaded on a criminal trial—on a trial for life and death—you bind us in conclusions more fatal than those of the Church of Rome. You force us one moment to say whether such a fact amounts to such a crime, and, the next, you will not permit us to know what the crime is. I hope the marshal will never summon me on such a jury. I give him warning; I will never surrender the constitution, my understanding, and my oath to the “*grim gribber*” of a court of law. I should consider myself as much entitled to decide the law for the judge in a civil case, as bound by his decision of it in a criminal one. Vain and futile is the attempt of the constitution to settle and define treason, if that definition is to mean any thing or nothing at the option of a corrupt judge. If this doctrine, sir, be denied by any member of this honorable Court, let him, in his legislative capacity, move for a bill “to render juries more obedient to the judges, and *especially in criminal cases.*” Until that is done, I shall refuse obedience to their dictates, and act as a juror upon the principles which I have avowed.

Mr. President, much as I regret the trespass that I have already committed on your patience, I must (painful as it may be to you, and it is not less so to myself) attempt something like a review of the conduct of this judge. In May, 1800, you find him in Philadelphia, engaged in propagating and establishing the detestable doctrine of constructive and implied treason, which, in England, has proved the dreadful engine of persecution and murder. From thence you trace him to Annapolis; (not by the blood of John Fries—no thanks, however, to him for that;) you hear his declaration in presence of Mr. Mason. But this, his counsel tell you, was all a joke, nothing but humor, sir; like his conduct at Richmond. If you listen to them, you must become a Pythagorean, and believe that the soul of Yorick himself has transmigrated into the body of this judge. It is true he could not be the king’s jester, because, *unfortunately*, we have no king, we have not yet reached that stage of civilization; but, sir, he is the jester of the sovereign people, a jester at your laws and constitution, and it is for you to say whether he shall continue to exercise his function. This jocular conversation is likely to prove a bitter and biting jest to the respondent. So serious did

that most intelligent and respectable witness deem it to be, that he locked it up in his own bosom, without venturing to mention it to any human being. He did not consider himself authorized to play with the fame of the respondent, however disposed *he* might be to sport with the feelings and rights of others. This merry fit lasted a long time. He indulges the same humor in the stage with Mr. Triplett, an entire stranger; and here let me observe, in justice to this gentleman, that never did any man deliver a more clear and unimpeachable testimony in a court of justice than this witness. It is conclusive. When the judge made personal declarations against Callender, could he be said to administer justice without respect to persons? But, sir, one of our adversaries (Mr. Harper) protests against this sort of evidence, and deems it highly inadmissible. Why? Because, forsooth, it violates the sanctity of private conversation, and wounds the feelings of gentlemen who may be called on as witnesses. Thank God! sir, we live in a country where the law is open to all, and knows no distinction between *gentlemen* and *simple-men*. No man, I trust, has a greater respect for the real gentleman than myself. When Francis I., the accomplished monarch of the most gallant people of Europe, deemed it his first distinction to be ranked as the first gentleman of his kingdom, he did not hold that sacred character in higher reverence than I do. But the respondent himself has told you that a court of justice is a coarse sort of thing, blind to these nice discriminations; that the polished address of a Chesterfield, and the rugged scowl of a Thurlow, in the eye of the law are equal. Suppose a person killed, will not the Court hear evidence of a previous declaration by the prisoner, of ill-will to the deceased, as “that he would be the death of him,” &c.? or, will they stop to ask whether it was uttered in a tippling-house, or a drawing-room; by a ruffian in rags, or in ermine? and yet we are accused of lying in wait for the respondent, of watching his unguarded and convivial hours, of wounding the nerve of social intercourse to the quick. We are ministers of justice, and as such, we know nothing of these delicate distresses, equally unknown to our forefathers, to the framers of our free and manly institutions. Their composition was of sterner stuff than this modern, flimsy, fashionable ware. To their robust constitutions and strong common-sense, these qualmish megrims, these sickly sensibilities of modern refinement were happily unknown.

Follow the respondent, then, with the steady and untired step of justice, from Philadelphia to Annapolis, from Annapolis to Richmond, and back

again to Newcastle. You see a succession of crimes each treading on the heel, galling the kibe of the other—so connected in time, and place, and circumstance, and so illustrated by his own confessions, as to leave no shadow of doubt as to his guilt. You are to take the facts, not, as his counsel would have you, isolated and dismembered, but embodied; a series of acts indissolubly linked together, each supporting, each animated by the vital principle of guilt that pervades and gives life to the whole. God hath joined them; no man shall or can put them asunder. Carry your mind back to the state of things in 1800; then advert to the testimony in the case of Fries. Lewis, Dallas, Tilghman, and *even Rawle*, declaring that they had never witnessed such a proceeding before; pronouncing the conduct of the judge, on that occasion, to be altogether novel in the annals of our criminal jurisprudence. The same spirit pervades his whole career. But you are warned by the counsel (Mr. Harper) not to tarnish the laurels of your political victory by an unmanly triumph over a fallen adversary. He implores the tribute of a sigh for the mournful yew and funeral cypress that bedecks the hearse of his political reputation. Dreading the decision of your judgment, your sympathies are enlisted for his client. An aged patriot, whose head is whitened with the hoar of threescore and ten years, is presented to your afflicted imaginations: broken with disease, compelled to employ his few and short intervals from pain and sickness, to spend the last moments of a life devoted to a thankless country's service, in defending himself against a criminal prosecution. Do we thirst for his blood? yet, even there, English authorities would bear us out. Do we seek to lead him to Tower Hill? If his heart will fly in his face, is it we who cast it there? Do we even ask his disfranchisement? No, sir, we only demand the removal of a man, whom the very suspicion of such crimes unfits for the high station which he fills. A man bent with age and infirmity, struggling with misfortune, is a venerable object, entitled to your sympathy, even although he were not a patriot. Mine shall never be denied to such a character. But, sir, mark the difference between Samuel Chase, powerful and protected, and John Fries, feeble and oppressed. Look at the one lodged in a sumptuous hotel, partaking of the best cheer, surrounded and supported by every comfort of life, by a large and respectable circle of friends, indulged with ample time for his defence, assisted by counsel second to none in the land, unrestricted in the conduct of their cause. When I give a man so situated my sympathy, it is not of so jejune a cast as to refuse itself to the victim of his

injustice—a hardy yeoman wrestling with indigence and persecution—selling his last bit of property to support a long imprisonment and meet the expenses of this very prosecution; a soldier of the Revolution, with whom the words “stamp act” and “window tax” were synonymous with slavery; who, in a moment of political delirium, perhaps of intoxication, had instinctively raised his hand against what he deemed an oppressive tax—immured in a dungeon, listening only to the clanking of fetters; snatched from the bosom of his family, to whom no doubt he was a kind parent and an affectionate husband—for be it remembered he was popular and beloved among his neighbors—this man, caught in the trap of judicial and constructive treason, at which common sense revolts, laid by the heels, trembling at the charge, ignorant of the extent of the law, without a friend to comfort and console him, no counsel in his defence; such a man, so situated, is as much entitled to my sympathy as any king that ever wore a crown, and he shall have it; he shall have more, he shall have justice from this honorable Court. Yes, sir, to my shame I confess, that my sympathy is not of this exclusive sort. It is not scared by the homely garb of poverty and wretchedness. It can feel for misfortune, even if it be not sumptuously arrayed.

We are asked to assign any rational motive for the conduct imputed to the respondent. His object might have been to court the Administration which he upheld and supported, to recommend himself to the President of the United States, to obtain the Chief Justiceship. Those who are anxious to attract the notice and favor of the powers that be, are not apt to put their light under a bushel. The fulsomeness of sycophants, who always overact their part, is proverbial. Sir, he might be aspiring to the Presidency itself, and anxious to engage the favor of the leaders of his party. Let it be remembered, the triumph of that day was complete, and the reckoning of this day too remote from probability to be taken into the account. Here, sir, you have a key to his whole conduct. It becomes you, then, Mr. President and gentlemen of the Senate, to determine whether a man whose whole judicial life hath been marked by habitual outrage upon decorum and duty, too inveterate to give the least hope of reformation, interwoven and incorporated with his very nature, shall be arrested in his career, or again let loose upon society, to prey upon the property, liberty, and life of those who will not rally around his political standard. We have performed our duty; we have bound the criminal and dragged him to your altar. The nation expects

from you that award which the evidence and the law requires. It remains for you to say whether he shall again become the scourge of an exasperated people, or whether he shall stand as a landmark and a beacon to the present generation, and a warning to the future, that no talents, however great, no age, however venerable, no character, however sacred, no connections, however influential, shall save that man from the justice of his country, who prostitutes the best gifts of nature and of God, and the power with which he is invested for the general good, to the low purposes of an electioneering partisan. We adjure you, on behalf of the House of Representatives and of all the people of the United States, to exorcise from our courts the baleful spirit of party, to give an awful memento to our judges. In the name of the nation, I demand at your hands the award of justice and of law.

FRIDAY, March 1.

The Court being opened by proclamation, the Managers, accompanied by the House of Representatives, attended.

The counsel for the respondent also attended.

The consideration of the motion, made yesterday for an alteration of one of the rules in cases of impeachments, was resumed: Whereupon,

Resolved, That in taking the judgment of the Senate upon the articles of impeachment now depending against Samuel Chase, Esq., the President of the Senate shall call on each member by his name, and upon each article, propose the following question, in the manner following: “Mr. —, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the — article of impeachment?”

Whereupon, each member shall rise in his place, and answer guilty or not guilty.

The PRESIDENT rose, and addressing himself to the members of the Court, said:

Gentlemen: You have heard the evidence and arguments adduced on the trial of Samuel Chase, impeached for high crimes and misdemeanors: you will now proceed to pronounce distinctly your judgment on each article.

The Secretary then read the first article of impeachment, as follows:

ARTICLE 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them “faithfully and impartially, and without respect to persons,” the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of this irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the constitution, and was condemned to death without having been heard, by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which ultimately rest the liberty and safety of the American people.

When the PRESIDENT took the opinion of the members of the Court respectively, in the form following:

“Mr. ——, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the first article of impeachment?”

Those who pronounced guilty, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Moore, Stone, Sumter, Worthington, and Wright—16.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Giles, Hillhouse, Jackson, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White—18.

The second article was read by the Secretary, as follows:

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as to the publication from which the words charged to be libellous in the indictment were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Cocke, Condit, Ellery, Giles, Howland, Maclay, Moore, and Sumter—10.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Brown, Dayton, Franklin, Gaillard, Hillhouse, Jackson, Logan, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Tracy, White, Worthington, and Wright—24.

The third article was read by the Secretary, as follows:

ART. 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Tracy, and White—16.

The fourth article was read by the Secretary, as follows:

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the Court, for their admission or rejection, all questions which the said counsel meant to propound to the above-named John Taylor, the witness:

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude manifested by the said Samuel Chase for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—16.

The fifth article was read by the Secretary, as follows:

ART. 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, entitled “An act to establish the judicial courts of the United States,” that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State, where such offender may be found: and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the Court shall order the clerk to issue a summons against the person or persons offending, to appear and answer such presentment at the next court; yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

All the members pronounced not guilty on this article.

The sixth article was read by the Secretary, as follows:

ART. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled “An act to establish the judicial courts of the United States,” that the laws of the several States, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Howland, and Maclay—4.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Jackson, Logan, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, Tracy, White, Worthington, and Wright—30.

The seventh article was read by the Secretary, as follows:

ART. 7. That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided—the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do, and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood “that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order—that the name of this printer was”—but checking himself, as if sensible of the indecorum which he was committing, added, “that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter,” and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of “Mirror of the Times and General Advertiser,”) and by a strict examination of them to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public

confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Franklin, Howland, Jackson, Maclay, Smith of Maryland, Stone, Sumter, and Wright—10.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Gaillard, Giles, Hillhouse, Logan, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White, and Worthington—24.

The eighth article was read by the Secretary as follows:

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and

tending to prostrate the high judicial character with which he was invested, to the low purpose of an electioneering partisan.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—19.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—15.

The PRESIDENT rose and said, on the first article, sixteen gentlemen have pronounced guilty, and eighteen not guilty; on the second article, ten have said guilty, and twenty-four not guilty; on the third article, eighteen have said guilty, and sixteen not guilty; on the fourth article, eighteen have said guilty, and sixteen not guilty; on the fifth article, there is a unanimous vote of not guilty; on the sixth article, four have said guilty, and thirty not guilty; on the seventh article, ten have said guilty, and twenty-four not guilty; and on the eighth article, nineteen have said guilty, and fifteen not guilty.

Hence, it appears that there is not a constitutional majority of votes finding Samuel Chase, Esq., guilty, on any one article. It, therefore, becomes my duty to declare that Samuel Chase, Esq., stands acquitted of all the articles exhibited by the House of Representatives against him.

Whereupon the Court adjourned without day.

EIGHTH CONGRESS—SECOND SESSION.
PROCEEDINGS AND DEBATES IN
THE HOUSE OF REPRESENTATIVES.

MONDAY, November 5, 1804

This being the day appointed by law for the meeting of the present Session, the following members of the House of Representatives appeared and took their seats, to wit:

From New Hampshire—Silas Betton, Clifton Claggett, David Hough, and Samuel Tenney.

From Massachusetts—Jacob Crowninshield, Thomas Dwight, Nahum Mitchell, Ebenezer Seaver, William Stedman, Joseph B. Varnum, and Lemuel Williams.

From Rhode Island—Nehemiah Knight and Joseph Stanton.

From Connecticut—John Davenport and John Cotton Smith.

From Vermont—William Chamberlin, Martin Chittenden, James Elliot, and Gideon Olin.

From New York—Gaylord Griswold, Josiah Hasbrouck, Henry W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, Erastus Root, Thomas Sammons, David Thomas, Philip Van Cortlandt, Killian K. Van Rensselaer, and Daniel C. Verplanck.

From New Jersey—Adam Boyd, Ebenezer Elmer, James Sloan, and Henry Southard.

From Pennsylvania—Isaac Anderson, David Bard, Joseph Clay, Frederick Conrad, William Findlay, Joseph Heister, Michael Leib, John Rea, Jacob Richards, John Smilie, John Stewart, and John Whitehill.

From Maryland—John Archer, Wm. McCreery, Nicholas R. Moore, and Thomas Plater.

From Virginia—Thomas Claiborne, John Dawson, John W. Eppes, Thomas Griffin, David Holmes, John G. Jackson, Joseph Lewis, jun., Anthony New, Thomas Newton, jun., John Randolph, Thomas M. Randolph, John Smith, James Stephenson, and Philip R. Thompson.

From Kentucky—George Michael Bedinger, John Boyle, and Thomas Sanford.

From North Carolina—Willis Alston, jun., William Blackledge, James Gillespie, James Holland, William Kennedy, Nathaniel Macon, (Speaker,) Richard Stanford, and Joseph Winston.

From Tennessee—George W. Campbell, William Dickson, and John Rhea.

From South Carolina—John B. Earle.

From Georgia—Peter Early and David Meriwether.

From Ohio—Jeremiah Morrow.

Delegate from the Mississippi Territory—William Lattimore.

Several new members, to wit: from Massachusetts, SIMON LARNED, returned to serve in this House as a member for the said State, in the room of TOMPSON J. SKINNER, who has resigned his seat; from New York, SAMUEL RIKER, returned to serve as a member for the said State, in the room of JOHN SMITH, appointed a Senator of the United States; and from Virginia, CHRISTOPHER CLARK, returned to serve as a member for the said State, in the room of JOHN TRIGG, deceased; appeared, produced their credentials, and took their seats in the House; the oath to support the Constitution of the United States being first administered to them by Mr. SPEAKER, according to law.

And a quorum, consisting of a majority of the whole number, being present,

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and ready to proceed to business; and

that the Clerk of this House do go with the said message.

The following committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections.—Mr. FINDLAY, Mr. VARNUM, Mr. LIVINGSTON, Mr. KENNEDY, Mr. EPPES, Mr. CLAGGETT, and Mr. ELMER.

Committee of Ways and Means.—Mr. JOHN RANDOLPH, Mr. JOSEPH CLAY, Mr. GAYLORD GRISWOLD, Mr. BOYLE, Mr. DAVENPORT, Mr. NICHOLAS R. MOORE, and Mr. MERIWETHER.

Committee of Commerce and Manufactures.—Mr. SAMUEL L. MITCHILL, Mr. CROWNINSHIELD, Mr. MCCREERY, Mr. LEIB, Mr. NEWTON, Mr. EARLY, and Mr. CHITTENDEN.

Committee of Claims.—Mr. JOHN COTTON SMITH, Mr. HOLMES, Mr. PLATER, Mr. CHAMBERLIN, Mr. Bedinger, Mr. STANFORD, and Mr. STANTON.

Committee of Revisal and Unfinished Business.—Mr. TENNEY, Mr. DICKSON, and Mr. EARLE.

The SPEAKER laid before the House a letter from the Governor of the State of Maryland, enclosing a certificate of the election of ROGER NELSON, to serve in this House as a member for the said State, in the room of DANIEL HEISTER, deceased; which was referred to the Committee of Elections.

TUESDAY, November 6.

Several other members, to wit: from Massachusetts, MANASSEH CUTLER; from Connecticut, SAMUEL W. DANA and ROGER GRISWOLD; from New Jersey, JAMES MOTT; from Pennsylvania, JOHN A. HANNA, JOHN B. C. LUCAS, and ISAAC VAN HORNE; from Maryland, JOHN CAMPBELL; from Virginia, JOHN CLOPTON; and from South Carolina, THOMAS LOWNDES, appeared, and took their seats in the House.

Another new member, to wit: ROGER NELSON, from Maryland, returned to serve in this House as a member for the said State, in the room of DANIEL HEISTER, deceased, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. J. RANDOLPH moved for the appointment of a committee on the part of the House to join a committee of the Senate to wait on the PRESIDENT and inform him that a quorum of both Houses is formed, and ready to receive his communications.

Mr. DANA inquired if a quorum of the Senate was formed? That circumstance, he thought, ought to be ascertained before the House adopted the gentleman's resolution.

Mr. RANDOLPH did not know whether or no the Senate had formed a quorum, but he saw no objection on that account to proceeding with their own business. He, however, had understood that the Senate would form a quorum this day.

The resolution was carried, and Messrs. J. RANDOLPH and R. GRISWOLD appointed the committee.

WEDNESDAY, November 7.

Several other members, to wit: from Maryland, JOSEPH H. NICHOLSON; from Virginia, WALTER JONES; from South Carolina, THOMAS MOORE; and from Georgia, JOSEPH BRYAN, appeared, and took their seats in the House.

Mr. JOHN RANDOLPH, from the joint committee appointed to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, reported that the committee had performed that service, and that the President signified to them he would make a communication to this House, in writing, to-morrow at twelve o'clock.

THURSDAY, November 8.

Several other members, to wit: from New Hampshire, SAMUEL HUNT; from Massachusetts, SAMUEL TAGGART; from Connecticut, SIMEON BALDWIN and CALVIN GODDARD; and from North Carolina, SAMUEL D. PURVIANCE, appeared, and took their seats in the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. BURWELL, his Secretary, as follows:

Mr. Speaker: I am directed to hand you a communication, in writing, from the PRESIDENT to the two Houses of Congress.

The communication was read, and, together with the documents accompanying the same, referred to the Committee of the whole House on the state of the Union. [See Senate proceedings of this date, page 164, for the Message.]

Sword to Decatur.

Mr. J. CLAY moved the following resolution:

Resolved, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, of the value of —— dollars, and to each of the officers and crew of the United States ketch Intrepid, —— months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services, of Captain Decatur, the officers, and crew, of the said ketch, in attacking and destroying a Tripolitan frigate, of forty-four guns, late the United States frigate Philadelphia.

Ordered, That the said motion be referred to a Committee of the Whole to-morrow.

FRIDAY, November 9.

Two other members, to wit: from Massachusetts, WILLIAM EUSTIS; and from Pennsylvania, ROBERT BROWN, appeared, and took their seats in the House.

Frigate Philadelphia.

Mr. J. CLAY's motion relative to Captain Decatur and the officers and crew of the ketch Intrepid, was taken up in Committee of the Whole.

On motion of Mr. CLAY, the resolution was altered, by striking out after the word "sword," the words "the value of —— dollars," and filling up the other blank with the word "two," thereby giving the officers and crew two months' pay.

Mr. C., with a view of showing the propriety of the measure, read extracts of letters written by Commodore Preble and Lieutenant Decatur, which had been obtained from the Secretary of the Navy; they contained an account of the circumstances attending this honorable exploit, which have heretofore been printed in the public newspapers.

The committee rose and reported the resolution as amended.

Mr. GRISWOLD presumed the object of this step was to pay a tribute of respect to those brave men who had so gallantly achieved this glorious and dangerous enterprise. He wished to do this in a manner the most honorable and notorious, and perhaps the best course would be to obtain from the Head of the Navy Department, a list of the names of the officers and the number of the crew, together with a detail of the circumstances attending the event. With this view, he moved to postpone the consideration of the resolution reported by the Committee of the Whole, till to-morrow, in order to introduce a resolution to this effect:

Resolved, That the Secretary of the Navy be directed to communicate to this House the name of the officers and the number of the men employed in the destruction of the frigate Philadelphia in the harbor of Tripoli, together with a statement of the circumstances attending that event.

The postponement was agreed to without opposition, and the resolution of Mr. GRISWOLD was adopted, with a small variation, suggested by Mr. J. RANDOLPH, and acquiesced in by the mover, to wit: "That the President of the United States be requested to cause to be laid before this House," etc.

Mr. J. CLAY and Mr. T. M. RANDOLPH were appointed a committee to wait on the PRESIDENT and communicate the request of the House.

MONDAY, November 12.

Several other members, to wit: from Massachusetts, PELEG WADSWORTH; from New Jersey, WILLIAM HELMS; from Delaware, CÆSAR A. RODNEY; from Virginia, MATTHEW CLAY; from North Carolina, MARMADUKE WILLIAMS and THOMAS WYNES; and from South Carolina, LEVI CASEY and RICHARD WINN, appeared, and took their seats in the House.

British Treaty.

Mr. J. RANDOLPH informed the House that the Committee of Ways and Means had received a communication from the Treasury Department, stating that the appropriation of \$50,000, for carrying into effect the seventh article of the British Treaty, had not been sufficient to discharge the second instalment upon all the awards made in pursuance thereof, and suggesting the propriety of making, as early as possible, a further appropriation for that object. The Secretary of State estimated the amount unpaid at \$60,000, and that, in order to prevent any disappointment, it would be eligible to make the appropriation \$70,000. Mr. R. hereupon moved that the Committee of Ways and Means have leave to report a bill on this subject. Leave being granted,

Mr. J. R. reported a bill accordingly, which was read a first and second time, and referred to a Committee of the Whole to-morrow.

TUESDAY, November 13.

Two other members, to wit: from Massachusetts, RICHARD CUTTS; and from South Carolina, WILLIAM BUTLER, appeared, and took their seats in the House.

No quorum being present, the House adjourned.

WEDNESDAY, November 14.

Another member, to wit, PHANUEL BISHOP, from Massachusetts, appeared, and took his seat in the House.

THURSDAY, November 15.

Two other members, to wit: from Massachusetts, SAMUEL THATCHER; and from Pennsylvania, ANDREW GREGG, appeared, and took their seats in the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the House of Representatives of the United States:

Agreeably to your resolution of the ninth instant, I now lay before you a statement of the circumstances attending the destruction of the frigate Philadelphia, with the names of the officers and the number of men employed on the occasion; to which I have to add, that Lieutenant Decatur was, thereupon, advanced to be a Captain in the Navy of the United States.

TH. JEFFERSON.

Nov. 15, 1804.

The said Message and the papers referred to therein, were read, and ordered to lie on the table.

MONDAY, November 19.

Sword to Decatur.

The House proceeded to consider the resolution reported, on the ninth instant, from the Committee of the whole House, to whom was referred a motion relative “to Captain Stephen Decatur, the officers, and crew, of the United States ketch Intrepid;” and the said resolution being twice read, and amended at the Clerk’s table, was agreed to by the House, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword; and to each of the officers and crew of the United States ketch Intrepid, two months’ pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of

Captain Decatur, the officers, and crew, of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Ordered, That the said resolution be engrossed, and read the third time to-day.

TUESDAY, November 20.

Another member, to wit, GEORGE TIBBITS, from New York, appeared, and took his seat in the House.

WEDNESDAY, November 21.

Louisiana Lead Mines.

The engrossed resolution authorizing the President to appoint an agent, who shall be instructed to collect all the material information respecting the actual condition, occupancy, and title of the lead mines in Louisiana, was taken up on its third reading.

Mr. LUCAS entertained a doubt as to the propriety of this measure; indeed, the gentleman from New York (Mr. MITCHILL) seemed to admit that it was superfluous, for he had said that the President, under proper authority, had already appointed agents to explore generally the Territory of Louisiana; that they have been some time engaged in that service at the Missouri, Arkansas, Red River, and about Detroit, and indeed Major Lewis had been some time in St. Louis, a post in the neighborhood of these very lead mines, and from his known enterprise and minute inquiries, there was good reason for believing that the subject which was the object of the proposed resolution, would be narrated in his general report of discoveries. But in addition to this expectation, the document accompanying the President's Message sheds considerable light. The information as to the condition of the lead mines, their number, names, and value, were explained, and as he had heard no gentleman suggest a doubt as to the accuracy of the narrative, he was inclined to give it full credit, from the general character of the gentleman who made the communication, and the particular knowledge he must necessarily have acquired by a long residence in the country. From

this view of the subject he was compelled to acknowledge that he had altered his idea of the resolution, and could not now vote in its favor.

Mr. MITCHILL had hoped that the gentleman from Pennsylvania, after the explanation of yesterday, would consent to the resolution; he would now add but a few explanatory words. The object of the resolution was simply to appoint an agent to inquire into the occupancy and titles of the present holders and claimants; this required a civilian versed in the municipal laws of the nations who had heretofore held that territory; not a natural historian, or mineralogist, not one who was acquainted with the art of mining, or smelting and testing ores. Neither did Mr. M. believe it would be necessary to send the agent to the mines themselves, but to the place where the deeds and conveyances constituting the title-papers of the proprietors, or pretended claimants, are recorded or preserved. Whether these were at New Orleans, or what other place, he did not know. As to the expense, it was not likely to exceed \$1,000 or \$2,000, even if the agent were sent from this city; but he imagined if the business could be as well conducted by the appointment of an agent in Louisiana, the President would instruct the Governor how to act. It might be seen too, from the words of the resolution, that it was a mere temporary employment, not likely to be of longer duration than three or four months, for the report is instructed to be made before the next meeting of Congress. Mr. M. concluded, that if Mr. LUCAS would reconcile himself to vote for the present motion upon this explanation, and should he hereafter desire a more extensive examination into the actual circumstances of the newly-acquired Territory, he might rely upon his earnest co-operation.

Mr. L. observed in reply, that Louisiana had been held alternately by three or four nations: each of which in sequence had granted titles to more or less of the lands in question. An examination into those titles would at this time excite a high degree of sensibility among the inhabitants, who, he thought, ought in their youthful state to be treated by Congress with tenderness and delicacy. The titles were various, some derived from the Governors of the country, some from commanders of posts. Many of the latter he believed might be considered by the agent illegal; especially as he had learned that the commander of St. Louis, in North Louisiana, held paramount authority over the subordinate posts, and that without his approbation the lands so granted would not be allowed; yet these persons

held under such title, and by occupancy and improvement consider themselves the *bona fide* proprietors of the lands. He feared that the inquiry intended by the resolution might create great dissatisfaction, while a postponement for the present could do no possible evil.

Mr. EARLY said, if Mr. L. had made a correct statement of the condition in which the titles in that country really stood, and he had no reason to doubt it, it would operate as the strongest reason on his mind to pass the resolution: though it would be perceived that the agency to be given on the present occasion extended no farther than to the lead mines. The gentleman, Mr. L., had yesterday mistaken his friend, Mr. MITCHILL's object, supposing a general agency was intended to be raised. He had mistaken him again to-day, by thinking the agent was to go into the Territory of Louisiana to decide upon the titles he might have an opportunity of examining. This was not the case. He was merely to inquire into the actual condition of the lead mines, the occupancy and title, for the information of Congress. We are not going to send a Board of Commissioners, or a Judiciary Establishment, for the purpose of hearing and determining upon the claims set up, but to procure for ourselves that information which will enable the Government to decide, without their instrumentality. If the gentleman (Mr. L.) views the subject in this point of light, he will find it freed from his objection.

The question was now put, and the resolution passed, 74 members voting in its favor.

THURSDAY, November 22.

Two other members, to wit: PETERSON GOODWYN and EDWIN GRAY, from Virginia, appeared and took their seats in the House.

MONDAY, November 26.

Preservation of Peace.

The House resolved itself into a Committee of the Whole on the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in waters under their jurisdiction.

The first section authorizes the President and other proper officers to call in the aid of the militia, regular troops, or armed vessels, to execute civil process upon offenders who take refuge on board foreign armed vessels.

On motion of Mr. NICHOLSON, any commanding officer refusing to obey a requisition to this effect was subjected to a fine not exceeding five thousand dollars.

Remission of Duties.

Mr. RANDOLPH called for the order of the day on the report of the Committee of Ways and Means respecting the remission of duties on books imported for the use of colleges and seminaries of learning—the resolution declaring it to be inexpedient to allow the same.

The House taking the subject into consideration—

Mr. J. RANDOLPH observed that the Constitution of the United States was a grant of limited powers for general objects, which Congress had no right to exceed, although they might think the powers too limited. This position he considered as of primary importance. Its leading feature was an abhorrence of exclusive privileges; it might be called the key to that instrument; every thing which rose up in the shape of privilege, was repressed in a peculiar manner, whether it related to orders or classes of men. Whenever they have touched the doctrine of privilege, the framers of that instrument, and the people of the United States adopting it, have been careful that nothing should be got by inference, or construction; the privileges of this House even have been precisely defined, and nothing is left for its extension, whatever may be the wishes or disposition of its members. The principle that this constitution is but a limited grant of power occurs, if not directly, yet frequently and effectually, so that it cannot be mistaken. On the privilege asked for, to permit colleges and universities to import their books free of impost, we refer to the eighth section of the first article, where it is declared that Congress shall have power to levy and collect taxes, duties, imposts and excises; but all duties, imposts and excises, shall be uniform throughout the United States. The impost shall be uniform. It is a lamentable fact, but nevertheless it is a fact, and cannot be too much dwelt and insisted upon, nor too well known, that the ambiguity

of language gives our constitution that character which leaves it in the power of civilians to say it means any thing or nothing. Whatever may have been said on other points, I think in this instance the language is so definite that it cannot possibly be mistaken. They shall be uniform, that is to say, there shall be but one quantum, one mode of collecting, and one manner; there shall not be two measures to mete with. If Congress undertake to exempt one class of people from the payment of the impost, they may exempt others also. If they begin with colleges and universities for the advancement of learning, surely they may go on to exempt the clergy and congregation for the advancement of religion; they may exempt their own members. Indeed, it cannot be seen where they are to stop, having once overleaped the constitutional barrier and entered on the wide field of privilege. The duties must be uniform! Nobody can be exempted: the President, if he chooses to import books, must pay the duty as well as any private citizen. In this country we have no privileged class, all must fare alike, every man must bend to the law, and the tax must be uniform whether on land or books.

Mr. FINDLAY observed, that in addition to the constitutional objections urged, he had others on the ground of expediency. The country colleges and seminaries whose funds were small, had seldom or never an opportunity of importing books; they were happy to receive them in the country as donations, or by cheap editions; they would therefore receive no corresponding accommodation, and yet they were more useful and their use more universally felt than those called higher institutions, which claim to be exempted from paying impost. There are only a few of the well-endowed academies that can afford to procure foreign books, and when they have them, their circulation is extremely confined; to say nothing more, these reasons would engage me to support the resolution.

Mr. R. GRISWOLD.—The gentleman from Virginia (Mr. RANDOLPH) must have misunderstood me when he supposed I objected to the report because the committee had assigned no reason for the resolution: I mentioned the circumstance merely to show that we ought not then to decide. With respect to the constitutional objection he has set up, I acknowledge it is new to me. Such an inquiry may be of great weight, but it does not appear so to me. The paragraph quoted from the eighth section of the first article, “that Congress shall have power to levy and collect taxes,” has never struck me

in the way it has that gentleman. The words are, “levy and collect taxes, duties, imposts, and excises;” but it drops the word *taxes*, it being settled in another part of the constitution, and declares that duties, imposts, and excises shall be uniform. The one speaks of direct taxes, the other of indirect—meaning that if an indirect tax is laid, it shall be uniform. No one State is to have an excise laid upon its inhabitants unless it extends to the citizens of every other: one part is not to be excised and another excused. This has always been the construction of that section of the constitution till the present moment, and I think it the true one. It is now said that Congress can only promote science and literature in one way. Why, have not Congress made grants of lands to promote those objects in the Western country? They have. I believe the power of Congress adequate to promote literature in the way applied for; and it has been frequently the case that, even after duties have been paid into the Treasury upon the uniform system, yet individuals have had those duties returned. I do not want to detain the House; but I am well persuaded that the constitution forms no impediment, and the expediency must be apparent.

Mr. J. CLAY said he was one of the committee, and had agreed to the report. Since reasons had been called for, he would in a few words assign those which influenced him. The gentleman from Connecticut (Mr. DANA) mistakes in thinking that a denial to exempt books from impost is a tax on literary institutions, and therefore not uniform, as the constitution requires all imposts should be; but he did not make his stand on the ground of the constitution—he rested the question upon its expediency. Giving literary institutions the privilege of exemption from imposts would open a wide door for fraud: we should soon have them importing books for sale duty free, rivalling the booksellers, who are subjected to the payment of impost, and vending them in every street and avenue of the nation. But why privilege colleges and universities to accommodate the rich; for we may believe that the rich, and the children of the rich, are the only persons who have access to these collections? The poor have little leisure and less opportunity to improve the advantage which even *neighborhood* would give them to peruse works of the kind alluded to; and sure it would be thought unjust to tax their pittance of imported articles, in order to enable gentlemen to read the classic authors, or the sublime and beautiful of the modern writers.

Mr. FINDLAY spoke of colleges, not of universities. We have three in Pennsylvania—one of them, to be sure, has also the title of university—but two of them have not funds to import books on their own account. It is only rich institutions that have this advantage: the poorer class of seminaries buy of booksellers, and pay them the impost as well as their retail profit. Indeed, this remission of duties will rather tend to create disgust than give satisfaction; and those seminaries which have large collections of books would be induced to sell them at their present price in order to procure new ones cheaper, as they have had to pay the duty on the former, but would have none to pay upon those they should hereafter import.

The question being called for, it was put on agreeing to the report of the Committee of the Whole, that it is inexpedient to remit the duty on books, and carried in the affirmative—seventy-nine members voting in the affirmative.

The House then adjourned.

WEDNESDAY, November 28.

Potomac River.

The House resolved itself into a Committee of the Whole on the bill authorizing the corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Mr. MACON (Speaker) moved to strike out the first section of the bill, with a view of trying its merits.

Mr. J. RANDOLPH seconded the motion of his respectable friend, (the Speaker.) The river Potomac was the joint property of the States of Maryland and Virginia under compact between those States. This property, at least on the part of Virginia, had never been relinquished. Congress, in his conception, had no right to pass the law in question; but if they had, there was another objection. The corporation of Georgetown were empowered to lay a tax which would be unequal and oppressive, since the property on which it was to be levied would not be equally benefited by deepening the harbor, supposing that effect to be accomplished. He hoped a prompt rejection of the bill would serve as a general notice to the

inhabitants of the District to desist from their daily and frivolous applications to Congress, to the great obstruction of the public business.

Mr. SMILIE understood there was a rival interest between the towns of Alexandria and Georgetown, and as this rivalry had been exhibited on many former occasions, he deemed it proper, before they passed any bill for the encouragement of either place, that the parties should be obliged to publish their intentions some weeks before the application, that if there were any objections to the measure contemplated, they might be before the House at the same time. He stated this merely as a ground of postponement, not saying whether he was in favor or against the measure.

Mr. GREGG thought the House bound to legislate for these people, until they relinquished the claim to the jurisdiction, either by authorizing them to legislate for themselves, or retroceding them to the States to which they originally belonged. He approved of the idea of publishing, as expressed by his colleague, (Mr. SMILIE,) which he considered absolutely necessary. If Alexandria were opposed to the bill, it is probable they would have sent in a memorial on the subject before this time; their not having done so inclined him to believe that they were satisfied that the measure should go into operation. He did not think the bill perfect, but nevertheless he should not oppose its progress.

Mr. LEWIS said the landholders of Georgetown had very generally signed the petition to Congress. And no person out of the walls of this House gave it opposition. The people of Alexandria were content, and the owner of the island and the west shore of the river was the person most likely to be affected, yet he had given it his hearty assent. He was well persuaded that no injury would be done to the navigation of the Eastern branch, or to the port of Alexandria; if, therefore, they could render a benefit to Georgetown, without injuring any other property, he trusted the House would agree to the bill.

Mr. SLOAN felt interested in the result of this measure. The people here have nobody to look to but Congress to make legislative provision for their well-being; he therefore considered it a duty to attend to their desires; but he wished the applicants to give notice of their intentions, in order that any person conceiving himself likely to be aggrieved should have an

opportunity of being heard. This was the usual course pursued in the State where he resided.

Mr. CLAIBORNE was by no means satisfied that the removal of the mud bank would do no injury to the Eastern branch and to Alexandria.

Mr. NELSON said that on a question so important to the upper parts of Maryland and Virginia, he could not refrain from stating some reasons in favor of the measure, and against the motion of the Speaker, which was intended to destroy the bill. It had been urged that the sediment which now obstructed the navigation to Georgetown, if set afloat by increasing the current and volume of water across it, would impede the navigation of the Eastern branch or fill up the harbor of Alexandria. Those who would take a view of the Eastern branch would be convinced it could make no deposit there, it being intercepted or turned aside by the point which projected into the Potomac; and as the water of the Eastern branch was more rapid than the Potomac, the breadth of the latter being much wider than the former, there certainly was no danger to be apprehended in that quarter. As to Alexandria, it was not to be supposed that the solid mass of sediment was to be taken off the bar at once and lodged in that harbor; the probability was, it would remove gradually and deposit at the eddy on each side of the river, while the union of the Eastern branch with the Potomac would increase the celerity of the current and carry it far below Alexandria.

The compact mentioned by the gentleman from Virginia (Mr. RANDOLPH) between the States of Maryland and Virginia, he acknowledged to exist; but as the measure contemplated the improvement of the navigation of the Potomac, instead of obstructing it, the right of each State to the free navigation thereof remained unimpaired. He imagined that the inhabitants of Alexandria and the citizens of Virginia wished success to the measure. He knew his constituents had it much at heart, knowing that a choice of markets is a great accommodation to farmers; and if defeated, it would be as much to their advantage to bring their produce to a shipping port at once by land, as to use the canal recently constructed at such prodigious expense, having afterwards to go with their produce to Alexandria by land.

Mr. SMILIE should not be against the bill, if upon full and fair inquiry it was found proper to pass it. But he could not agree to be hurried along

without allowing time to acquire information. He therefore moved that the committee rise and report progress.

Mr. MACON (Speaker) opposed the rising of the committee, because it was leaving the business exactly where it stood, unless it was meant to recommit it to a select committee for modification. But as he was determined to vote against it in any and every shape, he was prepared to decide now. As to the mode he had taken to come at his object, he should only say it was a fair one, and such as had been the uniform practice of the House since he had a seat in it.

The gentlemen in favor of this dam or causeway, say it will do no harm; but where is the demonstration? On the other side, serious apprehensions are entertained of its injurious effects upon the United States navy yard in the Eastern branch, and its causing obstructions in the harbor of Alexandria. He would assure the committee he was ready to promote the welfare of any of the citizens; but it must in justice be done, without injuring any other portion whatever.

At the last session, an application was made for a permanent bridge across the Potomac, with a draw for the passage of vessels; the petitioner urged the general utility of the measure to all persons travelling North or South, but particularly the vast benefit accruing to the inhabitants of the district, by affording a solid and secure means of intercourse between its several parts. This measure was opposed by the present petitioners, on the ground of the compact between Maryland and Virginia securing the right of free navigation to the river, and also alleging that their navigation to Georgetown would be impeded. The argument which they applied then, now applies against them, and it ought, in the minds of the same legislators, to apply with equal success.

Mr. FINDLAY was rather in favor of the bill, believing the mode proposed would be successful in deepening the channel, which would certainly improve the navigation to and from Georgetown, and in that object the citizens of some of the western counties of Pennsylvania were materially interested; several of their boatable creeks nearly interlocking with those of the Potomac. He would, however, agree to the committee rising, with a view to postpone the bill, until gentlemen acquired the information they asked for.

Mr. GODDARD hoped the committee would rise, and the subject be postponed until sufficient light was obtained to guide their votes to a proper decision. He also hoped that no member might be considered as the friend or the foe of the present bill, until he became such by an examination into its merits or demerits. He narrated the course the business had taken since its introduction into this House, and inferred that the same deliberate mode ought to be pursued to the end. Whether the measure was good or evil could only be determined in that way, and gentlemen ought not to object to doing positive good, unless it was demonstrated that positive evil would result to counterbalance the good that was intended. He conceived the members ought to inquire for themselves on this point, and legislate accordingly. He would on all occasions endeavor to promote the interests of the district; and as it had no immediate representative on the floor, he considered every representative bound to serve them, while the seat of Government remained among them.

Mr. G. W. CAMPBELL would not declare whether he should vote for the final passage of the bill or not. But he was disposed to take notice of the applications made from time to time by the inhabitants of the district; whether to redress grievances, or procure benefits. But he by no means approved of the principles of legislation without representation. He regretted that they were placed in this unfortunate situation; but he should decide on the present question according to its merits; and if it was found to be of great consequence to the petitioners, and not likely to work an injury to others, he presumed the bill would finally pass. But he wished the committee to rise, in order to give further time to obtain information. It had been alleged that the friends of the measure ought to demonstrate that the erection of a causeway would do no injury to any one. This was not a fair position; it was requiring them to prove a negative. The burden of proof should lie on those who oppose the bill, and it was for them to demonstrate that injury would result. The gentleman from Virginia (Mr. J. RANDOLPH) has stated that the boats from the western country have a choice of passing by the western or eastern channel to the market below Georgetown, and this, it is presumed, he means they should be still entitled to under the compact between Maryland and Virginia. Let us hear from those persons also, and then ascertain whether they have any objection to the project on that account. This was also an argument in favor of the rising of the

committee, and perhaps it may be added, that a little delay will enable the House so to modify the bill as to render it less exceptionable than at present.

Mr. SOUTHARD had not considered this subject of much consequence in the outset, but he found that its importance increased as it toiled along. He thought this morning it would have occupied but a short portion of their time; in that he found himself deceived; and he believed he was not singular in these opinions. He suspected many other members were in the same predicament. He therefore would vote for the committee's rising. That navigable waters are considered as highways, is a matter of great notoriety; but he did not know that to deepen a channel, by contracting its surface, was considered as obstructing the free navigation of a river, nor could he conceive that the body of sediment meant to be removed, would descend *en masse* and deposit itself at the confluence of the next stream it met. On the contrary, he imagined it would be separated by the force of the current giving it action into millions of particles, some of which would settle promiscuously on either side, while a part would ultimately be deposited in the ocean.

The committee hereupon rose and reported progress, and asked leave to sit again. On the question, Shall the committee have leave to sit again?

Mr. J. RANDOLPH requested that the act of cession by Virginia might be read, by which it would clearly appear that she had not ceded, or intended to cede to the United States any right acquired under her compact with Maryland. [The act was read.]

It is plain from the preamble, said Mr. R., that the intention of the State was to make a cession above the tide water; that the expected seat of Government would be fixed in some place contiguous to the limits of Maryland and Pennsylvania. It is not contended that the United States were bound to select any particular spot. This circumstance is mentioned only to show what was contemplated at the time by the Legislature of Virginia. Her act of cession was more broad. It extended to any tract of country not exceeding ten miles square, "to be located within the limits of the State." Over this she had relinquished to Congress her jurisdiction as well of soil as of persons. But her limits did not extend beyond high water mark on the western bank of the Potomac. Her right of highway on the river was a natural right acknowledged and secured by convention with Maryland. Her

civil jurisdiction over its waters was a conventional right, entirely derived from compact with that State, was a jurisdiction not within her limits, and which the words of the act just read could not embrace or convey.

Mr. DAWSON would vote against the committee having leave to sit again. He was convinced that the objection made by his colleague (Mr. J. RANDOLPH) was conclusive: the fact was, that neither Maryland nor Virginia had ceded their joint rights to this river, nor could they do so, by their separate acts; the terms of the compact requiring that any thing done respecting the navigation of the Potomac, should be done by their joint act. It was worthy of remark, that the petitioners for the causeway were the identical persons who petitioned against the bridge as a violation of the compact between the two States, and denied the authority of Congress to legislate on the subject of the navigation of the Potomac. He thought them right then, and he voted against the bridge. His opinion had not changed with their opinions, and, therefore, he should vote against the causeway now.

Mr. R. GRISWOLD said that from the vote just taken, he presumed that the question of expediency had been settled. But it is now objected that Congress have no exclusive jurisdiction over the Potomac. In reply he would submit a few observations. By the constitution, Congress were empowered to exercise exclusive jurisdiction over any place not exceeding ten miles, which might be ceded by particular States. The States of Maryland and Virginia had ceded this district to Congress, and the cession had been accepted. But the gentleman from Virginia (Mr. RANDOLPH) had said that Virginia did not cede the jurisdiction of the Potomac, because she did not own it separately. To this he would answer, that the river Potomac must have been under the jurisdiction of either Maryland or Virginia, or both. And as both allowed Congress to accept of any part of their territory not exceeding ten miles square, and Congress had chosen to accept of part from one and part from the other, he presumed the jurisdiction of the Potomac, let it have been held by either of the States, or jointly, must have passed to the United States. He was of opinion, that if Congress had no jurisdiction over the Potomac, they had none over the district. The constitution provides only for the cession of one district of country not exceeding ten miles square. The act of Congress, made in pursuance of the constitution, had also provided for the laying out one district. If the

arguments of the gentleman from Virginia were correct, and Congress had no jurisdiction over the Potomac, the Commissioners and the then President of the United States, under whose direction the district was laid off, had been mistaken, and had taken two districts of territory instead of one. This being the case, Congress had no jurisdiction in the district, because it not being laid off conformably to the constitution and the law of Congress, the acceptance by Congress was absolutely void. If this was correct, there was an absolute necessity for giving leave to the committee to sit again, for the purpose of deliberating whether Congress had jurisdiction or not. If they had not, and were legislating for the people of the district without authority, the sooner they put an end to such an assumption of power, the better.

Mr. J. RANDOLPH declared that the opinion which he had just given was the result of his most deliberate judgment. To what it might lead he should not at that time undertake to determine; but when that question should come before the House he was not sure that he should deny the corollary of the gentleman from Connecticut, (Mr. R. GRISWOLD,) at least as far as related to the testimony on the other side of the river. The question, however, then was, whether Congress possessed exclusive jurisdiction over the Potomac. How could they acquire it? From Maryland? It was more than she had to give. At farthest she could only grant her own qualified right. Had they obtained it from Virginia? Not at all. She had granted a jurisdiction exclusively her own, over a tract of country within her limits. And could any man pretend to say that this was a grant of her concurrent jurisdiction over the Potomac, confessedly without her limits? She had, to use the expression, issued her warrant to Congress, to be located somewhere within the State, and, under this pretext, her property out of the State was about to be usurped. Suppose the gentleman from Connecticut were to convey by deed his exclusive property, by certain metes and bounds, would his joint interest in other property not contained within those bounds pass by such a deed? Surely not. To a person setting up a claim to such property he would probably say, produce the evidence of your title; and in like manner Mr. R. demanded to be shown the conveyance by which Virginia had relinquished her concurrent jurisdiction over the Potomac? And in answer to this, gentlemen refer to a conveyance relinquishing something else in nowise connected with it, and tell us we always believed that we had a grant for this jurisdiction; we shall be grievously disappointed if we have not; it will be a great inconvenience to us to do without it, and, therefore, we must have

it. And Virginia is to be forcibly dispossessed of her right, to suit the convenience of Congress.

Mr. NELSON said, it was with diffidence he again troubled the House after the lengthy discussion which had taken place. But doubts having been originated as to the authority of Congress to pass the bill in question, he felt compelled to remove those doubts, as far as lay in his power. As the House had decided the expediency of the measure by a large majority, if upon an investigation it should be demonstrated that Congress possessed ample power to pass the bill, he trusted the same majority would still be found in favor of it. He would proceed to examine the power which Congress possessed to pass the bill, and he trusted that he should be able to satisfy a majority of the House, that they had sufficient power. Previous to the compact between Virginia and Maryland, which had been so much talked of, Maryland claimed the sole jurisdiction of the Potomac river, and Virginia claimed Cape Henry and Cape Charles, also the jurisdiction of the Pocomoke as her property. In order to prevent any duties from being imposed upon their vessels at either of those places, the two States entered into a compact by which Maryland agreed that the navigation of the Potomac should be free to the people of Virginia, and Virginia contracted not to impose duties on the vessels of Maryland coming by Cape Henry, or navigating the Pocomoke. By this compact, the Potomac became the joint property of Maryland and Virginia as to the free navigation, but all the islands were under the jurisdiction of Maryland. This being the situation, each of these States, by a law, ceded to Congress any part of their territory not exceeding ten miles square, which they might choose to accept. Congress chose to accept of part from one and part from the other; and, among the rest, this joint property the river Potomac. There was no exception made in the act of cession as to the water courses, and it would be needless to inform the members that a grant of land necessarily carried with it a grant of the waters thereon, unless an exception was made.

Mr. J. RANDOLPH.—The gentleman asks in the body of what county is the river Potomac passing through the District of Columbia? Will he take it for an answer that its jurisdiction is within the bodies of the same counties it was in before the acceptance of the territory on each side?

In addition to the observations made on passing joint property with exclusive property, suppose England and France to hold Malta in joint

possession, and that they cede to Germany, for her acquiescence in that measure, some of the exclusive property held by each within the German empire, will they say that their joint property in Malta passed by the treaty?

Mr. CLARK was unwilling to trouble the House at that late hour with any remarks, and would have entirely forborne, was not the question on which we were about to decide, and which had become extremely important, susceptible of a position which it had not assumed. It had been stated, and generally agreed to, and he supposed was correct, that the State of Maryland, previous to her compact with Virginia, rightfully claimed the whole river Potomac to the high-water mark on the western bank. Virginia owned the Capes. This collision of interest produced, in the year 1786, an adjustment of their interfering interests, and it was expressly stipulated that the river Potomac should remain a highway, free for the navigation of each State. In the year 1799, the Legislature of Virginia passed a law making a cession to the United States of a territory ten miles square, or any less quantity that should be accepted for the seat of the General Government, to be located and laid off within her limits; thus by the terms of her cession confining it to her territory. Maryland, nearly at the same period, made a similar cession. Out of these two cessions is the present Columbian Territory made. It is contended by the gentleman from Maryland, (Mr. NELSON,) that the two States uniting in the cession makes the grant complete, and the right in the United States predominant and exclusive. He acknowledges, at the same time, this correct principle that they could grant no greater right than they possessed. This doctrine I hold incontrovertible, that the alienee can have no greater or better title than the alienor, otherwise the derivative would be superior to the original title, a principle not to be admitted.

Let it be distinctly recollected that, prior to the cession, Virginia had purchased a right out of the soil of her sister State, distinct from the land—an incorporeal hereditament, a franchise which she had the right of exercising, unconnected with the use of the soil—so that, while Maryland owned the land, Virginia owned the right of way. She never passed this right by the terms of her cession or by any other act. Maryland could not, having already parted from it. No strength of argument can be derived from the terms of the constitution; for, if Virginia never parted with her right, the United States could never have acquired it. I trust I have shown that

Virginia purchased a right in the navigation of the Potomac, which she never parted from, and, of course, retains to this moment. We, therefore, cannot constitutionally legislate on this subject.

Let it not be said that the object is improvement and not obstruction. Is not building the wall from Mason's Island to the Virginia shore an obstruction, and the improvement at best problematical? But, this is begging the question. On a fair admission of my construction, I contend, and have endeavored to prove, that we possessing no jurisdiction over the river, it cannot be touched by any legislative act of ours in any point whatever. For, if it be touched in one way, it may be in another, and may finally end in whatever arrangement Congress may think expedient to make.

Mr. JACKSON did not stop to inquire whether it was proper for Congress to retain the jurisdiction over this district, but he was willing to remove a grievance which the people complained of and required to be done. He was not one of those who was disposed to guard the people against their worst enemies, themselves, as he did not believe the doctrine to be true. The objection that Virginia and Maryland had only ceded their exclusive property, and not the joint property of the free navigation of the Potomac, might, perhaps, be extended further than gentlemen wished, or were aware of. By the Treaty of Paris, France had ceded Louisiana in full sovereignty to the United States, but expressly reserved the right of free navigation of the Mississippi; if, then, the United States were disposed to shorten the navigation by cutting through the bend of that river, or in any other way improve the same, will it be necessary for the United States to consult and obtain the assent of France to the measure before they ventured to put it in execution?

Mr. NICHOLSON had but few observations to make upon the question before the House. His opinion was the same as at the last session, when a petition was presented for the erection of a bridge. He then thought that the erection of a bridge over the Potomac would tend much to the improvement of the place. He thought so still. But he then thought that Congress had no right to interfere in the least with the free navigation of the Potomac, and, of course, was opposed to the bridge. The same reason operated, in his mind, against the bill now in question. Neither of the States of Maryland or Virginia could have passed such a law previous to the cession of the district

to Congress. The question to be determined, then, was “whether the jurisdiction of the Potomac was ceded to Congress.” If this should be answered in the negative by the committee, all questions as to the expediency of the measure would be at an end. Previous to the compact between Virginia and Maryland, the latter claimed the river Potomac as its exclusive property. By that compact it was declared that the navigation of the said river should be free. Virginia, therefore, acquired a kind of property in the river, inasmuch as she acquired the right to the free navigation thereof. The question, then, to be inquired into, was, Had Virginia parted with this right? He conceived she had not. By the act authorizing the cession of ten miles square or less to the United States, this could not have been done; Virginia had no power to make the cession of the Potomac, because she had not the jurisdiction over it, and could not grant more than she possessed. After this grant by Virginia, the State of Maryland granted to Congress a portion of territory not exceeding ten miles square for the seat of Government. Had Maryland the sole property in the river, it could have passed in this grant, provided Congress accepted that part of her territory. But she had not this sole property, because the State of Virginia had a right by compact to the free navigation thereof. How, then, had the United States acquired the jurisdiction over the Potomac? Would it be contended that they had acquired it from Maryland? This did not appear from the act of cession. Had they acquired it from Virginia? That could not be, because Virginia had no power to make such a grant. So long as he had the honor of a seat in the House, he would hold up his hands against any measure like the present, which would go to affect the rights of any of the States. If Congress had a right to interfere in the least with the free navigation of the Potomac, they had a right to stop it altogether. He conceived they had no right to pass any law on the subject; and, believing so, he would certainly vote against the committee having leave to sit again.

On motion the committee rose and the House adjourned.

THURSDAY, November 29.

Recession of the District of Columbia.

On a motion made and seconded that the House do come to the following resolutions:

Resolved, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Virginia, by an act passed the third day of December, in the year one thousand seven hundred and eighty-nine, entitled, "An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government;" provided the said State of Virginia shall agree thereto.

Resolved, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of the Territory of Columbia within the limits of the City of Washington, which was ceded to the United States by the said State of Maryland, by an act passed on the nineteenth day of December, in the year one thousand seven hundred and ninety-one, entitled, "An act concerning the Territory of Columbia and the City of Washington;" provided the said State of Maryland shall consent and agree thereto:

Ordered, That the said motion be referred to a Committee of the whole House on Wednesday next.

THURSDAY, December 6.

The SPEAKER laid before the House a letter from the Governor of the State of Virginia, enclosing a return of the election of ALEXANDER WILSON, to serve in this House, as a Representative for the said State, in the place of ANDREW MOORE, appointed a Senator of the United States; which was referred to the Committee of Elections.

FRIDAY, December 7.

Post Roads.

Mr. JACKSON, from the committee appointed on the sixteenth ultimo, presented a bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading, from the navigable waters emptying into the Atlantic, to the Ohio river; which was read twice and committed to a Committee of the Whole on Monday next.

On a motion made and seconded, that the House do come to the following resolution:

Resolved, That a post road ought to be established from Knoxville, in the State of Tennessee, by the most direct and convenient route that the nature of the ground over which it is to pass will admit, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; and that a post road ought also to be established from —— in Georgia, to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee.

Ordered, That the said motion be referred to a Committee of the whole House on Monday next.

Duty on Salt.

Mr. THOMAS said, he rose with a view to propose an inquiry relative to the duty on salt. On this article a duty of six cents per bushel was first laid, in the year 1790 it was raised to twelve cents, and in the year 1797 eight cents more were added, making the duty twenty cents per bushel of 56 lbs.; at which rate it now stands. But, as every measured bushel of good strong salt which is imported into this country will weigh 80 or 90 lbs., this is in reality a duty of 30 cents per bushel.

Three years ago, when the repeal of the stamp act, excise, and other internal tax laws, were before Congress, an attempt was made to reduce the duty on salt, and retain a part of that system.

At that time, although he was conscious the duty on this article of real necessary consumption was too high, and fell extremely heavy on the agricultural part of the community, particularly those living back from the

seaboard, who were obliged to use large quantities of it, for their black cattle and other beasts of pasture, notwithstanding the increased price at which it came to them, in consequence of the transportation, and the profits charged on the amount of duty as well as original cost by the several merchants or traders through whose hands it passed, yet he did believe it better to allow this duty to remain as it was a while longer, rather than not be enabled to abolish that expensive, inconvenient and anti-republican system of internal taxation.

And should it now be found, on due inquiry, that a reduction of the duty on this article, at this time, would be incompatible with the great object of paying off the national debt and meeting the other exigencies of Government, for his part he would not urge it; but he was persuaded this was not the case—he believed our finances are amply sufficient to authorize the measure.

On examining the report of the Secretary of the Treasury he found, that besides meeting all the calls of Government, including the sum appropriated annually towards the reduction of the public debt, there was a surplus of \$4,882,225 in the Treasury, and although there are several payments to be made out of this sum, there will still be a large balance remaining.

It also appears, from a comparative view of the bonded duties of the present with former years, that there will be an increase of revenue coming into the Treasury the ensuing year, and he believed there was no reasonable probability of any new causes for expenditure.

This being the case, he flattered himself it would not be deemed unseasonable or improper to propose a reduction of the duty, on this article of necessary consumption, at this time.

With this object, however, said Mr. THOMAS, I wish to couple another which I consider of equal importance, as it respects the reputation of our beef, pork, fish, and butter, put up for exportation, as well as the health of our seaport towns, and seamen employed on foreign voyages.

He said, by the Treasury accounts it appears that the aggregate amount of salt imported into the United States during the year, ending the 30th September last, was 3,858,195 bushels of 56 lbs. each, of this about one-fourth part, or 868,355 were imported in foreign vessels. All this salt was

brought from foreign places, and no part of the salt prepared from the briny waters near the Onondaga, in New York, the various springs in the Western States, and the sea water of Cape Cod, Portsmouth, &c., is taken into this calculation.

Of this salt some parts came from the Swedish, Danish, and Dutch West Indies—other parts were imported from the British West Indies, and other British colonies, from the French West Indies, from Spain, from Teneriffe, and the other Canaries, and the Spanish West Indies; parcels of the same salt were likewise brought from Portugal, Madeira, Cape de Verd Islands, and Italy, and about 20,000 bushels of a similar kind has heretofore annually been brought from Louisiana, which is now a part of the United States.

But notwithstanding all this trade in salt, to so many parts of the earth, the commerce in that article between the United States and Great Britain is very extensive and important. During the year he before mentioned, the proportion of imported salt which was furnished by England alone, and of the manufacture of that country, amounted to 1,271,537 bushels of 56 lbs. So that it is evident at least one-third of the salt consumed in our country is exported from that part of Great Britain called England, and chiefly from those countries of which Liverpool is the mart.

This salt, as he understood, was prepared by the process of boiling the brine of the rock salt from Cheshire, and the water of the sea; and on account of the great plenty and cheapness of coal in Lancashire, there being also, as he believed, no export duty laid on it, this salt was produced in abundance and sold on very low terms; it is employed as ballast for British ships coming into our ports, and when arrived is sure to sell and pay the freight and frequently afford a profit; our own ships also very commonly take it in for ballast, and often as part of the cargo.

This traffic would be perfectly fair and convenient if English salt was of a strength and quality fit to preserve animal flesh for provisions. But he was clearly of opinion, from his own knowledge, this was not the fact, and he had lately observed a discussion on this subject in the British Parliament which confirmed that opinion.

The British Government long ago made a distinction between English salt and foreign salt on their importation into Ireland. To encourage the

introduction of salt from the Bay of Biscay and the Portuguese dominions, they permitted it to be imported into that kingdom at the rate of 84 lbs. the bushel, while Liverpool salt was charged with the same duty of two shillings on the bushel of 56 lbs. The reason of this distinction was undoubtedly wise and cogent; experience had proved that British salt, as brought to the market, was destitute of that purity and strength which was necessary to preserve animal flesh from taint and corruption, and fit for human food in hot climates and on long voyages.

The trade of Ireland in beef, pork and butter, was of great importance, not only to that country itself, but to the whole navy and army of Britain. To keep up the character and wholesomeness of their provisions was a matter of immense national importance, and this could only be done by attention to have it preserved with salt of purity and strength. Experience had proved that the salt formed by crystallization in the open sunshine on the western shores and islands of Southern Europe, was vastly better than that produced by artificial concretion, in a boiling heat over a fire in the North. And the Government had with prudent discernment favored the introduction of Bay salt into Ireland, by permitting 84 lbs. to be imported for the same duty that was paid on the introduction of 56 lbs. of Liverpool salt.

The people of Liverpool have lately expressed uneasiness at this partiality, and an attempt has been made in Parliament, so to equalize the duty, as to give to both Bay and English salt a fair competition in the Irish market. This, however, was repelled by the Irish members, with manly discernment and spirit, on the ground that Bay salt was of a stronger quality, less easy to dissolve, and indispensable to the salters of meats; that English or Liverpool salt would not answer for this extensive and important branch of business; that the discrimination in favor of Bay salt was politic and proper, especially connected with the provision trade and the health of the fleets and armies.

It is my wish, said Mr. T., that such a distinction should be made on the introduction of English salt into the United States, as has been made by the British laws themselves, on its importation into Ireland. There certainly exists the same causes for it. Like Ireland, our country abounds in provisions—beef, pork, fish and butter, are great and staple articles of export; but their quality is very far inferior to the provisions of Ireland. The putrefaction of beef, pork and fish, to a very serious extent, has often

occurred; the loss of the property thereby was great, and the reputation of our provisions materially affected. But that was not the greatest evil; there is no doubt but that the exhalation from tainted and corrupted meats and fish, in our towns as well as on board our vessels, poison the atmosphere and excite malignant fevers and other diseases.

His object was to retrieve and establish the reputation of our salted provisions in foreign markets—to prevent the loss of property by those who put up provisions for exportation, and also to prevent the evils resulting to our citizens and seamen from tainted and spoiling meats and fish. With this view of the subject he should propose, in the first place, an inquiry into the expediency of reducing the duty on salt generally; and, in the second, the propriety of making a distinction, so as to encourage the importation of strong and pure salt, in preference to the weak and impure salt manufactured in England.

He, therefore, moved the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duty on salt, and also into the propriety of making a distinction in the duty, so as to encourage the importations of salt from the dominions of Denmark, Sweden, the United Netherlands, Spain, France, Portugal, and the British West Indies, in preference to any other place or places; and that they report thereon by bill or otherwise.

Mr. J. RANDOLPH said, that the resolution which the gentleman from New York had submitted, and in relation to which he had favored the House with such copious details, embraced two objects: the reduction of the duty on salt, generally, and the encouragement of the importation of a particular description of that article. The last subject belonging to a class which was consigned to the Committee of Commerce and Manufactures, he should confine himself to the first branch of the resolution; nor should he have troubled the House at all were not the motion of the gentleman from New York calculated to excite an expectation, which he wished to repress, because he feared it could not be gratified. It was not to oppose inquiry, but to apprise the mover and the public that the result was likely to prove unpropitious to his wishes, that he had risen. The country on which the salt

duty fell with peculiar force was that middle region, near enough to the seaboard to be supplied altogether by importation, but too remote to have its consumption diminished by vicinage to the sea. Those whose stock had access to salt water felt the duty but partially; those whose situation obliged them to use salt of home manufacture only, not at all. As an inhabitant of that district of country by which the duty was principally paid, and as a friend to agriculture, he had at an early period of the session, in conjunction with his friend the Speaker, turned his attention to the practicability of reducing the duty on salt, and you well know, sir, (said Mr. R.) that the result of our inquiry satisfied us that this desirable object was not at present attainable. He mentioned this to show that other members felt an interest in this subject, as well as the gentleman from New York, although they had not brought it before the House. The Treasury statements on which that gentleman relied for the support of his position, that we can dispense with a portion of our existing revenue, establish the opposite opinion, beyond controversy.

MONDAY, December 10.

Two other members, to wit: MATTHEW WALTON, from Kentucky, and NATHANIEL ALEXANDER, from North Carolina, appeared, and took their seats in the House.

TUESDAY, December 11.

Recession of District of Columbia.

The SPEAKER laid before the House a letter addressed to him from George Washington Parke Custis, chairman of a meeting of the inhabitants of the county of Alexandria, in the District of Columbia, enclosing sundry resolutions of the said inhabitants, expressive of their disapprobation of so much of a motion now depending before the House, as relates to a recession of jurisdiction to the State of Virginia, of that part of the District of Columbia which is contained in the county of Alexandria, aforesaid.— Referred.

Potomac River.

The House again resolved itself into a Committee of the Whole on the bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Mr. MACON gave it as his opinion that it would be improper at this time to take up the subject, as there was a motion on the table to recede the territory of the district back to the jurisdiction of the States out of which it had been carved. If it is intended to recede the territory, it would certainly be better to recede with as few encumbrances or alterations as possible; indeed, the striking propriety of the business taking the course he had just mentioned, had led him to expect that the present bill would not be again agitated until the question of recession had been investigated and decided. He would therefore move that the committee rise and report progress.

Mr. SMILIE voted against going into a Committee of the Whole, on the ground mentioned by the Speaker. If it be the intention of the Legislature to recede this territory, there was certainly no necessity of discussing the propriety of erecting a causeway; if it be not the intention, when this is manifest it will be time enough to consider the bill before them. From what he had observed on the part of the inhabitants of the District of Columbia, there seemed to be a disposition, if not a determination, to give Congress as much trouble in legislating for them as they had for all the rest of the Union. During the present session, this single ten miles square had occupied as much of the time of the House as the whole of the United States, whose general and important business was daily caused to be suspended for the local concerns of this place. From observing this to be the settled course of proceeding, he was convinced that Congress must do one of two things, either recede them to their respective States, or put them in a situation capable of managing their own affairs, in their own way. The daily pay of the members amounted to a considerable sum, and the length of time consumed on every trifling application for want of some member able to explain the true situation of the district, occasioned by its unrepresented state on this floor, were evils much to be lamented, if they could not be remedied. He thought members could hardly justify the waste of time, intended to be devoted to the public, whatever they might think of the expense it occasioned. He hoped the committee would agree to rise.

Mr. LEWIS did not think it fair to anticipate the opinion of the House on the subject of recession, which he considered would be the effect of the committee's rising. If, however, the committee shall determine that they would not, at this time, discuss the present bill, he had no objection to enter on the consideration of the other subject.

Mr. NELSON thought this the proper time to discuss this question, even in preference to that of recession. It appears from the petition of the inhabitants of Georgetown, that the channel of the river, on which the salvation of that town depends, is filling up daily; that the mass of mud would soon increase to such a degree as totally to ruin the navigation to that port. If even it should be agreed by Congress to recede the territory to the States of Virginia and Maryland—which he wished and hoped in God would not be the case—it would be late in the session, and in all probability, at a time when neither of those State Legislatures will be in session. Supposing both States were willing to accept the recession, which he believed would not be found to be the case, the petitioners could not apply to the Virginia Legislature until next December, as their session began in that month, nor to Maryland until next November. A twelvemonth's delay might defeat the object altogether, for the petitioners assert that it requires immediate exertions to prevent the channel filling up altogether.

Mr. SLOAN reminded the committee of an old saying: "The time present only is in our power, the future we know not of." The time present, then, is the time to redress the grievances of the suffering part of this community, and as the citizens of Georgetown were really embarrassed, and their apprehensions excited of greater danger, he hoped the committee would proceed with the business.

Mr. STANFORD seldom troubled the House with any motion; but the one alluded to by his colleague, (Mr. SPEAKER,) he had brought forward from a sense of duty. The reiterated applications of the inhabitants of this district for legislative provisions, he had always listened to with attention, and he had no objection to proceeding in the discussion of the present bill, convinced that it would only serve to show the necessity of receding the territory. From all that had hitherto been done, it was apparent that they could not attempt to accommodate one part of the district without drawing forth petitions against the same from another part. Counter-petitions were constantly coming in. He was willing to hear every thing, but he did not

believe the House could agree to any thing, and it was not to be wondered at when the inhabitants could not agree among themselves; or, if the House agreed at this time relative to the objects of the bridge company and the causeway petitioners, it would be, he suspected, to do nothing in either case. All this tended to evince the propriety of adopting the resolution he had laid on the table to recede the territory to the States of Virginia and Maryland, who would then have competent powers to gratify both parties, if they deemed it expedient, of which he was convinced they were better judges than this, or any future Congress was ever likely to be.

The question on the committee rising was taken, and lost—only forty-three members voting in the affirmative.

Mr. MACON then proposed to amend the bill in such a way as to provide for regulating the ferries that might be established across the eastern part of the stream to the causeway, and applying the fund arising from the same for the purpose of keeping the causeway in repair.

Mr. LEWIS did not consider it useful to travel over the ground assumed on a former occasion, but would confine himself to state to the committee some information he had acquired since, in respect to the damage the Eastern Branch or the port of Alexandria was likely to sustain, as had been alleged. Before the year 1784, the channel on the western side was so shallow that vessels only of very ordinary burden could pass, while on the Maryland side vessels of great draught of water could easily pass up to Georgetown. The uncommon hard winter of 1783-'4 was followed in the spring by the greatest torrents ever known in the Potomac. The bodies of ice were of immense magnitude, and many of them lodged upon the island, and under the rocks of its bed, prizing with a force beyond all credibility: it tore the rocks asunder and pressed them over into the new channel, occasioning a rise of thirty or forty feet on the Georgetown shore. On the Virginia side the torrent also forced itself and deepened that channel, while it left a vast quantity of mud, rocks, and sand, in the eastern channel, which has been constantly accumulating since that period. The situation of the present bar is at the meeting of the two arms of the river, below the island, and does not permit the passage of vessels over it drawing more than twelve feet water. The consequence of this alteration in the bed of the river below the island has been to narrow the mouth of the Eastern Branch, but it had no effect upon the harbor of Alexandria. This may serve to explain what may be the

effect of opening the old channel in the way proposed: it may operate to widen the mouth of the Eastern Branch harbor, but it cannot injure Alexandria.

Mr. CLARK.—When this bill was under consideration, some days past, I endeavored to show (and hope with satisfaction) that Congress had not the power of legislating on this subject. The ground I then assumed was, that Virginia had, by contract with the State of Maryland, before the cession to the United States, acquired the right of highway on the river Potomac, which she has never granted. It is now unnecessary to inquire into the reasons of this policy; it is sufficient for our present purpose to say it is the fact.

In retracing this subject, I find my arguments very much strengthened by examining the Articles of Agreement between the States of Maryland and Virginia, and this circumstance is the only inducement for my troubling the committee again. The sixth article of the Agreement declares that “the river Potomac shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and all those in amity with them.” The eighth article declares that “all laws and regulations which may be necessary for preserving and keeping open the channel and navigation of the river shall be made with the mutual consent and approbation of both States.” If a doubt remained, therefore, it appears to me this must remove it, and time will be spent in vain to illustrate the subject.

Mr. NELSON did not expect that this point would have been brought up again, but since it had so happened, he felt a propriety, not to say a duty, in recapitulating also what he had urged before, and adding some further reasons to show that Congress had the right, and exclusive right, of jurisdiction over all that part of the river Potomac within the District of Columbia. The burden of the song appears to be this: that because the States of Maryland and Virginia entered into compact before the formation of the present constitution, by which it was agreed that the river should be considered a common highway, and as both possessed the right of way, it was a joint right, which, as they did not jointly convey the right, has never been ceded to the United States. Does the gentleman (Mr. CLARK) mean to say that the States of Virginia and Maryland had not the power of granting this joint right? If he does not assert this, or if he admits they had the power,

we shall be able to demonstrate that they have granted it to Congress. After two States have made a division of a part of each of their particular property, cannot they mutually give to another the property they have thus acquired? Surely common sense cannot deny them the right so to do: if you cannot grant away a right, it is no right, for a right cannot be complete if it cannot be conveyed to another; the very idea of right implies the power of disposal. They say that Maryland had the exclusive right of navigating the river Potomac, and that she gave by compact a qualified property in that exclusive right to Virginia. Cannot Virginia convey this qualified right? If one holds a right to an estate for life or a term of years, is it not as competent for the party to convey such right, as it would be to convey an estate in fee simple? Whether the right be a special right, or a limited right, or of whatever nature it be, every man has a right to convey it to another, unless there be exceptions or reservations; but in the compact between Maryland and Virginia there are no reservations or stipulations that abridge or preclude a conveyance. Then he asked them to propound this case: Maryland has a common right with Virginia in the Potomac, and Maryland declares that she gives up all her right to ten miles square of her territory—the Potomac is a part—Virginia also says that, so far as she has a right, she gives it up also. Well, then, both States have given up their respective rights. Does not the relinquishment of their rights by both States produce the same effect as if it had been done by a joint instrument? Maryland, he asserted, had given up her right; no matter whether it was a real right or qualified right, she gave up all but what she had conveyed to Virginia, and Virginia has given up all she possessed.

Mr. J. RANDOLPH had hoped that the very perspicuous statement of his colleague, (Mr. CLARK) when the subject was last under consideration, had satisfied the most incredulous that Congress were not competent to pass the bill before them. Indeed, he had hoped that the bill would have been suffered to sleep through the rest of the session, and the House no more troubled on the subject. The reasoning of the gentleman last up was to his mind utterly fallacious and inconclusive. The district was not necessarily divided into two bodies politic, because of the intervening jurisdiction of Virginia over the Potomac. Did Massachusetts constitute two States, because its parts were completely separated by New Hampshire, through which you must necessarily pass to get into Maine from old Massachusetts, as it was called? For the purpose of division the mathematical line which

marked the boundary between the two States of Maryland and Virginia was equivalent to the whole breadth of the Potomac. On the ground of natural right, Congress could not obstruct the navigation of the river. They could not do it without admitting the right of Virginia and Maryland to raise obstructions above and below. Those States had as good a claim to stop the passage of ships of the United States as Congress had to interrupt their bateaux. But gentlemen say they are not stopping the navigation, they are improving it. How? by damming up the best channel. Did not this justify any species of obstruction? It was only to term it an improvement, and every objection was silenced. Whatever might be the decision of the House, he trusted no member from Virginia would be found to concede her right over the Potomac. He hoped also that the subject would be suffered to remain at rest until the question of recession was decided; but, in whatever shape it should appear, he should always protest against it, as a violation of the rights of the State which he represented.

Mr. SLOAN would leave the dispute, as to the right of jurisdiction over the river, to be settled by those who were more competent to investigate law questions than he was himself. But, from what he had heard, he had brought his mind to this conclusion, that, whatever right Maryland possessed to the jurisdiction of the Potomac, Congress was now entitled to exercise. The gentleman from Virginia (Mr. J. RANDOLPH) has said that Congress has no right to obstruct the navigation. True; but it does not follow that Congress has no right to remove obstructions. He says, also, that we might stop both branches. Not so; it is intended to stop one only, in order to deepen the other, so as to render the navigation more useful and safe. The case before us has been occasioned by the act of God, or a great movement in nature; a great quantity of ice has been lodged, and tore up from the shore and the island the materials that form, perhaps, the base of this sand-bar, by which the navigation has been obstructed. Now, suppose another case, that this ice had pent up the whole body of the river, and compelled the waters to form themselves a channel for escape through the lower grounds of the Virginia side, and thereby have given a new course to the river; and it would not be the first time that ice had been the cause of changing the bed of a river.

Mr. ALSTON did not intend to consume much of the time of the committee in delivering his sentiments, as the discussion had already been protracted to a much greater length than he, at the first view of the subject,

supposed it merited. It has been contended by several gentlemen that Congress have no power to legislate at all upon the subject of the navigation of the river Potomac. This really, to him, appeared to be a very extraordinary doctrine indeed. That because Virginia and Maryland had not jointly conveyed a common property, their conveyances separate, although including this very common property, was not obligatory, and did not convey to Congress exclusive legislation and jurisdiction over such part of the river as lay within the District of Columbia. He admitted that the river Potomac was a common highway, and ought ever to remain so, for the benefit not only of the people of Virginia and Maryland, but likewise for all the citizens of the United States choosing to navigate the same; and to do any act whereby the navigation would, in the slightest degree whatever, be obstructed, was more than we had a right or ought to do. But would it follow, in consequence, that we had no right to improve or benefit the navigation of the river? Most indubitably not. It was, in his mind, clear, from the information he had received, that, unless something was done for the benefit of the navigation of the river, an end would soon be put to Georgetown as a commercial spot. He believed it to be universally the case that the uniting of any two streams of nearly equal size produced a bar or shallow place just below their junction. If, then, the bar complained of, just below Mason's Island, has been produced in consequence of the uniting of the two arms of the river, it seemed to him an inevitable consequence that, if one of them was dammed up, the channel would return to its former depth. Mr. A. could not see the force of an argument made use of by his colleague, the honorable Speaker, if he understood him correctly, to say that, if the dam contemplated should be effected, it would tend to injure the ferries established on the river. In what manner the erecting the dam from Mason's Island to the Virginia shore could affect them, he was not able to discover, as the land on the Virginia shore, opposite the ferries, and the island, belong to the same person. He entertained no doubt but that the same privileges would extend to the island as were now enjoyed at the landing on the Virginia shore.

Mr. CLAIBORNE asked if the ten miles square, located and surveyed to the United States, included the river? He rather suspected that they had laid off ten miles square, exclusive of the river. If this were the case, Congress had assumed jurisdiction over more territory than they were constitutionally entitled to.

Mr. J. LEWIS.—My colleague has expressed a hope that no member from Virginia would be found to sanction a measure so hostile to the rights of that State. I lament extremely that I should, upon any occasion, differ in sentiment with that gentleman, and particularly upon this; but, because I am so unfortunate as not to agree with my colleague upon this question, I hope I shall not, on that account, be charged with an abandonment of the interests of Virginia. I am as tenacious of her rights as my honorable colleague, or any other Representative from that State, and I must, at the same time, be permitted to express my regret that any member from Virginia shall be found to oppose a measure so very interesting to a large portion of the citizens of that State.

Mr. MACON.—Although it may be a good rule, yet it is not a general one, that people are well satisfied when they do not complain; yet gentlemen, when they are sent here to legislate, must exercise their own judgment on the probable consequences. If all the people of the district were to say that this was a proper measure, he should still exercise his own opinion. The gentleman from Virginia (Mr. LEWIS) had narrated the history of this river, and informed us there was no impediment prior to 1784. He did not doubt the correctness of the statement; but he should have gone further, and informed us what was the population on the waters of the Potomac at that time, and what it is at present, and likely hereafter to be; because if such a mud bank was raised in the river when its banks had little or no cultivation, what was it likely to be when thickly settled, for every new farm and every additional cultivation, loosened the earth, which was swept away by every fresh, and the mud bank at the head of tide water would proportionally increase in magnitude. Such had been the case with the Rappahannock, and if it should turn out that these two rivers are in a similar situation, their trouble would be thrown away.

Mr. HOLLAND admitted that the quantity of mud would increase by cultivation; but if the channel is deepened by narrowing the river, the mud would descend lower and deposit itself in that part of the bed of the river where the channel was deeper. He had no doubt of the right of Congress to the exclusive legislation over the river, as well as over every other part of the district. He should therefore vote for the bill, believing that they had the right, and that the measure would be greatly beneficial to the commerce of the country.

On the question being about to be put, Mr. EPPES requested the Clerk to read the eighth article of the compact between Maryland and Virginia, which being done,

The question on striking out the first section was put and lost—forty members voting in the affirmative, and seventy-two against it.

The committee then rose and reported, and the House adjourned.

WEDNESDAY, December 12.

Another member, to wit: BENJAMIN HUGER, from South Carolina, appeared and took his seat in the House.

THURSDAY, December 13.

Impressment of John Gregory.

The SPEAKER laid before the House a letter from John Gregory, a black man, alleging himself to be a native of Nansemond County, in the State of Virginia, dated on board of the British ship-of-war, called the Alcmene, the nineteenth of August in the present year, stating, that having lost his protection, and being shipwrecked in the British Channel, he has been impressed on board the said Alcmene, and detained there against his inclination; and praying that Congress will be pleased to take his case into consideration, and obtain his discharge from the British service.

The said letter was read, and, together with a certificate of the Consul and Agent of the United States at London, accompanying the same, ordered to be referred to the Secretary of State for information.

Potomac River.

On the third reading of the bill for the erection of a dam or causeway from Mason's Island to the western shore of the Potomac, the yeas and nays were called for by Mr. VARNUM.

Mr. DAWSON said: My absence from this House for some days past, occasioned by my bad health, has prevented my hearing the arguments which have been urged in favor of this bill, as well as those in opposition to it; presuming, however, that they had much affinity to those which were urged on its introduction, which, in my judgment, were conclusive in opposition and feeble in support, I must be permitted to express my astonishment that it has progressed so far, and that this House must now decide on its passage or rejection.

In this stage of the business, and under existing circumstances, I should not intrude a single observation, especially as I learn that the subject has been fully discussed, and various votes taken, did I not feel impelled by one consideration superior to all others; but, sir, whenever a proposition is made which goes to affect the interest and wantonly violates the rights of a State, one of whose Representatives I am, I hold it to be my bounden duty to rise in the opposition. Such is the bill in your hands, and under such influence do I now act. In my judgment that bill usurps a power, and attempts the exercise of a right, which the States of Maryland and Virginia never have, and I trust never will, relinquish to any government—a right essential to them as sovereign States, and the relinquishment of which will render them dependencies not only on the General Government, but upon any corporation within the District of Columbia.

In the course of this discussion, reference, no doubt, has been had to the deeds of cession from those two States to the General Government; I mean not again to bring them to their view, and mention them only for one purpose. I presume that in the construction of those articles, the same rules will be observed, the same principles will be adhered to, which are observed in the construction of the original compact, the constitution. I well know that in the construction of that instrument, two opinions have gone abroad in the United States, and have their zealous advocates: the one is, that the General Government possesses all powers which it shall deem necessary, and which are not expressly reserved to the States; to this doctrine I have never been a friend, and am surprised to find that it has so many advocates on this day who support that bill; the other is, “that all rights, powers, and jurisdictions, are reserved to the States, which are not expressly delegated to the General Government.” This is the doctrine which I have always advocated, and which I support on this day by opposing that

bill. Admitting, sir, my first position to be true—that the same rules of construction must be used in the two cases which I have mentioned, I call upon gentlemen to show any express surrender of this right of jurisdiction, either by the State of Maryland or that of Virginia. None appears, and gentlemen must either adopt the extensive doctrine of *implication* as one of their political tenets, or relinquish that bill. I will go further, sir, and declare it as my opinion, that the legislatures of those two States never could have intended the surrender of that jurisdiction. I was a member of the Legislature of Virginia at that time, and the idea was new to me until the last year, when the bridge proposition was brought forward. I appeal to the candor of the gentlemen of this committee, and call upon them to say whether it is reasonable to suppose that those two States, after taking uncommon pains to fix, and render secure for ever, to themselves and their friends, the navigation of this river; after uniting their efforts to open and improve it to a considerable distance above tide-water, would surrender the jurisdiction to any earthly power, thereby putting it in their power to impede it whenever they please? for, be it remembered, that if we have a right to throw up a dam in one place, we have a right to build a bridge in another; if to build a bridge, to draw an artificial line at any place, saying, “Thus far you shall go, and no further.”

For these reasons, I am convinced that the right has never been surrendered; that it never was intended; and that it never ought to be relinquished. Considering the objections which I have mentioned as sufficient to defeat the bill, I have forborne to examine into its expediency; whether it will prove advantageous to some of the district and injurious to others, I will not pretend to say. One thing, however, appears probable to me, that if, by the erection of this dam, the rapidity of the water opposite to Georgetown is increased, and thereby the sand and mud carried to a lower point and there deposited, that point may be at or near the Eastern Branch, which we have established as our navy yard, to which heavy vessels get with great difficulty, and from which they may be entirely excluded, should the effect which I apprehend take place. I submit this to the consideration of the friends of this establishment, which is not without its enemies already.

One more word and I am done. If we admit the right to erect a dam, we have the same to build a bridge; and if we grant the one for the accommodation of one part of the people of the district, I know not how we

can refuse the other to the inhabitants of the other part. Let the friends of the present bill look to this; the division of this House on the last year, on that point, was very equal, and the admission of the right will certainly give it new friends.

On the passage of the bill the yeas and nays were 66 to 39.

Resolved, That the title be, “An act authorizing the corporation of Georgetown to make a dam or causeway from Mason’s Island to the western shore of the river Potomac.”

THURSDAY, December 27.

Mrs. Amy Dardin.

A petition of Amy Dardin, of the county of Mecklenburg, in the State of Virginia, widow and administratrix of David Dardin, deceased, was presented to the House and read, praying compensation for the value of a stud horse, called Romulus, the property of the deceased, which was impressed into the service of the Southern Army, under the command of Major General Greene, by order of James Gunn, a Captain in a regiment of Continental cavalry, some time in the month of July, one thousand seven hundred and eighty-one.—Referred to the Committee of the whole House to whom was committed, on the sixth instant, the bill making farther provision for extinguishing the debts due from the United States.

General Hazen.

An engrossed bill for the relief of the legal representatives of the late General Moses Hazen was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 60, nays 38.

MONDAY, December 31.

Post Road to New Orleans.

On a motion made and seconded that the House do come to the following resolutions:

1. *Resolved*, That a post road ought to be established from the City of Washington, on the most convenient and direct route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement, in the Mississippi Territory, and from thence to the City of New Orleans.

2. *Resolved*, That the President of the United States be requested to cause to be laid before this House any documents, and give such other information as he may think proper, relative to opening a post road from the City of Washington to the City of New Orleans.

The first resolution being twice read, was, on a motion made, ordered to be referred to the Committee of the whole House, to whom was committed, on the seventh instant, a motion respecting “the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee.”

The second resolution being twice read, was, on the question put thereupon, agreed to by the House.

Ordered, That Mr. HOLLAND and Mr. G. W. CAMPBELL be appointed a committee to present the second resolution to the President of the United States.

District of Columbia.

Mr. GREGG called up the resolutions for a recession of the District of Columbia to the States of Maryland and Virginia.

Mr. HUGER moved to postpone the same till this day week.

Mr. JACKSON moved to postpone them till the 31st December next.

Some desultory remarks were made, not touching the merits of the main question; at length the question was taken on postponing till 31st December,

and lost, without a division.

On postponing till Monday next, the question was decided in the affirmative—59 for and 31 against it.

An engrossed bill to incorporate the Washington Building and Fire Insurance Company was about being read, when

Mr. GREGG expressed a wish that it might be postponed, and a speedy decision had on the question of recession. He understood this was the day fixed for that subject.

Mr. LEWIS observed that the motion for recession could have had no effect upon this bill, as it did not contemplate the recession of the City of Washington, but only of the other parts of the district.

Mr. STANFORD had intended to have called up the resolutions for recession, but he had just received a letter from a number of the inhabitants of the district, wishing a short delay. There were also absent from the House several members who had taken considerable interest in the subject. For these reasons, he did not intend to call up the resolutions for two or three days.

Mr. EARLY was averse to a postponement. He thought an early decision ought to be made, to quiet the minds and soothe the feelings of the inhabitants, who felt a deep interest in the decision. Indeed, the members themselves had had their feelings excited in no inconsiderable degree. He hoped if the gentleman who brought the resolutions forward should forbear to bring them up, some other gentleman would do it for him.

Mr. STANFORD was induced to let the subject rest a few days longer, on account of those very feelings, and interest, which pervaded the whole body of the people. He would also prefer a decision by a full House, rather than by such a thin one as now appeared.

Mr. EARLY did not think that a thin attendance by the members was a good argument for postponement. If it was expected that every member should attend, he feared the public business would progress very slowly; but if the subject was entered upon now, and the resolutions adopted, they would have to take the shape of a bill, and it would be many days before the subject was finally decided, by which time, no doubt, the absent gentlemen alluded to would arrive.

Mr. LYON said the bill that was moved to be postponed had nothing to do with the recession, as it was not proposed to recede the city.

Mr. GREGG knew that the resolutions excepted Washington City, but he hoped that if a part of the district was to be receded, there would be found a majority for receding the whole. He was against the recession altogether, and so he should be till the question was decided against him. The business had been so long before the House, that he could not see any reason for further delay.

On the question to postpone the bill for incorporating the Washington Building and Fire Insurance Company, there were 51 for it and 42 against it; and the bill was postponed accordingly,

The House then adjourned to Wednesday.

MONDAY, January 7, 1805.

District of Columbia.

The House resolved itself into a Committee of the Whole, on a motion “to recede to the States of Virginia and Maryland, the jurisdiction of such parts of the Territory of Columbia as are without the limits of the city of Washington.”

Mr. STANFORD said it was his wish to make a few observations on the resolution now before the Committee, for the retrocession of that part of the District of Columbia which had been ceded to the United States by the State of Virginia, in support of the vote he should give—expecting that what was said on the first, would be generally applicable to the last resolution also. He begged leave, however, in the first place, to suggest that, in bringing forward the motion, he had not had any the least intention to take any step that should go to a removal of the government. He trusted no gentleman of the committee would entertain such an opinion of his views. Had such been his intention he would have preferred a direct motion to that effect.

As then both the resolutions together made but a single object—that of ceding back again to the respective States of Virginia and Maryland all the District of Columbia, except the city of Washington—he should, in the

course of the discussion, consider it more incumbent on those adverse to the measure to show the original wisdom and utility of the provision in the constitution, than on its friends. It would be enough for them to show its present evil tendency, and that it was an encumbrance no way necessary or useful to the General Government.

Upon a former occasion some question had arisen, and might yet lie in the way of some gentlemen, whether Congress, having once accepted the cessions of the States, had now the power of recession. On that head he had not, himself, ever found reason to doubt. By the third section and fourth article of the constitution, "Congress has power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States;" and besides, the eighth section of the first article, which assigns to Congress the exclusive legislation over this district, in all cases whatsoever, does not appear to come short of such a power. Like authority is also given, in the same paragraph of the constitution, over all places purchased by the consent of the State in which the same shall be, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Congress, thus possessing the right of disposal, had exercised that right by an act passed two sessions ago, authorizing the Secretary of the Navy to convey to the Salem Turnpike and Chelsea Bridge Companies a part of the navy yard at Boston. With it, will any one contend that jurisdiction did not also pass to the State of Massachusetts, whence it had been obtained? It certainly would by every fair and *bona fide* view of the circumstances. If, for instance, murder should be committed on that part of the turnpike which was formerly a part of the navy yard, could it be contended that such murder was not punishable by the laws of Massachusetts; that the General Government was the only competent authority to punish? He hoped otherwise. A like discretionary power of cession was also exercised when Congress anticipated the ordinance, and transferred the jurisdiction to the people of the North-western Territory, which now forms the State of Ohio. It would be remembered that, at the time of the transfer, the United States held the exclusive jurisdiction of that territory.

But, said Mr. S., over and above the consideration that the District of Columbia is in no way necessary, and every way expensive, to the General Government—in fact, a kind of governmental nuisance that ought to be

removed—there was another objection, still more serious with him, the people of the district were the merest subjects in their condition. If they held rights, they were not apparent to him in the constitution. He believed all they held were those of courtesy. In the constitution no immunity, no privilege, no political right, had been, in so many words, reserved to them. They had been specifically given away, consigned to the ideal convenience of the General Government, without a single specific reservation. This was not the case as to the people of the States. If he were told the people were content, and did not wish a change, that with him was a good reason why the motion should at once prevail. If twenty, or twenty-five thousand people had already become willing subjects, without wishing any share or control in their own affairs, such an example ought no longer to remain under our system of government, and he trusted would not. He concluded by expressing a hope that the resolutions might be adopted.

Mr. SMILIE rose in reply. He disclaimed any intention hostile to Washington remaining the seat of Government, and denied that the recession would have any influence upon it. Having elucidated the constitutionality of the measure, he exhibited in strong colors the degraded situation of the people of the district, and the dangers which might hereafter arise from a continuance of it.

Mr. DENNIS.—Mr. Chairman: As a resolution analogous in all its leading features to those now under consideration, was submitted to the consideration of a former Congress, by a gentleman from Massachusetts, (Mr. BACON,) and as that resolution was put at rest by a very decisive majority, I had not expected that its ghost would have risen up at so early a day to haunt the people of Columbia, or to interrupt the deliberations of this body. That the gentleman who has offered these resolutions has acted from the best lights of his own understanding, and has believed the object intended to be thereby effectuated is both within the pale of our constitutional authority, and politically expedient, it is not for me to question. To me, however, they appear unconstitutional and politically inexpedient, and I will moreover add, cruel, unjust, and tyrannical, in their operation on the people of this district.

In order to ascertain the extent of our power on the subject, we must resort to the eighth section of the first article of the constitution. Here we find that, amongst other powers therein enumerated, it is declared as

follows: “That Congress shall have the power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the General Government,” &c. This clause contemplates, first, a place to be acquired, lying at the time within the jurisdiction of some of the States, but which was to be put out of their control and within the exclusive jurisdiction of the General Government. This was to be done in order that a permanent seat might be established, which should not be liable to be changed by legislative caprice; and in order that the jurisdiction over the place in which its operations were to be conducted might be, like the Government itself, the property of the whole people of the Union, and free from the influence of any one of its component parts.

This appears to be as much a part of the constitution, that you should always have this federal district, as that there should be a Legislative, Executive, and Judiciary Department.

2d. It points out the manner in which this district shall be acquired, and the agents who are to be instrumental in the acquisition. The convention, on behalf of the people of the United States, who are the principals, appoint Congress the attorney in fact to receive the conveyance, and constitute the Legislatures of the States from whom the cession or conveyance is to be made similar agents to make it. The several agents have performed their respective offices, the district has been acquired in conformity with the authority given, the right to the property vested in the American people, and possession held of it by us, for their benefit for whose use it was acquired. All the power which was given as to the acquisition of the territory has been exhausted, and no other power remains but that of exercising over it exclusive legislation. To explain and illustrate this subject to the most ordinary capacity, let me compare the transaction to a case in common life. If I give a man a power of attorney to purchase for me a tract of land, in a particular district of country, of a specified quantity of acres, leaving it to him to make the location, and he accordingly make a purchase, and I consent to the act, receive the conveyance, and take possession of it, can my agent afterwards make another choice, divest me of my right, and reconvey the property without my consent? No man will answer this question affirmatively; and yet it is clear there is a perfect similitude between the

cases, and that Congress are agents acting in this case under a limited authority and confined in the exercise thereof to a specific object. That Congress are special agents, and not vested with a general power over every possible case, is manifest from the whole tenor of the constitution; and I will lay down in this instance a rule which has been generally recognized as the standard, by which to test the extent of constitutional authority in any given case. It is, that Congress can exercise no power on any subject but what is expressly delegated and specifically enumerated in the constitution, or necessary and incidental to the execution of the specified powers. What is their power in the present instance? To accept a cession and exercise over it exclusive legislation. Can you infer from hence a power of retrocession? To do so is at war with the amendment of the constitution, which declares that all powers not given to the General Government are retained by the States or the people respectively. Was not the power confined to the acceptance of the district directed to be procured for a specific purpose, and when so acquired, to continue an object over which Congress, as a permanent body, might always have it in their power to exercise exclusive jurisdiction? Can you then claim the power of reconveying the district and receiving one as often as your caprice may dictate, or of divesting your successors of the same control over this district which we may exercise ourselves? The power is not expressly delegated, nor is it a necessary power to carry into effect any power given; for it will not be contended, but we may exercise all our powers and perform all our duties, and still retain the jurisdiction over the district.

This district has been completely severed from Maryland and Virginia, and has been erected into two counties by the name of Washington and Alexandria, and forms, at this time, no more a part of the territorial limits of Maryland and Virginia, than of New Hampshire or Georgia; and you may by the same authority that you propose to reannex them to those States, unite them to Delaware or Jersey, and put the people, many of whom never were citizens of Maryland or Virginia, under the jurisdiction of the Emperor of Hayti.

But, Mr. Chairman, are the people of the territory unworthy of a moment's consideration, and will their remonstrances against the measure be altogether disregarded? Let us take a retrospective view of the circumstances under which they were seduced from their parent State, and

the manner in which they consented to dis sever the civil and political bonds by which they were formerly connected. What induced them to alienate their native allegiance, and with a generous confidence to submit themselves to your authority? First, the constitution held out a pledge and formed the basis of the contract, involving a promise, that if the people living in the district of country which should be fixed upon for the seat of Government, would give up the rights possessed under the government of the States to which they belonged, they should for ever remain under the exclusive jurisdiction of Congress. By the act of Congress accepting the cession, the territory received is declared to be the place fixed on for the *permanent seat* of the Government, and the States ceded for ever the jurisdiction of the persons and soil within the same to Congress, for the purpose of exercising therein exclusive legislation. Finally, you assume the government, establish your own systems, and annul those of the States. Confiding in the premises, they gave up the control of their persons, and some of them divided with you their property. They came to you with one consent, and hailed your arrival here as the most fortunate epoch in the annals of their country—and now, will you set them adrift without deigning to listen to their prayers?

This being the seat of Government, where all the representatives of the nation are collected, and who, from the responsibility which they owe to their respective constituents and to the whole people of the United States, are under every moral and political tie to do justice, and to protect the rights and interests of the people here; here every citizen of the district has access to every member, and he may personally communicate his wants, his wishes, and solicit his particular patronage of his interest; and instead of being confined, like a district of country in the remote parts of the Union, to a single member, who may not possess the talents to explain its interests to the legislative body, the citizen of this place may make a selection out of the whole of the members to whom he may choose to confide his application. Like the seat of Government in all other places, without having any actual representation, this district will have more than its equal share of influence, and its weight will always be felt more sensibly in the Legislative Councils of the nation than the remote parts of the Union. Our theoretical philosophers, however, not only contend that in order to make these people free and happy, we must force liberty upon them, whether they will have it or not, but that even with respect to the conveniency or inconveniency of

being governed by this body and the States of Maryland and Virginia, they are incapable of judging for themselves.

But is there no conveniency resulting to them from having all their concerns brought within the narrow limits of ten miles square? Is there no conveniency in having their own courts of justice at their very doors, instead of travelling to Richmond and Annapolis? It is an old-fashioned idea perhaps, but it is one which very generally prevails, even at the present day, that to bring justice home to every man's door, is a great political and civil blessing; and in this respect the people of this place enjoy an advantage which is unknown to any other people in the world.

The great advantages contemplated as likely to result from being represented in the Legislatures of Maryland and Virginia, and the powers of self-government which it is supposed may result from the measure, are merely ideal. What weight will the district on the Virginia side of the Potomac have in the large body of the Legislature of that State, when they will only form a part of the county of Fairfax, and have a share in choosing two members to the Assembly? The same question might be asked in relation to the district of country formerly comprehended in the counties of Prince George and Montgomery, in Maryland. They would be regarded with a jealous eye; a sort of aliens, who were forced, contrary to their remonstrance, to submit to their respective jurisdictions.

Mr. EARLY.—Mr. Chairman, the resolutions which we are now called upon to decide, possess a high degree of importance, not only from their object, and the consequences likely to result, but also from certain principles which have been contended for, as applying themselves to the subject. In the outset of the discussion we are met with objections upon constitutional principles against our right. We have been told by the people of this district, that we cannot recede the territory of which they are inhabitants without their consent; and the gentleman from Maryland (Mr. DENNIS) has told us to-day that the proposed recession cannot be made without the consent of the people of the whole United States.

It is certainly desirable that all questions of this nature should receive a solution from the principles and practice of our own governments, without having a resort to foreign sources. But much I fear that the condition of the District of Columbia is one of a nature so peculiar to itself, that no such

solution can be found. For it is impossible to conceive that the principles of a government whose essence is right, should be found to apply to the situation of a people stripped of all right.

The proposition that the consent of the people of this district is necessary to give validity to an act of Congress, having for its object a recession of the territory, carries with it the resolution of itself. It proves too much. The same reason by which they maintain this proposition, would go to prove that their consent was necessary to give validity to any act of legislation over them. That Congress possess the power of exclusive legislation over them, cannot be denied. We exercise, and we are authorized so to do, a power over all their rights of life, liberty, and property. And there cannot be presented to my mind a greater absurdity than to say the consent of the people of Columbia is necessary to any act in relation to them, when they are stripped of all rights of self-government.

Mr. EPPES, with the gentleman from Pennsylvania, (Mr. SMILIE,) considered the question of receding the Territory of Columbia as entirely separate and distinct from a question to remove the seat of Government. He did not understand the particular connection between the two questions. He believed that the seat of Government would be as permanently fixed here if the jurisdiction of Congress extended only over the soil covered by its public buildings, as if it embraced any given number of square miles. All that the National Legislature wants here is accommodation. Assembled at this place for purposes of general legislation, the exercise of a local sovereignty over a few square miles is neither beneficial to the nation nor interesting to Congress. The right of legislating for persons around us, whose local interests we do not feel or understand, cannot attach to this spot the Representatives of the nation: the exercise of this power by Congress cannot attach to this spot the nation itself. The public convenience and interest fixed our Government within this territory; the public convenience and interest can alone continue it here. The permanent seat of our Government depends, not on the extent of our powers over the country around us, but on the will of the nation. Whatever might be the feelings of other gentlemen on this subject, he had no hesitation in declaring, that, although he was in favor of receding the Territory of Columbia, he should never feel himself authorized, as a Representative of Virginia, to vote for a removal of the seat of Government.

The committee now rose, reported progress, and had leave to sit again.

TUESDAY, January 8.

The District of Columbia.

The House again resolved itself into a Committee of the Whole on a motion of the twenty-ninth of November last “to recede to the States of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia as are without the limits of the city of Washington.”

Mr. SOUTHARD.—Mr. Chairman, I should have contented myself with giving a silent vote on this question, had it not been for the strong impressions on my mind that more is intended than expressed in the resolutions now on the table. It is not two years since two resolutions were introduced to this House similar to those now under consideration, with this distinction, that *they* went to include the city of Washington with the other parts of the district in the transfer to the States of Virginia and Maryland.

I believe it to be the object of some members not only to recede the branches of the district contained in these resolutions, but likewise the city. If the doctrine so strongly contended for, that Congress has a right to transfer or recede, be once established—take the first step, and you may as easily take the second. I have no desire to call in question the sincerity of the mover of these resolutions, nor of many who support them; yet there are others who wish a recession of the *whole* territory.

This subject involves two questions: First, whether Congress has a constitutional power to make a retrocession of this district to the States of Virginia and Maryland; and secondly, whether it be good policy. As to the first, Mr. S. said, he had strong doubts on his mind, as to the rightful power of Congress to recede or transfer.

The members of the convention who framed the Constitution of the United States looked forward to a day when it would become necessary to fix a place which should become the permanent seat of the Government. By reference to the eighth section of the first article of the constitution, we see it clearly expressed that Congress shall have power “to exercise exclusive legislation in all cases whatsoever, over such district, not exceeding ten

miles square, as may by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States.”

This article, with all others contained in that instrument, after publication for the consideration of the people of the United States, was adopted, and became a part of the constitution. In pursuance of this object, Congress, on the 16th of July, 1790, passed an act, entitled “the cession act,” in the words following, to wit:

“That a district of territory, not exceeding ten miles square, to be located as hereafter directed, on the river Potomac, at some place between the mouths of the Eastern branch and Conococheague, be, and the same is hereby accepted for the permanent seat of the Government of the United States.”

Congress accepted a cession of ten miles square for the express purpose, and on the express condition of exercising exclusive legislation and jurisdiction, and this, too, agreeably to the spirit and meaning of the constitution and law, thus forming a compact which Congress has no right to violate. All the States in their Legislative capacity, and the people of the United States, including the inhabitants of this territory, are bound by this compact, which compact is as strong as the constitution itself.

Mr. FINDLAY observed that, after what his colleague (Mr. SMILIE) and others had said in favor of the resolutions for a retrocession of the territory, exclusive of the city, he had not expected to hear any objection to the resolutions on arguments derived from the constitution; the resolutions for receding the territory to the States who had made the original cession might, he thought, have been fairly combated, on the ground of expediency; on this ground only did the resolutions before the committee rest. He gave the credit, however, to the gentlemen opposed to the resolutions, for their ingenuity in taking the most tenable ground, though not directly involved in the question, but he acknowledged it was indirectly connected with it. If we had not a right to retrocede, the Representatives of the United States undoubtedly might decline to exercise jurisdiction, for whatever the rights of the people were, the Legislature must be free to act or not to act. If this is not the case, it could not be a sovereign Legislature; Congress itself, in this case, would act by compulsion.

He said that, though a member of the ratifying convention of Pennsylvania, and of the Legislature of that State, and of Congress since that time, he did not remember ever to have heard it suggested that Congress was not vested with the same discretion in this case as in others, expressed in similar terms. He had, indeed, of late, heard several members say that Congress was obliged to establish a permanent seat, &c., but, in taking a review of the constitution, he found no such expressions. The word

permanent was not in that instrument, nor any other expression that made it the duty of Congress to establish a permanent seat, more than to establish a permanent excise, direct tax, or bankrupt law. The word permanent, however, he found in an act of Congress, but certainly not authorized by the constitution; and this present Congress had equal power to make a retrocession as that Congress had to accept. He said it was not necessary to prove to the members of this committee that laws, in their nature, were not permanent, but changeable with circumstances, and that Congress had by the constitution equal powers with any other Congress. That, from the express words of the constitution investing this power in Congress, and from its analogy to the investiture of other powers, no argument could be drawn against the resolutions; that every argument of that kind he had heard was not taken from the words of the constitution, but from constructions given to it which he conceived the words would not bear, and which would have a ruinous effect applied to other powers expressed in similar words. That he did not consider himself bound by what other gentlemen fancied the constitution meant or intended, but by what it said.

Mr. F. said it had been frequently asked what more difficulty there was in legislating for ten miles square, than for the city alone. In answer to this, he asked those members to recollect how many applications had been made, how many laws have been passed, how many days have been occupied in legislating for other parts of the district than the city. He would ask what the people would lose by being receded to the States to which they formerly belonged, and what they gain by the members of Congress, who have no common interest with them, nor even acquaintance with them or their peculiar circumstances, and liable to be imposed on by every one with whom they converse, legislating for them? He said that it had not been made to appear that the people would suffer any loss by agreeing to the resolutions, and that, as it was indubitably evident that the public would gain advantage, he hoped they would be agreed to. He had early observed that there were nearly as many interfering interests in this ten miles square, as in the whole United States; the members of the committee would recollect that several of the most tedious debates, accompanied with the greatest irritation, that had taken place this session, arose from such subjects.

Mr. BOYD said, that, although some gentlemen had left the constitutionality of the proposed measure out of the question, he was not satisfied any more on that point than he was of its expediency. The constitution was to him the polar star by which his course through the sea of politics would be regulated. The constitution had been formed by a convention composed of delegates from the several States of the Union, and was afterwards adopted by State conventions, on behalf of themselves and the people. He had been a member of his State Legislature, when they passed a law ceding a part of their territory, well knowing that if Congress did accept it, by the constitution, they must and would exercise exclusive legislation over such district. He was well aware at that time of the consequence of accepting a district of territory not exceeding ten miles square, as laid down in the section so often alluded to; and he did believe that that consequence would be, that Congress must exercise exclusive legislation whenever they accepted the ceded district. The idea of recession was not taken up at that time. The States of Pennsylvania, Delaware, New Jersey, Maryland, and Virginia, made offers of cession under the terms of the constitution. A partial cession was accepted by Congress from Maryland and Virginia. If a new disposition is to be made of this district, he did not see why Congress might not convey it to any of those States which had proffered to comply with the constitutional suggestion, and receive from the same another territory in lieu thereof. This statement he made merely to show the absurdity of recession, as it had presented itself to his mind.

Mr. NELSON meant to lay his opinion before the committee, because it appeared to be the habit of members to assign reasons for voting, without expecting to make any impression upon others. He considered the present question of the greatest magnitude to the United States generally; and of peculiar importance to his immediate constituents. He thought he should be able to show, to the satisfaction of every member present, that the removal of the seat of Government, which would be the consequence of recession, was not only inexpedient, but also unconstitutional. If he was successful in making out his point, that it was unconstitutional, he presumed the question of expediency need not be argued; the measure would be set at rest, and not a member would be found to give it his support. But, if he should prove unfortunate in this respect, which however appeared to his mind as true as that two and two make four, he might have reference to the question of expediency.

Previous to an inquiry into the constitutionality of the proposed project, he would just observe that constitutions themselves were things of recent date. Before the American Revolution the word itself was never fully understood. Lexicographers who attempted to define it never could agree. There was no practice whereupon to try its meaning. No power on earth had a constitution before the American States. True, England has long boasted of possessing a constitution, and so satisfied were her statesmen and politicians of the reality of this imaginary being, that they have extolled it to the skies. The glorious Constitution of England, her pride, and the envy of the world! Fine words truly; but where is the thing itself to be found? Is it reduced to writing? No. Who has seen it? No man. Is it known to any man? If it be, no two agree as to what the boasted Constitution of Britain is. How different, how honorably different, is the American Constitution! With us it is reduced to writing. It is in every man's hand; it is known to the whole world, and every citizen agrees in its true and legitimate meaning. He would take this opportunity of expressing his voice, and of holding up his hand in resisting the doctrine of construction and inference formerly set up, whereby the tenor and effect of that invaluable instrument was likely to be changed. He knew that artful and ingenious men might twist and turn, and make it, like the word republican, to mean any thing or nothing, as best suited their nefarious designs. But this declaration and these attacks upon the body of that sacred work, were introduced by insinuating and artful lawyers, aided by the villany of judges, and accepted by men employed in the administration of our public and most important national affairs.

He saw nothing to justify the present motion. Gentlemen had attempted to show, not only its policy, but also its constitutionality. He, however, could not discover any words on that paper that warranted the project in the most remote degree; perhaps it had escaped his search; but he rather suspected gentlemen relied more upon an inference than on either the letter or spirit of the instrument itself. But he here would repeat, that no man was authorized to infer or construe, from the constitution, any other thing than what the plain sense of plain words would justify.

Mr. ELMER said he agreed with the gentleman from Maryland who had just now been up, that the question before the committee is an important and weighty one; but it seems that it is not of itself sufficiently weighty for that gentleman's shoulders, for he has loaded it with much extraneous

matter. Had the gentleman proved to my satisfaction either of the positions which he promised to demonstrate, I would not have troubled the committee with any remarks on the subject, but would have joined him in voting against the resolutions on the table. But, unfortunately for me, I have, by everything that has been said, become more convinced of the constitutionality and expediency of carrying the resolutions into effect.

Mr. R. GRISWOLD said the object of the present motion was, he supposed, to make a permanent recession of the two parts of this district, one to Virginia, and the other to Maryland, retaining the city of Washington. If this was really the object, there could be no doubt but it went to operate a change of the seat of Government. This he would endeavor, in as few words as possible, to demonstrate. The eighth section of the first article authorizes Congress to assume the exclusive legislation over a district not exceeding ten miles square, &c. The States of Maryland and Virginia ceded a district of ten miles square, or any lesser quantity, and Congress accepted a part from each State, making one district, to become the seat of Government of the United States. From this statement, it is apparent that the territory, or district, of Columbia is the seat of Government, and not the city of Washington. If, then, you recede the territory, you recede the seat of Government, although you reserve the city of Washington. He asked, then, whether this did not substantially go to remove the seat of Government? After you have receded two parts of the district, can a district be said to remain? If it does not remain, your seat of Government is gone, and gentlemen are justified in connecting the idea of removal with that of recession. Indeed, he felt surprised at the declarations made by gentlemen on this floor, that the recession had no connection with removal, and if they thought it had, they would abandon the measure; yet, nevertheless, they give the resolutions their warmest support.

He was not prepared to say that Congress had no right to exercise the powers of recession and removal; but he did not think they were prepared to act upon those questions at the present day. He, however, acknowledged, that events might arise to make a removal necessary, but nothing of the kind had yet occurred. There were some inconveniences in residing here, but the members knew them, and they are lessening every day. If, however, gentlemen are not satisfied with the accommodation, and think that a justifiable ground for removal, they will vote for the motion, if they can get

over the constitutional objections, which had considerable weight on his mind.

It was very clear to him, that the convention which framed the constitution intended and designed to establish a permanent seat of Government; that the constitution fully and effectually provides for that object. The circumstances which gave rise to the measure are too recent, and must be too fresh in the minds of the members of this committee, to render it necessary or useful for him to detail them at this time. Now, whether the convention accomplished the object they had in view, the constitution would decide; and whether the object had been accomplished by the cession of particular States and the acceptance of Congress, the laws will decide. But whether it is wise or expedient to destroy a work on which so much wisdom, time, and money had been expended, the gentlemen forming this committee will decide.

There were doubts entertained of the constitutionality of the measure of retrocession, and if gentlemen doubted, it would be much safer not to act on the subject than to risk the breach of the solemn obligations they had entered into at that table. He thought the weight of the argument on the expediency preponderated on the side he had advocated; and, from the most candid view of the subject, he was inclined to recommend the rejection of the resolutions; at all events, he should give them his decided negative.

Mr. CLARK.—The question before the committee is truly of considerable importance, not only as it respects the constitutionality but the policy of the measure. He was sorry he had not the talents requisite for a full and complete investigation of so great a subject. Bred to an occupation purely professional, he had been led more to the study of detail and practice, than to abstract theories; hence it was, that, engaged in that laborious pursuit, he had no time and less opportunity of studying the diversified objects of political science. Thus circumstanced, he approached this question with extreme diffidence and cautious circumspection; the infraction of the constitution was to him a source of alarm, and however great the object or brilliant the achievement, he stood appalled at the prostration of that constitution he had always held in an estimation that approached to reverence.

But, on reflection, he was convinced that Congress were not about to violate their oaths, as had been insinuated, by the adoption of the present motion. He considered them in the exercise of a legitimate authority, and he would endeavor, in a brief manner, to examine whether they had not complete constitutional power to make a retrocession. If he was capable of demonstrating this point, he trusted he need not go further. But, it was necessary he should, in order to ascertain whether the present was the proper time, and the resolutions the correct mode? In doing this he had no prejudice to gratify or caprice to indulge; a stranger to the place, a stranger to the people, he had no motive to action but the unbiased result of his own opinion.

He should not, however, look into the constitution for sections wherefrom to draw a constructive power on this head; he was not one of those that collected power from implication, and if the authority is not expressly given, he would not assume it. The eighth section of the first article gives to Congress the power of exercising the sole and exclusive legislation in all cases whatsoever.

What is the appropriate meaning of the word “exclusive” as here used? It implies more than the debarring and shutting out all other possible powers of legislation, and, when taken in connection with the after, and immediately following words of the paragraph, it vests the absolute and uncontrollable power in Congress, free from any restriction; there is no possible case in which it cannot legislate. The constitution declares Congress shall legislate in all cases whatsoever. But gentlemen say there is a case in which Congress cannot legislate. Aware of this absurdity, a distinction is attempted to be drawn between legislating for inhabitants of the district and for the district itself. But if it be established, as I think it has been, that Congress is here omnipotent, if you will allow me the expression, the conclusion in both cases (admitting the distinction, which can by no means be done) is the same; in one case, the retrocession will mean nothing more than a cessation from legislation, accompanied with a desire that it may be resumed by the States; in the other, it will be a complete transfer of the district. In this sense it must be considered; the very words go the whole of this length. It is given to Congress, and not to the people; it is a complete investiture, boundless and indefeasible; and this is a full answer to the argument of gentlemen that the power is held in trust and not absolute.

As to the expediency of retrocession, he would add a few words. When he took a view of this mighty ten miles square, he saw nothing pleasant—nothing political—to commend. He spoke of the inhabitants, whenever he had occasion to allude to them, with pity and compassion; and he most devoutly wished to see them placed, as Americans, in a condition more congenial to his own feelings, and the feelings of every true lover of civil and political freedom. The question in this point of view will be, Is it proper for Congress at this time to recede the parts of the district contemplated by the resolutions?

He should allude to the expense, in order to give an answer to that question—an expense enormous, indeed, yet every day increasing, and one which threatened to defeat every calculation made to ascertain its amount. The time of Congress is occupied day after day in trifling Legislative provisions for this or that particular spot, so inconsiderable in size or commercial importance as scarcely to furnish a speck in the map of the United States. But laying this circumstance out of sight, he would ask, Was Congress competent to legislate for the inhabitants of the district? He had hoped when he first came to Washington that they were, but experience had convinced him that they were not equal to the task. One day they received petitions to make certain provisions for the benefit of the people of the district, and Congress, with the best intentions and dispositions, went into the inquiry. After some progress made therein, a counter-petition is presented, and the House is suspended between two or more jarring interests. How much better, then, would it be to let these people have recourse to those Governments which understand their real views, and can adopt measures to ameliorate their condition! Congress is composed of materials too heterogeneous ever to do this with any tolerable satisfaction.

Mr. SLOAN.—My friend from Maryland (Mr. NELSON) has observed that it is customary for members to express their sentiments on subjects under discussion in the House—not that he expected to make one proselyte by his observations. I perfectly agree with him that there is no reason to believe that he has, for this plain reason: he has not adduced a single fact in support of his argument; but, after exploding all conclusions drawn from implication or construction, drew his own from nothing else.

But, Mr. Chairman, under sanction of the aforesaid custom, and also from a sense of duty, I beg the attention of this committee to some brief

observations on this important subject. I consider it as altogether improper, unfair, and unjust to blend a subject under discussion with others not even contemplated, and to endeavor to influence the minds of members with predictions of certain events, yet in the womb of futurity, that may or may not come to pass. The end contemplated by the present resolutions is neither the removal of the seat of Government, nor to prevent Congress from exercising exclusive jurisdiction over any territory, but to reduce the present quantum. But, say the opposers of these resolutions, the proposed retrocession of a part of the territory is intended as an opening wedge, preparatory to a total retrocession and removal of the seat of Government.

Mr. Chairman, I do not pretend to a foreknowledge of any member's thoughts before they are articulated in words; those who have this foreknowledge have a great advantage over other members who have it not; but I am free to declare that my opinion is quite the reverse—believing that the retrocession of that part of the territory contemplated by the resolutions now under consideration, would have a tendency to continue the seat of Government in this place.

But it has been asserted that we have no right to make the proposed retrocession, and from the dictatorial style of the resolutions of the town of Alexandria, and the positive assertions that we have heard on this floor that it was unconstitutional, oppressive, and tyrannical, I expected from the usual accuracy and correctness of the member who made those assertions, (Mr. DENNIS,) that he was in possession of documents to substantiate the fact; but, to my surprise, instead of such documents, he has adduced and principally relied on the constitution, in which there is not a single imperative sentence obligatory on Congress, either to receive a cession, or, when received, to continue exclusive jurisdiction over one foot of territory—the plain and unequivocal language of the constitution leaving it perfectly optional whether to receive, and, if received, whether to retain jurisdiction or not. Hence, I conceive that no legislative body can be justly charged with tyranny or oppression for altering or (if from experience it becomes necessary) disannulling their own acts—a contra-opinion I consider as altogether uncongenial to improvement, genuine liberty, and the inherent rights of man, and as such, I hope will ever be exploded in these United States.

WEDNESDAY, January 9.

District of Columbia.

Mr. THATCHER was opposed to the motion for a recession, and he had heard only two reasons urged in favor of the measure; that the exercise of exclusive legislation by Congress over the District of Columbia was attended with an undue expense of the public money, and occupied so much of their time, that the business of the Union was interrupted and put to a stand by the interference of the local concerns of this place. This statement he did not believe to be perfectly correct; no doubt some of their time was taken up, but he would leave it to every gentleman to say, whether, if they had even more business before them than they had, there was not time enough to transact it. The House usually sat from eleven o'clock until three; but it must have been frequently observed, that the adjournment took place much earlier for want of business to employ them. But he was not an advocate for the present mode of conducting the business of the district; it would perhaps be a better way to give them a subordinate government, controllable by Congress; or a committee of Congress might be appointed for the purpose. He did not see that the complaint of too much legislation was well founded, in any thing that had taken place during the present session. If the little labor they had to perform was too great for them, what must the labor of their predecessors have been, who had passed all the laws in existence for the government of the district, and yet he had never heard any complaint made by them on the ground now taken; they knew that the constitution enjoined upon them the duty of exercising exclusive legislation over the ten miles square, and they performed it with patient attention.

His mind revolted at the idea of recession. Gentlemen had contended that the powers exercised over the people of Columbia were derogatory of, and inconsistent with the principles of free government. Yet, what does this motion for recession propose? Why, to transfer them and the territory away, in the manner practised in Russia, in the transfer of provinces or manors, transferring the vassals with the soil. This may be truly called derogatory to the principles of freedom. Nor is this all; for you do not transfer them merely without their consent, but in the face of their serious remonstrances against the transfer.

Mr. SMILIE advocated, and Messrs. HUGER and CLAIBORNE opposed the resolutions; when the question was taken on agreeing to the first resolution, for receding that part of the district formerly attached to Virginia, and passed in the negative—yeas 42, nays 62.

The question was then taken on the second resolution, for receding that part of the district, excepting the city of Washington, formerly attached to Maryland, and passed in the negative—yeas 42, nays 65.

The question was then taken by yeas and nays on agreeing to that part of the report which involved a disagreement to the first resolution, and carried affirmatively—yeas 87, nays 46, as follows:

YEAS.—Nathaniel Alexander, Simeon Baldwin, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dennis, William Dickson, Thomas Dwight, John B. Earle, James Elliot, William Eustis, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Thomas Plater, Samuel D. Purviance, Thomas Sammons, Thomas Sanford, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Wynn, Joseph Winston, and Thomas Wynns.

NAYS.—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, Phaniel Bishop, John Boyle, William Butler, Christopher Clark, Matthew Clay, John Dawson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findlay, John Fowler, Edwin Gray, John A. Hanna, Josiah Hasbrouck, Joseph Heister, John Hoge, James Holland, Walter Jones, Simon Larned, Michael Leib, Andrew McCord, David Meriwether,

Nicholas R. Moore, Jeremiah Morrow, James Mott, Gideon Olin, Beriah Palmer, John Randolph, John Rea, of Pennsylvania, John Rhea, of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, John Stewart, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, and Alexander Wilson.

Mr. SMILIE moved to amend the second resolution by striking out the words “without the limits of the city of Washington,” so that the city as well as the other parts of the district might be receded.

Only twenty-one members rising in favor of this motion, it was lost.

The question was then taken by yeas and nays on agreeing to the report of the committee, involving a disagreement to the second resolution, and carried affirmatively—yeas 69, nays 39.

So the said motion was rejected.

The question was then taken on agreeing to the whole report of the committee, and carried—yeas 50, nays 28.

SATURDAY, January 12.

Resolved, That the Speaker address a letter to the Executive of the State of North Carolina, communicating information of the death of JAMES GILLESPIE, late a member of this House, in order that measures may be taken to supply any vacancy occasioned thereby in the Representation from that State.

TUESDAY, January 15.

District of Columbia.

The bill to prohibit the exaction of bail upon certain suits within the District of Columbia was brought in engrossed, and read the third time.

The final passage of the bill was opposed by Mr. GODDARD, Mr. ROOT, and Mr. NELSON, and defended by Mr. NEWTON, as a proper measure to prevent the oppression of malignant creditors.

Mr. EPPES desired Mr. BECKLEY to read that part of the Constitution of the United States relative to the extent of the Judiciary power, and that part of the law establishing the Judicial authority of the District of Columbia, with a view of showing that the bill was not essentially necessary.

Mr. EARLY moved a recommitment of the bill to a select committee.

Mr. BEDINGER wished that the bill might go to a select committee, because he considered the principle a valuable one. He imagined, however, that the details were not altogether perfect. He felt concerned on this subject, on account of several of his constituents who had been tricked out of notes and bonds for lands in Kentucky, which had been advertised, and were no longer available against the drawers in that State; but, should it so happen that business called them to Washington, they might be extremely harassed for want of bail.

The reference was opposed by Mr. R. GRISWOLD, as he was against the principle of the bill altogether.

On the question to recommit it, it passed in the negative—ayes 44, noes 59.

The question was then taken on the passage of the bill, and it was lost, there being but thirty members who voted in its favor.

WEDNESDAY, January 16.

Naval Appropriations.

The House again resolved itself into a Committee of the Whole, on the bill making appropriations for the support of Government for the year one thousand eight hundred and five.

Mr. J. RANDOLPH moved to fill the blank, in the clause providing for the expense of intercourse with the Barbary Powers, with \$63,500, instead of the sum of \$113,000, stated in the estimate for the current year. The difference (\$50,000) would make a part of additional appropriations, for which he should move a distinct clause.—Motion carried.

Mr. R. then moved to add the following words: “for the contingent expenses of intercourse with the Barbary Powers —— dollars.” He said,

that he should be obliged to ask \$150,000, in addition to the sum reserved out of the preceding appropriation, and of course to fill the blank with the words \$200,000. This was rendered necessary because the Mediterranean fund, heretofore liable to this charge, had been subjected, on the motion of a gentleman from Connecticut, to the whole expense of the support of the Navy. He supposed that no difference of opinion could exist on the subject of enabling the Executive to make peace with Tripoli. He had no objection to any restriction which might be thought necessary to limit the application of the additional sum of \$150,000, which he required, to the object for which it was intended. But as the words ransom, or tribute, had never been introduced into our statutes heretofore, he hoped they would not be admitted on this occasion.

Mr. R. GRISWOLD had no objection to making the appropriation required, or even a larger sum; for he was well convinced that the President ought to have funds as well as the authority to accomplish any object connected with the present subject, which he might wish to accomplish.

FRIDAY, January 18.

Relief of Tax Collectors in New York.

A petition of John York, of Brookefield, in the county of Chenango, and State of New York, late collector of the taxes on lands, slaves, and dwelling-houses, for the eighty-third collection district within the said State, and now confined in the jail of said county, was presented to the House and read, praying relief in the case of a judgment awarded against the petitioner and execution issued thereon, for the sum of eight hundred dollars, including interest and cost of suit, for the payment of which the petitioner was compelled to apply a certain proportion of the proceeds of taxes collected by him in the capacity aforesaid.—Referred to Messrs. ROOT, GREGG, and HASTINGS; to examine and report their opinion thereupon to the House.

District of Columbia.

DIVORCES.

Mr. DAWSON, from the committee appointed on the petition of Marcella Stanton, and others, reported a bill, entitled an act to authorize the Court of the District of Columbia to decree divorces in certain cases; which was read twice, and referred to a Committee of the Whole on Tuesday next.

Mr. DAWSON prefaced his motion, on this subject, when he introduced it in the manner following:

He observed that, after the decision which had taken place a few days ago, he had resolved not to meddle any further with the affairs of the District of Columbia, but to leave the inhabitants in the enjoyment of the blessings of that government which they seem to have chosen, and the principles of which were sanctioned by this House.

There was, however, one class of persons who claimed, in all situations, our particular attention; who had not made a surrender of their political rights; and, if they had been defrauded out of their natural ones, were anxious to regain them.

It would be remembered that, at the last session, a gentleman from Maryland, who had been absent for some time, and whom he rejoiced now to see in his place, (Mr. NICHOLSON,) presented a petition from a person in this district, praying for a divorce, and he two others for the same relief. These were referred to a select committee, and a bill reported, which remained among the unfinished business; as he learned that the situations and wishes of these unfortunate persons were still the same, he thought the subject ought again to be renewed.

Emancipation in the District of Columbia.

Mr. SLOAN moved the following resolution:

Resolved, That, from and after the fourth of July, 1805, all blacks and people of color that shall be born within the District of Columbia, or whose mother shall be the property of any person residing within the said district, shall be free, the males at the age of ———, and the females at the age of ———.

The House proceeded to consider the said motion, and on the question that the same be referred to a Committee of the whole House, it passed in the negative—yeas 47, nays 65.

And then the main question being taken that the House do agree to the said motion as originally proposed, it passed in the negative—yeas 31, nays 77, as follows:

YEAS.—Isaac Anderson, John Archer, David Bard, Phaniel Bishop, Robert Brown, Clifton Claggett, Joseph Clay, James Elliot, Ebenezer Elmer, William Findlay, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, David Hough, Nehemiah Knight, Michael Leib, Andrew McCord, Nahum Mitchell, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Joseph Stanton, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, and John Whitehill.

NAYS.—Willis Alston, jr., Simeon Baldwin, George Michael Bedinger, William Blackledge, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, John Davenport, John Dawson, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, John Fowler, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Roger Griswold, Joseph Heister, William Helms, John Hoge, James Holland, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sanford, John Smith, Henry Southard, Richard Stanford, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Alexander Wilson, Richard Wynn, Joseph Winston, and Thomas Wynns.

So the said motion was rejected.

MONDAY, January 21.

Slavery in Territories.

A memorial of the people called Quakers, at their yearly meeting, held in the city of Philadelphia, in the month of December last, was presented to the House and read, praying that effectual measures may be adopted by Congress to prevent the introduction of slavery into any of the Territories of the United States.—Referred to the committee appointed on the twelfth of November last, on so much of the Message of the President of the United States as relates “to an amelioration of the form of government of the Territory of Louisiana.”

WEDNESDAY, January 23.

Protection of Seamen.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying statements and abstracts relative “to the number of American seamen who have been impressed or detained on board of the ships of war of any foreign nation; with the names of the persons impressed; the name of the ship or vessel by which they were impressed; the nation to which she belonged, and the time of the impressment; as also certain facts and circumstances relating to the same;” prepared in obedience to a resolution of this House of the thirty-first ultimo.

Mr. CROWNINSHIELD said, that the list of impressed seamen, furnished by the Secretary of State, exceeded in number any thing he had expected. He thought these impressments ought to be prevented, and that the subject demanded investigation. He had drafted a resolution, which he would submit to the House, having in view to connect this with another very important subject. Many gentlemen must have observed that some late proclamations had been issued by the Governors of the several British West India Islands, interdicting the American trade after May next. The proclamations bore date in October or November, and were to take effect in six months. It appeared to him that the British Government were determined to exclude us from their islands, upon the expectation that their

own vessels would be competent to carry the necessary supplies. Mr. C. said we had a right to carry the productions of the United States in American bottoms, and he hoped we should never permit foreign ships to come to our ports and carry on an exclusive trade with any country whatever, where our vessels were not allowed the same privilege. His intention was to prevent the American carrying trade to the West Indies from falling into the hands of other nations. He would not exclude foreign vessels from our ports, but it was desirable that our own export trade should not be monopolized by foreigners. The subject was highly important to this country. Will the United States tamely submit to see some of its best citizens torn from their families and friends, without attempting something for their relief? Shall we see another country pursuing measures hostile to our commercial rights and make no effort to correct the mischief? The West India Islands depended on the United States for their ordinary supplies, and our vessels had usually carried a large proportion of their cargoes on American account; but it appeared now that we were to be shut out from this trade, and it was in future to be carried on in foreign vessels. An effectual remedy would be to prohibit the exportation of our productions in foreign bottoms to all ports of islands with which we were not permitted to have intercourse, and in order that the subject might undergo the examination which its importance demanded, he offered the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire if any, and what, further provision be necessary for the protection of the commerce and seamen of the United States, and to inquire whether any foreign country has made any late regulations with a view to monopolize any branch of the American carrying trade, to the exclusive benefit of such foreign country, or which in their operation may be injurious to the agricultural or commercial interest of the United States; and also to inquire into the expediency of prohibiting the exportation from the United States of all goods and merchandise whatever in foreign ships bound to any port with which the vessels of the United States are not allowed communication, or where a free and unrestricted trade is not permitted in the productions of the United States, and that the committee be authorized to report by bill or otherwise.

Mr. RANDOLPH wished the resolution to lie for consideration a few days; he would mention Monday. The gentleman had said it was an important subject, and if he had no objection it would be as well to allow the resolution to remain unacted upon for a little time. It might be printed for the consideration of the House, and he rather supposed some alteration would be necessary in the form of the resolution.

Mr. CROWNINSHIELD replied that he was perfectly willing the resolution should lie for consideration, agreeably to the desire of the gentleman from Virginia, and he would consent to any reasonable delay; but he would not consent to its remaining unacted upon till a period so late as to preclude any measures from being adopted this session, because the proclamation would take effect in the month of May. He was not tenacious of forms, it was the substance of things he looked to, and he would with great pleasure agree to modify the resolution to any shape which the gentleman from Virginia might suggest.

A motion was made to refer the resolution to a Committee of the Whole for Monday next; which was agreed to, and the resolution ordered to be printed.

THURSDAY, January 24.

The SPEAKER laid before the House a letter from the Secretary of War, enclosing sundry documents relating to the case of William Scott, and James and John Pettigrew, stated to have been murdered and plundered by the Cherokee Indians, in pursuance of a resolution of this House of the twenty-second instant; which were read and referred to the Committee of the Whole, to whom is committed the report of the Committee of Claims on the petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others.

Navy Yards, &c.

Mr. EUSTIS moved the following resolution:

“Resolved, That it is expedient to provide by law for defraying the expense incident to fitting and preparing one of the navy yards belonging to the United States, and lying near the margin of the ocean, for the reception and repairing of such ships of war as are now at sea on their return to port, and such other ships or vessels of war as may hereafter return from their cruises or stations.”

Mr. EUSTIS said the resolution now submitted to the consideration of the House had grown out of an opinion which impressed itself on his mind, when he first beheld the whole naval force of the United States moored in the Eastern branch of the Potomac. He had ever considered the establishment of a navy yard in this city, as the principal naval arsenal, to be among the errors or misfortunes which had presided over many other arrangements respecting this city and territory. As the United States were at that time at peace with all the world, excepting the Dey of Algiers, as a small part of the force only was necessary to carry on this warfare, and as the ships had been actually hauled up at a considerable expense, there appeared to be no immediate necessity for incurring a further expense in their removal. Our maritime concerns have now experienced a change. We are at war with another of the Barbary Powers, and a greater number of ships have been necessarily taken into the service. We have at this time six frigates, and five or six smaller vessels on duty in the Mediterranean. After a certain time these ships must be relieved. Others must be sent out to take their stations. Those which return will require repairs; and in order to prepare for these contingencies it was proper that some one of the navy yards nearer to the ocean should be put in a condition to receive them. This was the object of the resolution. It was desirable that some place should be selected easy of access, where the water was deep, and in the neighborhood of some large maritime town, having large markets and magazines of the variety of articles required for repairing and fitting ships for sea, with the artizans employed in that business. It was not his intention to describe the advantages or disadvantages of one place or of another. The United States own six navy yards. The whole coast is before the Executive, and such a place will be selected as will combine the greatest number of advantages and best promote the public interests. To those who believed that ships of war could be repaired or fitted out with the same despatch, at the same expense, and with the same ease and convenience, at a place three hundred

miles distant from the sea, as they could be in one of the ports lying on its margin, and possessing the advantages which had been stated, no reasoning could be applied which would change their opinions. The proposition was offered to the House to be decided by common sense and understanding. There was one objection which he had anticipated, and which had some weight in it. The business of the department would in that case be removed from the eye of the Government, and from the more immediate inspection and control of the intelligent and capable officer who directed its operations; this inconvenience would be balanced by the more ample means and resources which his agents would find in the large towns, and by which they would be enabled to carry his instructions more promptly into effect.

The motion was referred to a Committee of the Whole on Monday next.

FRIDAY, January 25.

Mississippi Territory.

Mr. LATTIMORE presented a memorial from the Legislative Council and the House of Representatives of the Mississippi Territory, stating sundry grievances to which they were exposed by the act of Congress for the government of the same. They complain that a man is not qualified to vote unless he possess fifty acres of land, whereby those who hold houses and town lots, as well as respectable citizens of considerable personal estate, are disfranchised. The inequality of representation in the several counties to the number of inhabitants in each; the necessity of extending the powers and authorities of an additional judge lately furnished the Territory; the inconveniencies arising from the prescribed mode of the disposal of lands; the necessity of establishing a hospital at the Natchez; and, lastly, an increase of the salaries of the judges.

On motion, the memorial was referred to a select committee of five members.

TUESDAY, January 29.

Another member, to wit, OLIVER PHELPS, from New York, appeared, and took his seat in the House.

Georgia Claims.

The House again went into Committee of the Whole on the Georgia claims.

After reading over the report of the Committee of Claims, which concludes with submitting the following resolution:

Resolved, That three Commissioners be authorized to receive propositions of compromise and settlement, from the several companies or persons having claims to public lands within the present limits of the Mississippi Territory, and finally to adjust and settle the same in such manner as in their opinion will conduce to the interest of the United States: *Provided*, That in such settlement the Commissioners shall not exceed the limits prescribed by the convention with the State of Georgia.

Mr. DANA moved that the committee rise and report the resolution.

Mr. J. RANDOLPH wished, before the committee rose, that the gentleman from Connecticut (Mr. DANA) would assign some reasons for the adoption of the resolution. No two things could be more opposite than the prefatory statement made by the Committee of Claims and the resolution which terminated the report. As there were no reasons assigned, he suspected the gentleman had kept them back with a view of surprising the House by their novelty; but he hoped the committee would not agree to the motion, unless some better cause was assigned for its adoption than had hitherto been made known.

Mr. DANA said the Committee of Claims, in the report now before the Committee of the Whole, had confined themselves to a statement of facts derived from the documents referred to them. He conceived it to be the business of the Committee of Claims to investigate the facts, and arrange them in such a manner as to free the House from the labor of detail; they had done this, and the report was a summary of all that passed in review before them. It was left to gentlemen to reason on the case according to their course of reflection. Whether the committee reasoned on the subject well or ill, he did not know that gentlemen were bound to follow them in their conclusion. Indeed, he apprehended that were the reasoning ever so

energetic, it would not go to satisfy every gentleman. On a question like the present, he despaired of making it satisfactory to the gentleman who had asked for reasons. He was persuaded that gentleman could not be convinced by any argument the committee might have used, and it was idle to call upon them to perform impossibilities.

The question on the committee's rising and reporting their agreement to the resolution was put, and carried—yeas 61, nays 50.

The SPEAKER having resumed the chair, Mr. VARNUM reported the foregoing resolution as agreed to.

Mr. BRYAN called for the reading of that rule of the House which restrains interested persons from voting.

The Clerk read the same, as follows:

“No member shall vote on any question in the event of which he is immediately and particularly interested; or in any other case where he was not present when the question was put.”

A motion was made to consider the report of the Committee of the Whole, and carried—yeas 64, nays 51.

Mr. CLARK moved a proviso as an amendment, declaring that no part of the five millions of acres reserved should go to compensate the claimants under the act of Georgia, passed in 1795.

Mr. J. RANDOLPH called the yeas and nays on the amendment.

Mr. DANA observed that the report on the table had been made on the application of persons claiming land under the act of 1795. The amendment, said he, is nothing more nor less than a denial to comply with the prayer of the petitioners, and whether it was not to all intents and purposes a substitute for the resolutions agreed to in the Committee of the Whole, he would leave to the Speaker. If it were decided to be a substitute, it could not be received, conformably to the rules of the House.

The SPEAKER said, the resolution reported from the Committee of the Whole was a general one, including all claims; the amendment went to limit

and confine the resolution to a particular class, and, therefore, he conceived it to be in order.

Mr. J. RANDOLPH.—It must be manifest to the House that this discussion is forced upon those who are opposed to the report of the committee; that we are not prepared at this time to meet it. I am among those who hoped that some reasons would be assigned, if indeed reasons can be found, to warrant the step about to be taken. I did hope that, instead of a string of facts and statements which were already before the House, the committee would have given us something new in the shape of argument, justificatory of the resolution which they have recommended. But I have been disappointed. Nothing is offered either in the report itself, or in the debate, which throws a single gleam of light on the subject. I have particular reasons to deprecate a discussion at this time. I shall not trouble the House by detailing them, but briefly state that I feel myself unequal to an immediate investigation of this question, as well from personal indisposition as from the pressure of other important business, which has left me but little leisure to attend to this. The few moments which I have been able to devote to it, have convinced me that much new and important matter remains to be brought to light. But no apology will be received: we are driven to a vote by an inflexible majority.

The objection taken by the gentleman from Connecticut, (Mr. DANA,) and the doubt which he raised on that point of order, respecting the amendment offered by my worthy colleague, (Mr. CLARK,) discloses his drift, and that of the Committee of Claims, whilst it proves the necessity of some such amendment to save citizens of the United States and their property from spoliation and plunder. The gentleman has stated truly that his object was to further the claim of the New England Mississippi Land Company. As I fear I shall have full occasion to exert my voice, I must beg that the memorial of the agents of that company may be read by the Clerk.

Mr. J. RANDOLPH then called for the reading of the act of Georgia of February, 1796, generally called the rescinding act; and he hoped they would have silence whilst the act was reading, as it was a very important one, and ought to influence the decision on the present subject.

The act was read in compliance with the request.

After it was finished, Mr. CLARK moved to adjourn.

On the division, there were 52 yeas, and 55 nays. So the motion was lost.

Mr. CLARK requested that the act of 1795, under which they derived their pretended titles, might be read.

Whilst the SPEAKER was reading the same, Mr. DANA rose and inquired whether it was necessary to read the whole of the law, or whether gentlemen would not be satisfied with the reading of such part of it as bore upon the present question.

Mr. J. RANDOLPH called the gentleman to order for interrupting the Speaker in his reading.

Mr. SPEAKER.—The objection ought to have been made (if at all) when the reading of the law was first called for.

The reading was continued to the end of the act—when,

Mr. J. CLAY moved that the House adjourn.

On a division, there were 53 yeas, and 60 nays. Motion lost.

Mr. J. RANDOLPH.—Perhaps it may be supposed, from the course which this business has taken, that the adversaries of the present measure indulge the expectation of being able to come forward, at a future day—not to this House, for that hope is desperate, but to the public, with a more matured opposition than it is in their power now to make. But past experience has shown them that this is one of those subjects which pollution has sanctified; that the hallowed mysteries of corruption are not to be profaned by the eye of public curiosity. No, sir, the orgies of Yazoo speculation are not to be laid open to the vulgar gaze. None but the initiated are permitted to behold the monstrous sacrifice of the best interests of the nation on the altars of corruption. When this abomination is to be practised we go into conclave. Do we apply to the press—that potent engine, the dread of tyrants and of villains, but the shield of freedom and of worth? No, sir, the press is gagged. On this subject we have a virtual sedition law—not with a specious title, but irresistible in its operation, which, in the language of a gentleman from Connecticut, (Mr. GRISWOLD,) goes directly to its object. The demon of speculation, at one sweep, has wrested from the nation their best, their only defence, and closed every avenue of information. But a day of retribution may yet come. If their rights are to be bartered away and their

property squandered, the people must not, they shall not be kept in ignorance by whom, or for whom it is done.

We have often heard of party spirit—of caucuses as they are termed—to settle legislative questions, but never have I seen that spirit so visible as at this time. The out-of-door intrigue is too palpable to be disguised. When it was proposed to abolish a judiciary system reared in the last moments of an expiring Administration, the detested offspring of a midnight hour—when the question of repeal was before this House, it could not be taken up until midnight, in the third or fourth week of the discussion. When the great and good man who now fills, and who (whatever may be the wishes of our opponents) I hope and trust will long fill the Executive chair, not less to his own honor than to the happiness of his fellow-citizens; when he, sir, recommended the repeal of the internal taxes, delay succeeded delay, and discussion was followed by discussion, until patience itself was worn threadbare. But now, when public plunder is the order of the day, how are we treated? Driven into the Committee of the Whole, and out again in a breath, by an inflexible majority, exulting and stubborn in their strength, a decision must be had instant. The advocates for the proposed measure feel that it will not bear a scrutiny. Hence this precipitancy. They wince from the touch of examination, and are willing to hurry through a painful and disgraceful discussion. But, it may be asked, why this tenacious adherence of certain gentlemen to each other on every other point connected with this subject? As if animated by one spirit, they perform all their evolutions with the most exact discipline, and march in a firm phalanx directly up to their object. Is it that men combined to effect some evil purpose, acting on previous pledge to each other, are ever more in unison than those who, seeking only to discover truth, obey the impulse of that conscience which God has placed in their bosoms? Such men do not stand compromised. They will not stifle the suggestions of their own minds, and sacrifice their private opinions to the attainment of some common, perhaps some nefarious object.

Having given vent to that effusion of indignation which I feel, and which I trust I shall never fail to feel and to express on this detestable subject, permit me now to offer some crude and hasty remarks on the point in dispute. They will be directed chiefly to the claim of the New England Mississippi Land Company, whom we propose to debar (with all the other

claimants under the act of 1795) from any benefit of the five millions of acres, reserved by our compact with Georgia, to satisfy such claims not specially provided for in that compact, as we might find worthy of recompense. I shall direct my observations more particularly to this claim, because it has been more insisted upon, and more zealously defended than any other. It is alleged by the memorialists, who style themselves the agents of that company, that they, and those whom they represent, were innocent purchasers; in other words, ignorant of the corruption and fraud by which the act from which their pretended title was derived, was passed. I am well aware that this fact is not material to the question of any legal or equitable title which they may set up; but as it has been made a pretext for exciting the compassion of the Legislature, I wish to examine into the ground upon which this allegation rests. Sir, when that act of stupendous villany was passed in 1795, attempting under the forms and semblance of law to rob unborn millions of their birthright and inheritance, and to convey to a band of unprincipled and flagitious men a territory more extensive, and beyond comparison more fertile than any State of this Union, it caused a sensation scarcely less violent than that produced by the passage of the stamp act, or the shutting up of the port at Boston, with this difference: when the port bill of Boston passed, her Southern brethren did not take advantage of the forms of law, by which a corrupt Legislature attempted to defraud her of the bounty of nature; they did not speculate on the necessities and wrongs of their abused and insulted countrymen. I repeat that this infamous act was succeeded by a general burst of indignation throughout the continent. This is matter of public notoriety, and those—I speak of men of education and intelligence, purchasers, too, of the very country in question—those who affect to have been ignorant of any such circumstance, I shall consider as guilty of gross and wilful prevarication. They offer indeed to virtue the only homage which she is ever likely to receive at their hands—the homage of their hypocrisy. They could not make an assertion within the limits of possibility less entitled to credit.

The agents of the New England Land Company are unfortunate in two points. They set out with a formal endeavor to prove that they are entitled to their proportion of fifty millions of acres of land, under the law of 1795, and this they make their plea to be admitted to a proportional share of five. If they really believed what they say, would they be willing to commute a good legal, or equitable claim, for one tenth of its value? Their memorial

contains, moreover, a suggestion of falsehood. They aver that the reservation of five millions for satisfying claims not otherwise provided for, in our compact with Georgia, was especially intended for the benefit of the claimants under the act of 1795, and that we were pledged to satisfy them out of that reservation. Now, sir, turn to the sixth volume of your laws, and what is the fact? In the first place, so much of the reserved five millions as may be necessary, is appropriated specifically for satisfying claims derived from British grants not regranted by Spain; and as much of the residue as may be necessary is appropriated for compensating other claims, not recognized in our compact with Georgia. An appropriation for certain British grants specially, and for other claims generally, is falsely suggested to have been made for the especial benefit of the claimants of 1795; and the reservation of a power in the United States to quiet such claims as they should deem worthy of compensation, is perverted into an obligation to compensate a particular class of claims; into an acknowledgment that such claims are worthy of compensation. Can this House be inveigled by such barefaced effrontery? Sir, the act containing this appropriation clause was not brought to a third reading till the first of March. Our powers expired on the fourth: it was at the second session of the seventh Congress. It was in the power of those opposed to the corrupt claims of 1795 to have defeated the bill by a discussion. But, sir, they abstained on this ground. If the appropriation of the five millions had not been made at that session, the year within which, by our agreement with Georgia, it was to be made, if at all, would have expired before the meeting of the next Congress; and it was urged, by the friends of the bill, that there were several descriptions of claims to which no imputation of fraud could attach; that by making a general appropriation we secured to ourselves the power of recompensing such claims as, on examination, might be found worthy of it, whilst we pledged ourselves to no class of claimants whatever. But that if we should suffer the term specified, in our compact with Georgia, to elapse without making any appropriation, we should preclude ourselves from the ability to compensate any claims, not specially provided for, however just and reasonable we might find them, on investigation, to be. Under these circumstances, and I appeal to my excellent friend from Maryland, who brought it in, for the correctness of my statement, the opponents of the bill gave it no other opposition than a silent vote. And now, sir, we are told that we stand pledged, and that an appropriation for British grants not regranted

by Spain, specially, and for such other claims against the State of Georgia, generally, as Congress should find quite worthy, was made for the especial benefit of a particular description of claimants, branded, too, with the deepest odium; who dare to talk to us of public faith, and appeal to the national honor!

The conclusion of the memorial is amusing enough. After having played over the farce, which was acted by the Yazoo Squad at the last session, affecting to believe that an appropriation has been made by the act of March 1803, for their especial benefit, they pray that Congress will be pleased to give them—what? that to which they assert they are entitled?—by no means—an eighth or tenth part of it—which said eighth or tenth part, if we may credit them, has been already appropriated to their use by law. From a knowledge of the memorialists, and those whom they represent, can you believe for a moment that, if they had the least faith in the volume of argument (I am sorry to profane the word) which they presented to the House to prove the goodness of their title, can you believe that under such impression they would accept a paltry compromise of two shillings in the pound—much less that, to obtain it, they would descend so low! Sir, when these men talk about public faith and national honor, they remind me of the appeals of the unprincipled gamester and veteran usurer to the honor of the thoughtless spendthrift, whilst in reality they are addressing themselves to his vices and his folly.

The first year that I had the honor of a seat in this House, an act was passed of a nature not altogether unlike the one now proposed. I allude to the case of the Connecticut Reserve, by which the nation were swindled out of some three or four millions of acres of land, which, like other bad titles, had fallen into the hands of innocent purchasers. When I advert to the applicants by whom we were then beset, I find that among them was one of the very persons who style themselves agents of the New England Mississippi Land Company, who seems to have an unfortunate knack at buying bad titles. His gigantic grasp embraces with one hand the shores of Lake Erie, and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs. Goaded by avarice, they buy only to sell, and sell only to buy. The retail trade of fraud and imposture yields too small and slow a profit to gratify their cupidity. They buy and sell corruption in the gross, and a few millions, more or less, is hardly felt in the

account. The deeper the play, the greater their zest for the game, and the stake which is set upon their throw is nothing less than the patrimony of the people. Mr. Speaker, when I see the agency that has been employed on this occasion, I must own that it fills me with apprehension and alarm. This same agent is at the head of an executive department of our Government, subordinate indeed in rank and dignity, and in the ability required for its superintendence, but inferior to none in the influence attached to it. This officer, possessed of how many snug appointments and fat contracts, let the voluminous records on your table of the mere names and dates and sums declare; having an influence which is confined to no quarter of the country, but pervading every part of the Union; with offices in his gift amongst the most lucrative, and at the same time the least laborious, or responsible, under the Government, so tempting as to draw a member of the other House from his seat, and place him as a deputy at the feet of your applicant; this officer presents himself at your bar, at once a party and an advocate. Sir, when I see this tremendous patronage brought to bear upon us, I do confess that it strikes me with consternation and dismay. Is it come to this? Are heads of executive departments of the Government to be brought into this House, with all the influence and patronage attached to them, to extort from us now, what was refused at the last session of Congress? I hope not, sir. But if they are, and if the abominable villany practised upon, and by the Legislature of Georgia, in 1795, is now to be glossed over, I for one will ask what security they, by whom it shall be done, can offer for their reputations, better than can be given for the character of that Legislature? I will pin myself upon this text, and preach upon it as long as I have life. If no other reason can be adduced but a regard for our own fame, if it were only to rescue ourselves from this foul imputation, this weak and dishonorable compromise ought to receive a prompt and decisive rejection. Is the voice of patriotism lulled to rest, that we no longer hear the cry against an overbearing majority, determined to put down the constitution, and deaf to every proposition of compromise? Such were the dire forebodings to which we have been heretofore compelled to listen. But if the enmity of such men be formidable, their friendship is deadly destruction, their touch pollution.

Such men, I repeat it, are formidable as enemies, but their friendship is fraught with irresistible death. I fear indeed the "*Danaos et dona ferentes*." But, after the law in question shall have passed, what security have you that the claimants will accede to your terms of compromise? that this is not a

trap, to obtain from Congress something like a recognition of their title, to be hereafter used against us? Sir, with all our wisdom, I seriously doubt our ability to contend with the arts and designs of these claimants, if they can once entangle us in the net of our own legislation. Let the act of March, 1801, of which already they have made so dexterous a use, be remembered. They themselves have pointed out the course which we ought to pursue. They have told us, that so long as we refrain from legislating on this subject, their case is hopeless. Let us then persevere in a “wise and masterly inactivity.”^[23]

The committee rose, and had leave to sit again, and the House adjourned.

WEDNESDAY, January 30.

On motion, it was

Resolved, That the President of the United States be requested to inform this House whether SAMUEL HAMMOND, a member of this House, has not accepted of an Executive appointment, and when?

Ordered, That Mr. BRYAN and Mr. EPPES be appointed a committee to present the foregoing resolution to the President of the United States.

Georgia Claims.

The House resumed the consideration of the resolution reported yesterday from the Committee of the Whole on the Georgia Claims.

Mr. ELLIOT.—It cannot but be considered as a very fortunate circumstance, and one which cannot fail to have a favorable influence upon the final decision of this important question, that, since the delivery of the animated observations which yesterday so powerfully attracted the attention of the House, we have been afforded a few hours of tranquil retirement from the tempest of the forum, for the purpose, useful at all times, and peculiarly so at the present time, of calm reflection. To transfer ourselves in a moment from the flowery fields of fancy, to the rugged road of argument, to descend instantaneously from the elevated scenes of eloquence to the humble walks of common sense, requires an effort transcending ordinary powers. In claiming your attention, Mr. Speaker, for a greater portion of the

day than I commonly occupy in debate upon this floor, I shall not address you in the style of compliment or ceremony. It is time to banish from these walls that idle frippery of ceremonious conversation, which is suited only to a new year's compliment, or a birthday salutation, and to catch a little of the sturdy spirit of antiquity. A bold, a loud, an impressive appeal is made to the American people. In that appeal I fearlessly and most cordially unite. I regret, however, the existence of a precedent which at once justifies and demands these addresses to the people. Much as I wish to disseminate correct information, particularly on a subject which I believe is but imperfectly understood without these walls, except by interested persons, and convinced as I am that the subject is understood, and an opinion formed upon it, by every member of this House, I shall not so completely follow the example before us as to speak to the people in the first instance, but shall, as usual, direct my observations to the House.

I propose to examine, in a concise, and if it be in my power, in an argumentative manner, the following questions, which have a direct application to the amendment proposed by the gentleman from Virginia (Mr. CLARK) to the resolution under consideration, and which, at the same time, open to view the whole extent of the subject:

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

Were the Legislature of Georgia, in 1795, invested with the constitutional power of making a sale of the territory, and did they make such sale to those from whom the present claimants derive their title or pretended title? And if such sale was made, what title or color of title did it convey?

Were the members of the Legislature of Georgia, in 1796, invested with the constitutional power of rescinding the acts of their predecessors in relation to such sale, and did they rescind them?

Were the claims or pretended claims of the present claimants in any manner recognized by the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a

certain description against Georgia, in reference to the said territory, should be appropriated for the purpose of satisfying the claims of the present claimants?

However extensive the outline which I have sketched of the subject, the survey will be a rapid one.

It is necessary that I should make one or two preliminary observations. I have uniformly been opposed to the doctrine which has been so powerfully advocated, that Congress is competent to make a legislative decision upon the validity or invalidity of the conflicting acts of Georgia. We possess no such powers. But as individuals we may express our opinions. Nor am I disposed to do any thing which shall have a tendency to impugn the title of the United States to this territory. Without deciding the question of title, my principal object is to show that the claimants are in possession of so strong a color of title, that it will be good policy to authorize a negotiation with them for the abandonment of their claim, especially as we have a prospect of obtaining that abandonment on their part, without going beyond the reservation in the act of cession, and of course without the actual expense of a single dollar to the United States.

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

To answer this inquiry, it is only necessary to make one or two quotations from the articles of agreement and cession, entered into on the 24th of April, 1802, between the Commissioners of the United States and those of Georgia. In the first article, "the State of Georgia cedes to the United States all the right, title, and claim, which the said State has to the jurisdiction and soil of the lands situated within the boundaries of the United States south of the State of Tennessee," &c. By the second article, "The United States accept the cession above mentioned, and on the condition therein expressed; and they cede to the State of Georgia whatever claim, right, or title, they may have to the jurisdiction or soil of any lands lying within the United States, and out of the proper boundaries of any other State, and situated south of the southern boundaries of the States of Tennessee, North Carolina, and east of the boundary line herein above described, at the eastern boundary of the territory ceded by Georgia to the United States." Whatever claim or title the United States might previously have had to the territory,

they thought proper, in 1802, to combine with it, and to fortify it, by that of Georgia; and surely we shall not do any act, or adopt any principle, tending to impair the title under which we now exercise jurisdiction over the territory.

Were the Legislature of Georgia, in 1795, invested with the constitutional power of making a sale of the territory, and did they make such sale to those from whom the present claimants derive their title or pretended title? And if such sale was made, what title or color of title did it convey?

In this age of political revolution and reformation, for I consider it an age of reformation as well as revolution, there are still certain principles and maxims, not merely venerable for their antiquity, but consecrated by their conformity to the common sense and reason of mankind, which are considered as universal in their application, and irresistible in their influence. Among these may be numbered the principles which attach to the government of every regularly-organized community; the power of pledging the public faith, and that of alienating the right of soil of the vacant territory of the nation. In every free government, there must exist the power of legislation, or of making laws; a distinct power, charged with the execution of the laws, and a judicial power. The union of these different powers in the same man or body of men, is the very essence of despotism. Thus in France, prior to the Revolution, it was a fundamental maxim of State that the King was the Legislator of the French Monarchy; and the power exercised in some instances by certain parliaments, of refusing to register the edicts of the monarch, however in practice it might operate as an obstruction to legislation, was in theory only a matter of form, or at most but a temporary check upon the executive power. In oligarchies the legislative power is vested in the rich and noble; and in aristocracies, in a few individuals who are presumed to be the wisest and the best in the community. In governments of the democratic form, this power resides in the great body of the people, and is exercised by themselves or their representatives. The base of the temple of American liberty is democracy, or the sovereignty of the people; representation and confederation are the principal pillars which support the great superstructure. As the State governments are unquestionably representative democracies, the General Government is a representative federal republic. In every government of the representative form, the representatives of the people are vested with power

to pledge the public faith, and to alienate the vacant territory of the nation. Were the members of the Legislature of Georgia, in 1795, invested with this authority? Certainly it was within the sphere of those constitutional rights and powers, which had never been surrendered to the General Government. We have since recognized that authority by receiving a solemn deed of cession of the territory from a subsequent Legislature of Georgia, transferring to us not only the soil, but the right of jurisdiction. Was this authority exercised in 1795? In the act of the Legislature of that State of the 7th of January in that year, granting this territory to those from whom the present claimants derive their claims, certain lands are described, and it is enacted that those lands shall be sold to such and such persons, as tenants in common, and not as joint tenants. The land shall be sold, or, in other words, the right of soil shall be alienated. A proper distinction is taken between the *dominium utile* and the *dominium directum* of the civilians. No transfer was made of the right of jurisdiction, although such imaginary transfer forms a prominent article in the reasons assigned by the Legislature of 1796 for passing the rescinding act. From this view of the subject, whatever may be the present state of the question of legal title, who can doubt that the present claimants, honest purchasers from the original grantees, upon the faith of an independent State, and innocent of fraud, if fraud existed, possess such a color of title, such an equitable claim, as to render it prudent and politic to enter into a compromise with them upon reasonable terms?

Were the members of the Legislature of Georgia, in 1796, invested with the constitutional power of rescinding the acts of their predecessors in relation to such sale, and did they rescind them?

Congress is incompetent to the decision of this question. Nor is such decision necessary. I will, however, make one or two inquiries, and state one or two principles, which are applicable to the subject, which at the same time will go to strengthen the ground I have taken as to color of title in the claimants, and the policy of extinguishing their claims.

Can a legislature rescind a contract made by its predecessors?

Writers on national law make a distinction between laws which operate in the nature of contracts, and those which have no such operation. Every enlightened and reasonable man will subscribe to the opinion that a pledge of the public faith, given by the competent authority, ought to be

irrevocable. Laws which pledge the faith of the community, which create contracts, which vest rights in individuals or in corporate bodies, it may safely be assumed as a general principle, are irrevocable. Laws of merely municipal operation are alterable or repealable at the pleasure of the existing legislature.

Can the judicial power declare a legislative act void, as having been passed by means of corruption?

Different opinions have existed in our country as to the right claimed by the judiciary, of deciding upon the constitutionality of laws. The better opinion seems to be, that from the nature of our Government, and the very terms of the constitution itself, by which that instrument is declared to be the supreme law of the land, the judges not only ought to exercise that power, but that they cannot avoid its exercise. If I am not mistaken, some gentlemen, who deny that the judges possess this right, are prepared to invest them with the more dangerous one of setting aside a legislative act on the ground of corruption. To admit that the judiciary may examine into the motives of the Legislature in passing laws, or that they may receive and decide upon evidence tending to prove corruption in the legislative body, would certainly be going much further than those have gone who have claimed for that department the right of deciding upon the constitutionality of laws. Suppose a trial of title between a person claiming under the act of Georgia, of 1795, and another claiming under the United States, and suppose evidence offered to the Court to prove the corruption of the Legislature of Georgia, in what a peculiar situation the judges would be placed? And would they listen for a moment to an application for the admission of such evidence? It may well be doubted. Do not then the present claimants possess a very strong color of title? Is it not prudent to extinguish claims of this description?

Were claims, or the pretended claims of the present claimants, in any manner recognized by the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a certain description against Georgia, in reference to the said territory, should

be appropriated for the purpose of satisfying the claims of the present claimants?

I have anticipated the principal arguments in favor of the equity of the claims, and the policy of a compromise with the claimants. The memorialists state that their claims were particularly contemplated by the Commissioners, both of the United States and of Georgia. They have offered us no evidence of this fact, and we are not to take it for granted. Indeed, I am far from thinking it my duty either to advocate or answer the pamphlet of the memorialists, and I shall make but this single allusion to it. Whatever may be its merits, it has had no influence upon my mind in forming my opinion. An examination of the official documents upon our tables will evince, however, that by a very strong implication, if not by express provision, these claims have been recognized, both by the act of cession, and by the law of Congress passed in consequence.

The gentleman from Virginia has expressed his surprise that the Chairman of the Committee of Claims had contented himself with reporting facts and principles, and that he has not adopted the novel procedure of reporting something tantamount to an elaborate speech in favor of the claims. As the speech of the gentleman from Virginia is unfortunately destitute of argument against the claims, and as it might be possible to deduce from it reasons in their favor, it might perhaps be proper for him to print it and annex it to the report, as a substitute for that which he thinks the chairman ought to have subjoined for the edification of the House. My feeble optics have been able to discover but one attempt at argument, which is in those observations which relate to the Message of the President, and the proceedings of Congress, on the act of Georgia, in 1795, and which, it is contended, were notice, to purchasers and to the world, of fraud. At that time, it was not suspected that fraud had been committed, and the reason for those proceedings was, that the United States possessed, or were supposed to possess, certain claims to the territory. There are certain subtle, sublimated, ethereal, heaven-descended geniuses, the soft and silken texture of whose minds would suffer infinite discomposure from the contact of that rude and knotty thing—an argument. That gentleman is not of this description. Too often have we witnessed his argumentative powers to entertain this idea. I regret that he has declaimed instead of reasoning upon this occasion, as I believe that argument, particularly upon important

subjects, is more useful than mere declamation. From motives which I cannot develope, for I ascribe improper views to no one, the present is attempted to be made a party question. The people are told that the Capitol has become a scene of political and private iniquity, of fraud and federalism; that the majority, of their Representatives are committing a stupendous robbery upon the public patrimony, and their indignation is invoked upon the plunderers. What facts exist to justify these denunciations? Are we about to barter away the rights and interests of the people? Are we about to be guilty of a wanton waste of the public property? Are we guilty of political apostasy? No such thing. We are about to make arrangements for carrying into effect a solemn stipulation in the treaty with Georgia, and a solemn act of our predecessors, by devoting a part of the five millions of acres, specially reserved for that purpose, for which the United States never paid a cent, and never will pay a cent, to the extinguishment of the colorable claims of equitable claimants. Yet we are told that this act of equity, good faith, and good policy, is a stupendous crime, compared with which the flagitious acts of the former “unprincipled administration” dwindle into “petty larcenies.” I am a republican—a democratic republican. I was opposed to the general system of that administration. But I do not think it magnanimous, or honorable, malignantly to triumph over fallen foes. Nor do I dread the union of honest men. It can be dreadful only to the dishonest.

It is said that the circumstance that one of the great officers of the Government is numbered among the claimants, ought to scatter consternation through this House. It is unnecessary for me to undertake a vindication of the character of that gentleman. Does his office divest him of the common rights of a citizen? Does it deprive him of the right of petitioning the National Legislature? But his contracts are resorted to for the purpose of proving that he has extended his official influence within our walls. Unfortunate, indeed, is the application of this argument. By the report upon the table, it appears that three members are contractors, and we all see that two of them are opposed to the present claims.

Believing, Mr. Speaker, that this act of enormous robbery, this wanton dissipation of the public treasure, this abominable league between corruption and federalism, of which we hear so much, is neither more nor less than an act of just national policy; believing with the Secretary of State,

the Secretary of the Treasury, and the late Attorney-General, that “the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms;” and believing that this compromise ought to be delayed no longer, I shall give a decided vote in opposition to the proposed amendment, and in favor of the original resolution, as reported by the Committee of Claims.

Mr. LUCAS.—I am, sir, in favor of the amendment proposed to the report now under consideration. The unparalleled fraud which has been practised by the divers land companies styled purchasers, under the act, or pretended act, of Georgia of 1795, and by the Legislature that passed that act, have been fully noticed and exposed in the course of the debates which took place on the same subject, during the last session of Congress, and again during these two last days. This notorious fraud, odious as it is on the part of the land companies, is still much more so on the part of the members of the Legislature of Georgia, as their country had confided in them, and that themselves had pledged their faith under the obligation of an oath. But there are other instances of fraud and deception, materially affecting the purchase or claim in question, which have been solely practised by the land companies, and in which the Legislature of Georgia had no kind of participation. These charges cannot be resisted by the ordinary means of denial of facts, for they are supported upon authentic documents.

It ought to be observed that the four land companies who are original purchasers under the act of the Legislature of Georgia, passed on the 7th January, 1795, stated in their petition, containing their proposals to the Legislature to purchase certain lands belonging to the State of Georgia, that the land contained within the bounds which were described in their petition, amounted to 21,750,000 acres. It was evidently upon the faith of this statement, that the Legislature consented to sell that land for \$500,000. However, it is now ascertained that the quantity of the land thus described amounts to 35,000,000 of acres, and the companies themselves compute it to be near 40,000,000. From this it appears evidently that the companies have deceived the Legislature by stating what was not true, that the contracts are legal and obligatory. The parties ought not only to have contracted with liberty of choice, but they ought also to have contracted

with a due knowledge of the matter, which was the object of the contract. This has not been the case here; the Legislature have sold twice as much land as they intended to sell, or, which is the same thing, they have sold it one time cheaper than it was their intention, and all this loss is the result of the false statement given by the land companies.

It is an incontrovertible maxim of law, that none ought to be benefited by his own wrongs; this maxim applies with a double force in a contract between the sovereign authority and private persons. The contract between the Legislature and the land companies having been entered into by the means of a statement which proves to be false, and which has been made by the parties that claim the benefit arising thereof, the contract becomes vitiated and of no effect.

Should this wrong not be sufficient to invalidate the contract, there is another wrong that would arise from it; by the act of 1795, a reserve was made of two millions of acres out of the several tracts sold to the Georgia land companies, for the use of such citizens of Georgia as chose to subscribe in the original terms of the purchase. The price paid by the citizens who did subscribe was two cents and one-third per acre, it being the price then supposed to have been paid by the companies, according to the statement originally made of the whole quantity of land contained in the purchase, which, as I have before said, proves to be very near double the land companies would receive from the citizens of Georgia, who clearly had a right to subscribe on the original terms; a price per acre nearly double to that which they themselves would have to pay, and thus have a profit on the citizens of Georgia for the difference in the quantity of acres contained in the purchase arising from the false statement; which reduces, with respect to the speculators, the actual price of the land to little more than one cent per acre, while it remains at two cents and one-third with respect to the citizens of Georgia. However great may have been the departure of the Legislature of Georgia from the interest of their constituents on this occasion, it appears evidently, that by the expression, "original term," they understand that their citizens should subscribe, if they chose, to the amount of two millions, upon terms similar to those of the land companies. It appears evidently they did believe they were selling the land of the State at the rate of two cents and one-third per acre, whilst, in fact, they received but

one cent and one-sixth, which, upon the whole, is a consideration merely nominal.

To the multiplicity of the radical defects with which the title of the companies claiming under the act of 1795 abound, the advocates of the claim of the New England Mississippi Land Company answer, that none of those who compose their company had any participation in the fraud; they are said to be *bona fide* purchasers, perfectly ignorant of the fraud which may have been practised by those of whom they bought. They are represented in their memorial and vindication as plain farmers, mechanics, &c., who have made what they possess by the closest application and industry.

Sir, I stand among those who are the most ready to acknowledge that the inhabitants of New England are conspicuous for their industry; but I am likewise of opinion, that they are not less noted for their sagacity, in their attendance to their interest; and in the art of making good bargains, I view them as being fully competent to cope in dealings with the inhabitants of the Southern States. That they should not have heard of the notorious fraud which has taken place at the passing of the act of 1795, is a great cause of astonishment to me; that they should have made a purchase to the amount of eleven millions of acres, without making inquiries sufficient to discover what almost every body knew throughout the United States, if possible, increases my astonishment. For my part, having never thought of purchasing any land from the Georgia land companies, I made no inquiry about the acts of the Legislature of Georgia; yet the corruption was so flagrant, the fraud so notorious, that it reached my ears soon after it was passed. A gentleman from Virginia (Mr. RANDOLPH) has justly observed, yesterday, that the President of the United States had, in his address to the two Houses of Congress, at the beginning of the session of 1795, taken a most direct notice of the act of Georgia, passed in January of the same year, as tending to dangerous consequences. Certainly such solemn communications of the first Magistrate, at the beginning of a session, contain matters that are an object of national concern, and generally sought for. There is not a paper in the Union that omits publishing those communications. It would be possible, however, that this communication would have escaped the notice of plain industrious farmers, such as are able, perhaps, to purchase two or three hundred acres of land; but that a

company of sober and discreet speculators, and of New England too, being about purchasing an immense quantity of land for a great sum of money, should be ignorant of what every body knows, and of what they ought to know sooner than any body else, is a circumstance too unaccountable and extraordinary for me to believe that it really exists. I should rather think that the speculators of New England, sober and discreet as they style themselves to be, found the bargain so good and so tempting, the means of pleading ignorance of fraud committed in the original purchase so easy, the means on the part of the State of Georgia, or its vendee, to prove the notice so difficult, that the sober and discreet speculators of New England thought it advisable to make a gambling bargain, expecting that the two extremities of the United States being engaged in the same speculation, they would combine their force and influence to press hard upon the centre, and save through the conflict their speculation, either in whole or in part. Other strong circumstances lead still more to believe, that the New England Company were well aware of the danger which did exist in making a purchase from the Georgia land companies; and that they were taking unusual risks upon themselves; this appears clearly from the face of their deeds; not only the covenant of warranty is special, instead of being general, but another extraordinary covenant is entered upon by which the Georgia Mississippi Company “is not liable to the refunding of any money in consequence of any defect in their title from the State of Georgia, if any such there should hereafter appear to be.” Was not such covenant smelling strongly of the fraud which the Georgia grant was impregnated with? Could the New England Company take more clearly every risk upon themselves? Could they more expressly preclude themselves from every remedy in law or equity in case of eviction?

Mr. BOYD.—The question before the House is not whether we are to do a good or an injury to the class of men who are denounced as a band of speculators; but it is whether we shall agree to or reject the amendment to the resolution offered yesterday to the House by a gentleman from Virginia, (Mr. CLARK.) Yesterday was taken up in reading the laws of Georgia, and of the United States, and various other papers, which have been long in the hands of the members, and which no doubt had been so attentively perused by them as to have rendered the reading at this day not indispensably requisite. Mr. B. said, that if papers were to be read for the instruction and edification of the members as to well-known facts, he thought it would have

been of more consequence to have read the Declaration of Independence, and the Treaty of Peace of 1783, in which the independence of the United States was acknowledged by the only Power on earth who contended against it. We were then free, sovereign, and independent States, to all intents and purposes, and as sovereign States, each and every State in the Union had full power and authority to dispose of their lands to whom they pleased, and under what conditions they pleased. And if the State of Georgia, in the exercise of her sovereignty, have conveyed to the Mississippi Land Company the right of soil to the land in question, and that company have transferred the same to the New England Mississippi Land Company, the right is vested in them; unless we have arrived at that stage of political depravity that what was yesterday acknowledged as a right shall to-morrow be declared a wrong.

Mr. CLARK said he was still in favor of the amendment on the table, and which he yesterday had the honor of submitting. He did not wish it to be understood that the amendment was intended to give a preference to any description of claims under the different acts of the State of Georgia, and provided for by the general resolution, but intended it should meet directly those which have excited the most public attention, have been the most ardently pursued, the most zealously advocated, and attended with the most extraordinary circumstances. If the facts which have accompanied this monstrous business from its origin to the present moment were publicly known, or if it could be retraced through all its cunning and wily mazes, the claims would sink beneath the weight of honest indignation, and instead of now being urged before the Congress of the United States, would be gladly withdrawn from public view, and buried in perpetual silence. He peculiarly wished on this occasion a cool and temperate discussion, to divest ourselves of all feelings, either of improper compassion or prejudice, that equally tend to inflame the heart and mislead the judgment. It should be his humble province to endeavor a fair investigation of the naked question, disrobing it of those tinsel habiliments which have been artfully thrown around it for the purpose of concealing its real deformity.

The claims the amendment goes to reject, are derived by a pretended law of the State of Georgia, said to have been passed in the month of January, 1795. He would contend this law was absolutely void, *ab initio*, not only because the Legislature had no power to make such a law, but from the

circumstances under which it was made. That the grantees under this law could have no title to the land, either legal or equitable; and that there have been no circumstances attending the subsequent sales, that place the sub-purchasers under superior equitable advantages. It will be particularly necessary, Mr. Speaker, to be attentive to dates; that of the law under which the claims are made, and generally known by the name of the “cession law,” has already been noticed. Let us now see how this law passed. It stands characterized by circumstances unparalleled in the annals of pollution—of which we have the most conclusive evidence before us. The whole State of Georgia has borne testimony to the fact, and it is now deposited in the archives of the Government, that a majority of the Assembly which passed the law were corrupted and bribed. Some had money given them; others, shares in the lands they were effecting the sale of. This is so universally admitted and detested, that the most enthusiastic friends of the present claimants cheerfully allow the original grantees had no titles, and he believed there was not one now before Congress with his claim. But it is contended the sub-purchasers had no notice of the fraud in the original contract, but are *bona fide* purchasers for a good and valuable consideration actually paid. This he never could agree to. The evidence before him was the contrary, and he would here take a review of at least a part of that evidence, a great portion of which, no doubt, has been destroyed by the lapse of nine years, but a sufficiency remains when brought together, irresistibly to carry conviction to the mind of the most skeptical. The law itself is almost enough for this purpose. The simple object was to sell to four companies the vacant western land; but to delude the people and lull inquiry, it is called, “An act supplementary to an act, entitled ‘an act for appropriating a part of the unlocated territory of this State, and for the payment of the State troops, and for other purposes, and the protection and support of the frontier;’” and the same fascination is kept up through the enacting clauses, and it is the longest act in the statute book. It goes into a lengthy examination of the State title, of extinguishing the Indian title, and appropriating the money, directing it to be laid out in bank stock. Where, Mr. Speaker, will you find such a law as this? If the object of the Legislature had been correct, would there have been a necessity for clothing the law in such delusive colors? No, sir! fraud and infamy were to be cancelled, and the covering must be thick. They were, however, disappointed in their aim, for honesty and integrity had yet their residence

in the State, and as soon as it was known, the whole country was feelingly alive to the abuse, and a general effervescence pervaded the public mind; this was manifested in the only possible way that remained. The Assembly had adjourned, not to meet again in a twelvemonth. Presentments of the grand juries, in almost all the counties of the State, were made in terms of bitter disapprobation of the law. It was also denounced in the public prints, from one end of the continent to the other. In the month of May, 1795, a convention was held in the State; the grand jury presentments, petitions, and remonstrances from all parts of the country were sent up; these were, by the convention, remitted to the next Legislature as the only competent authority to remedy so enormous an evil. In the month of February before, as has been so ably stated by my valued friend and colleague, (Mr. RANDOLPH,) had this subject been the substance of a communication of the President of the United States to Congress, and a resolution and a bill passed the House of Representatives on the subject. Shall I, after this, be told the sub-purchasers had no notice? Impossible; no historical event so notorious. But the evidence does not stop here. The Georgia Legislature again assembled in the month of November, 1795. The subject of this nefarious and wicked speculation, that covered the country with shame and disgrace, was taken up, and if a doubt had remained of the corruption, it was then removed by a number of affidavits proving incontestably the fact; and on the thirteenth day of February, 1796, a law was passed, not repealing the act of 1795, but with honest and laudable indignation declaring it null and void, as being bottomed upon fraud and perjury, and unveiling to the world the most flagitious conduct that ever disgraced a legislative assembly. It is there ascertained and declared, that the land had been sold for three hundred thousand dollars less than what had been offered for it, and the quantity of land much greater than it had been represented. The lands contained in the grants to the four companies were estimated at twenty-one millions of acres, which, at five hundred thousand dollars, the price given, is twelve and a half cents per acre; the real quantity is about thirty-five millions of acres; this reduces the price of the garden of the world to nearly one and one-third cents the acre. Take notice, Mr. Speaker, that the law of 1796 does not pretend to repeal the act of 1795, but proclaims, to every body, that to be void which was in reality so before, and with an honest zeal provides that the money which had been paid should be repaid to the purchaser. This annulling law was so precious to the people, it was a monument so

honorable to the State, that when afterwards the citizens of that State arose in the majesty of their strength, resuming all those rights, and acted in convention, this very law was ingrafted in their constitution.

Mr. EUSTIS.—If the position taken by the gentleman from Virginia (Mr. CLARK) could be established, it would not in my opinion justify the amendment which he has proposed to the resolution under consideration; because the amendment renders the resolution null and void, and the resolution neither affirms nor admits the legal title. Still, I should be willing to rest the whole merits of the case on the single question, whether the claimants, at the time of making their purchases, had or had not a knowledge of the fraud? In the autumn of 1795, when the sales were generally made in New England, there was no knowledge or suspicion of fraud—the contracts were made in full confidence of the act of a sovereign and independent State—and I know they could have had no knowledge of any fraud in the Legislature of Georgia. We are told by the gentleman that there was “a great uproar throughout the State of Georgia.” Whatever might have been the nature or extent of this uproar, I am confident that a knowledge of it had not reached New England at the time the contracts were made. But the proof that there was no knowledge of any fraud depends not on the opinions or assertions of individuals—it is founded on a circumstance which removes all doubt on the subject—it is founded on the price which the purchasers paid for the land. They paid, as they have stated in their memorial, as much per acre for these lands as the State of Massachusetts had received, a few years before, for lands lying in the State of New York. And is it probable that the purchasers who have been represented by a gentleman from Pennsylvania as possessing so much sagacity, and looking so well to their own interests, would have paid or contracted to pay such a price, with a knowledge that the original grant had been fraudulently obtained?

THURSDAY, January 31.

Georgia Claims.

The House resumed the consideration of the resolution reported the twenty-ninth instant, from the Committee of the Whole, on the Georgia

Claims.

Mr. JACKSON.—Mr. Speaker, I rise with some degree of reluctance to address you on the present occasion, not because I fear to give publicity to my sentiments on the question before the House, but from the assurance that the length of time which this subject has occupied at the last, and during the present session of Congress, renders it most certain that no new view can be given; and more especially that the opinions already formed cannot be changed. I would not now have risen but for the wish that inasmuch as a most extraordinary course has been pursued, and a general denunciation of every man who dares to favor the report on your table has been made, my reasons may accompany my vote, and I am willing that they together may form the criterion by which my political existence shall be decided. The reluctance I felt in rising is somewhat removed by the reflection that the arguments urged on this floor are declared not intended to influence the judgment of this House, but to control the public mind, by an avowed appeal to the people of the United States. Let the appeal be fairly made, and I fearlessly await their decision. For that purpose, I deem it proper to offer my sentiments, in order that they may accompany those of my two colleagues who have preceded me. Sir, I am decidedly in favor of the report of the Committee of Claims, and of course opposed to the amendment under consideration. I do not on this occasion regret the absence of party spirit from these walls, which has been invoked by my colleague, (Mr. RANDOLPH.) That party spirit which has been the bane of all government; that party spirit which, disregarding all the forms of justice, tramples its most sacred laws under foot, and presides without check or control over questions relating solely to private property; or which was displayed in the conduct of Jeffries, who servilely prostrating his sacred functions to the purposes of ministerial vengeance, has justly excited the reproach and execration of posterity: and which, if cherished upon occasions like the present, will tend to demolish the fair fabric of our Republican Government. I will not admit that because a majority of this House are in favor of the claims, and desire a prompt decision without debate, it is evidence that “unprincipled men have acquired the ascendancy, and knowing themselves to be in the commission of wrong they are silent.” Is my colleague aware of the extent of this doctrine? When unprincipled men, said he, acquire the ascendancy, they act in concert and are silent—silence and concert, then, are to him proofs of corrupt motive. Is this always

a correct position? Does the gentleman recollect that measures were adopted a few years past without discussion, by my political friends, in conjunction with him, who were *silent, and united*? I am unwilling to believe that such an inference can result from a union of sentiment. In some instances we are unanimous in our decision of questions, on which no debate takes place; but I have never thought this was proof of the prostration of principle; nor can I suppose that the gentleman himself thinks so; even now we adopt measures advocated by him, and are nevertheless told that to act in concert is proof of corruption. Having premised that the inferences made by the gentleman were not correct, I will proceed to the investigation of the question before the House, viz: Are the claims under the act of 1795, entitled to reference to commissioners for compromise and settlement, or are they not? My colleague (Mr. RANDOLPH) says the persons who obtained the land from the Legislature of Georgia were guilty of a most detestable fraud; and the present claimants, pretending to be innocent purchasers without notice of fraud, are a set of hypocrites, undeserving the attention of Congress, or the commiseration of mankind. In support of this assertion he has quoted the Message of the President of the United States, in 1795, to Congress, describing in terms of approbation the high character of its author—WASHINGTON—whose memory I revere, and whose name I will teach my children to lisp, and venerate as the father of American freedom, and who with Liberty were the two best gifts bestowed by Heaven upon our favored country! WASHINGTON, my colleague says, gave notice to the nation, and published the rape of unhallowed hands upon the property of the State of Georgia. But, sir, if we examine the Message, and the proceedings of Congress upon the occasion, it will be discovered that no knowledge of fraud in the transactions of the Legislature of 1795, was even known, or suspected; because, if any such information had been received, the known integrity of that virtuous man assures me, he would have communicated it; he would have opposed it with his best exertions, and give me leave to say, deprecated it as much as any man can.

Mr. FINDLAY said that he claimed the attention of the House for a short time; but from viewing the unusual turn some of the arguments had taken, and the nature of the subject, he found it a matter of some delicacy to know how to proceed. He was opposed to the amendment under debate, and in favor of the resolution, but he observed some members, with whom he had generally voted, and for whose talents he had a high esteem, and in whose

integrity he had the utmost confidence, take the other side with such ardent zeal, and in a mode of argument so unusual in public bodies, that on observing this, he had hesitated and had voted in the last session for the postponement which took place. He had done this in hopes that the House would in this session meet the case in a temper more becoming their own dignity and the importance and delicacy of the subject.

He said he would begin with the Message of the President near the close of the session in February, in the year 1795, informing Congress of the two laws made in Georgia, one in December and the other in the month of February, 1795, (the same Message mentioned by the member from Virginia, Mr. RANDOLPH.) The Message was referred to a select committee, of which he had the honor of being a member, with other very intelligent members from both South and East, (Mr. NICHOLAS, Mr. AMES, &c.) It had long been the opinion of men well informed, that the title of Georgia to the extent of territory she claimed was doubtful, and that it was too great for any one State to possess in connection with the Federal Union. The old Congress frequently called on Georgia to make a cession of her unsettled territory, agreeably to the stipulations on which the Confederation was agreed to, but when Georgia did propose a cession, the terms on which it was made were rejected. Other States made cessions of lands to which they had no title, or else had appropriated the lands to individuals before the cession was made; so that, on the whole, but a small quantity of land unencumbered came to the benefit of the United States. But to return: the committee in February, 1795, examined the title of Georgia as far as they had information, the bounds not being certainly known; the unsettled territory of Georgia was believed to be larger than France or Germany, or any other European nation, except Russia, whose Asiatic dominions extend to the Pacific Ocean; hence they concluded that such an extent of territory possessed by one State, at the extremity of the United States, and bordering its whole length on the Spanish dominions, with which we were then in danger of a serious contest, it was the opinion of the committee that every proper means should be used to induce Georgia to cede, in a peaceable manner, a proportion of that territory; and, as a first step towards obtaining this object, the committee reported that the Attorney-General should examine the titles of the State of Georgia and of the lands claimed by the company from the law of 1795; and they further reported that the President

should be authorized to obtain a cession from the State of Georgia of the whole or part of the territory.

It was not certainly known that there was a defect in the title of Georgia, but from the circumstances of the small extent of that colony at the beginning, and in various extensions by different royal proclamations, &c., the title of Georgia was held in doubt. It is well known that the State of Georgia at first was pitched into the State of South Carolina, which for a considerable time granted titles for land south of the State of Georgia, and one degree of latitude which the United States claimed from the definitive treaty with Britain, was yet in the possession of Spain; but this the members of Georgia considered also as within the jurisdiction of that State. This being the case, the committee thought it prudent to make no mention of the supposed defect of the title of Georgia. The committee, and particularly himself, suspected that different laws enacted by that State for the sale of land, and particularly the recent sale of 1795, were encouraged by their own suspicion of a defective title, but they knew nothing of the bribery and corruption assigned as a reason in the year following, for annulling the contract; therefore it was, that no notice to the contractors that Congress doubted the title of Georgia was given. There was no precedent in the United States of a contract authorized by a constitutional legislative act being declared null and void by a succeeding legislature. The power of decisions on frauds and corruptions, or the validity of titles being vested in the courts of justice in all civilized countries, such a decision could only be looked for from that department; but neither a judge who is stated to have been corrupted was impeached, nor any of the members indicted.

Mr. F. said, while the case was so situated, the New England purchasers, or long-legged speculators, did not, as his colleague (Mr. LUCAS) had said, go to Georgia, but the long-legged contractors or speculators of Georgia, went above a thousand miles to Massachusetts, an old, thick-settled country, the citizens of which needed land for their families, (a country which annually sent forth numerous emigrants, who generally purchased in large quantities and settled in large bodies together,) and sold the land at seven or eight times the original price, by which they gained near \$1,000,000 advance. They went with the patents from the State of Georgia, and the law, and probably the constitution of that State, in their hands. This, alone, was sufficient to encourage purchasers among a people who needed land; but

this was not all. The respectability of the characters of the settlers was such as would reasonably induce an opinion, that they could not themselves be deceived, and would not deceive others. Among these were a very respectable *judge of the Supreme Court of the United States*, who had been a member of the old Congress from almost its commencement till its dissolution, for as long a period as the State constitution would permit, and had been an efficient member of the Convention which prepared the Constitution of the United States, and several State conventions, and a gentleman who was then, and both before and after that time, a SENATOR of the United States, and many other very respectable characters—who, however, he acknowledged, had by that act forfeited the character they had formerly enjoyed, and yet, strange to tell, neither before nor after the annulling act, he could not call it a law, as no such law could be made under the Constitution of the United States. The sale was annulled; but the judge said to have been corrupted, nor the federal judge, was impeached, nor any of the members of whom it was testified that they had received bribes, or were sharers in the spoil, were indicted, but still enjoy the confidence, as much as they otherwise would have done, of that State. Not one of them was removed from office, or in any official manner consigned to infamy, by the courts of that respectable State, or by impeachment.

The lands sold at Boston were yet in possession of the Indian tribes, and the Indian war but lately extinguished, while, at the same time, the lands in Pennsylvania were sold, the first rate at one shilling and sixpence; the reputed second rate—but in fact equal if not superior in quality and situation—at one shilling the acre; and what remained unsold to the old settlements, at sixpence; and, in New York, still cheaper the acre; when the Georgia purchase, with all its disadvantages, is stated and admitted to have been sold, rough and smooth, good and bad, and of which a large proportion is allowed to be bad, at something above fifteen pence an acre on the amount reserved. Certainly such a speculation, if it was one, was such as he would not have had any share in, and therefore no proof of the superior cunning ascribed to them by his colleague and others.

Mr. F. said that, so far, the bargain and sale were fair and legal; whether it was a good bargain or a bad one, was the look-out of the purchasers; if it was a bad one Government would have given them no relief. Had nothing extraordinary, or out of the common road, taken place, he believed the

attention of Congress would never have been called to the subject. Soon, however, after this contract was made, the Legislature of Georgia declared the contract, and the law under which it was made, to be void or annulled; and in a short time after, a convention of that respectable State disapproved of the constitutional act of the Legislature; but as long as we pay respect to constitutional obligations and the distribution of the powers of government, and as long as we respect the Federal Constitution, which expressly asserts that no *ex post facto* law, or law impairing the obligation of contracts, shall be made, we must agree that one session of a legislature cannot annul the contracts made by the preceding session. If that could be done, the patent for his own plantation might also be set aside, for he acknowledged it is worth more now than the price that he paid for it. This doctrine had never been entertained even in the Revolutionary period. At that solemn period, all contracts were protected.

Mr. F. said that he cheerfully acknowledged that the amount of land sold under the law of Georgia of 1795, was so enormous as that, if that State had been a separate and wholly independent government, would have justified, in some degree, an agrarian law; and if the fraud and corruption attested by *ex parte* testimony was true, would have justified the most exemplary punishment of those who suffered themselves to be corrupted, or who defrauded the commonwealth, and this would have proved a defect in the contract itself; but no such thing appears to have taken place. The judge, who is said to have received \$13,000 for his vote, was not impeached, nor the members who are said to have given, or received bribes, indicted. It appears to have been so contrived that the State or citizens of Georgia, should suffer no loss—that the loss and reproach should be transferred to people at the greatest possible distance. He gave credit, however, to the Legislature of Georgia, which met in the year 1796, for making an extraordinary exertion to free themselves from an extraordinary evil. It was a laudable testimony against corruption and fraud, but no court of justice had yet, by deciding on it, acknowledged it to be law, and it was too slow for warning others at a distance against titles originating under the law of 1795.

The annulling law of 1796 had all the effect that any citizen, at that period, could have wished. Congress took possession of the government of the western parts of Georgia, the parts in which the lands in question lay,

and erected a territorial government, without the consent of that State, and passed a law authorizing the President to enter into a negotiation with Georgia on the principles of compromise, for the right of soil. The compromise eventually succeeded, and an act of cession took place between the United States and the State of Georgia. In this act of cession, or convention, it was provided that the claims in the counties of Bourbon and Washington, bordering on the Mississippi river, &c., should be protected, and that five millions of acres, or part thereof, should, by the United States, be applied to satisfy, quiet, or compensate, the claims now before the House, and that if they were not so applied, they should revert to the State of Georgia.

On these conditions, Mr. F. said, did Georgia surrender her right of soil. Agreeably to these conditions were the Commissioners of the United States authorized to make and receive proposals, but the commissioners were not authorized to conclude the agreement, they did report to Congress, and in that report, they state that the claimants cannot, in their opinion, recover by law. This is well founded, because no action can be brought against the United States, nor, since the amendment made to the constitution respecting the suability of States, against a State. Therefore this fund, viz: the five millions of acres, set apart by the Convention of Georgia, to quiet, satisfy, or compensate these claims, must be either applied to that purpose, or revert to the State of Georgia, or the faith of the United States must be sacrificed.

Mr. F. said, that from this view of the subject, he had made up his mind to vote in favor of the report of the Committee of Claims. That he had not made up his mind lightly, that he had been prepossessed against it, but it becoming his duty to decide, he had thrown aside these prepossessions, and examined the case with all the coolness and deliberation of which he was capable, and would give his vote, as he had made up his mind, without consulting or relying on the opinions of others, for he was responsible only for his own opinion.

Mr. GREGG.—I rise, Mr. Speaker, to congratulate the House, on the question being at length brought within such narrow limits. The validity of the title appears to be nearly abandoned, and the advocates of the resolution seem now disposed to rest its defence almost entirely on the ground of expediency. For my own part I have always felt satisfied with the report of the commissioners, so far as it respects the question of title. They have

investigated the subject with more diligence and attention than can well be bestowed on it by members of this House, and being men distinguished for their abilities and of high official standing, their opinion, certainly, should have great weight. That opinion, as recorded in their report, is, that the title of the claimants cannot be supported. In this opinion I most heartily concur, for I can never be induced to believe that an act so marked with fraud and corruption as the act of Georgia, under which the claimants pretend to derive their title, has been fully proved to be, can vest a title either in law or in equity.

The question of title being given up, any remarks respecting the weight that ought to attach to the rescinding act passed by the Legislature of Georgia, in 1796, will be unnecessary. On that part of the subject I will only just observe, in reply to one of my colleagues, (Mr. FINDLAY,) who has stated that act to be without precedent, and that one Legislature cannot repeal an act of a preceding Legislature where it involves a contract, that there is one instance at least of such an act, and that instance is in the State in which he and I live. The case to which I allude, is an act passed by the Legislature of Pennsylvania, for repealing the charter of the Bank of North America. This act, if I am not mistaken, was passed when my colleague was a member of the Legislature, and I believe received his support.

But, leaving the question of title, good policy, say gentlemen, requires us to pass the resolution. In this sentiment, they and the commissioners appear to unite. The commissioners acknowledge that the title of the claimants cannot be supported, and yet undertake to recommend a compromise, by stating “that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and certain equitable considerations which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms.” Now, I would ask, how is the interest of the United States to be promoted by giving five millions of acres of land to persons acknowledged not to have a good title in law, and none in equity? If our interest is to be promoted in this way, we may soon get rid of all our land. Claimants will not be wanting, if it is to be got for asking.

With respect to the equitable considerations which have been urged so strenuously in favor of the present claimants, I must acknowledge they have not appeared to me so very forcible. The innocence of the claimants has

been painted in strong and glowing colors. They have been represented, not only as innocent, but innocent through ignorance. One of my colleagues, in particular, has dilated largely on this idea, and applied it especially to the New England purchasers. In evidence of this, he has referred to the case of the Connecticut intruders in the State of Pennsylvania. But in this allusion he was certainly extremely unfortunate. The case might be cited to prove a position exactly the reverse. The fact is, that these intruders have for many years, by their superior skill and address, held their lands in defiance of the State; and, from appearance, I believe will continue to hold them, without making any compensation to the State; and this instance may serve to show the impropriety and inefficiency of governments pretending to compromise with individuals. The measures pursued by the State of Pennsylvania relative to these claimants have generally been of this description. They have produced no advantage to the State, and have always been converted by the intruders into arguments in favor of their claims. I do know of one case that goes far to prove that there are some persons in the Eastern States extremely uninformed in matters relating to land. The case to which I allude is recent, having occurred but a few days ago. A petition was presented by a gentleman from Vermont, signed by a number of persons, praying to be permitted to form a settlement on the public lands lying north-west of the river Ohio. On a motion for referring it to a committee, a member from the same State rose and opposed the reference, assigning as a reason, that if the petition should so far receive the countenance of the House as to be referred, the petitioners would instantly commence the sale of rights. Now, if there are people so extremely ignorant as to purchase rights of this description, they certainly ought to be pitied. But will any person say that the present claimants belong to this class? No, sir; they are men experienced in business, by all accounts well versed in transactions relating to land, and as little liable to be imposed on as perhaps any equal number of persons that could be selected.

But it is said they could not have knowledge of the circumstances under which the act of Georgia of 1795 was passed; that they became purchasers before such information could possibly reach them. This certainly cannot be seriously insisted on. Will gentlemen look at the deeds conveying the titles, and then say the purchasers had no notice? Evidence, if not of the fraud, at least that there was something wrong in the business, is stamped on the very face of all the conveyances.

Mr. J. RANDOLPH said, that, as well as his extreme indisposition and excessive hoarseness would permit, he would lay before the House some observations on the various objections which had been urged against the amendment of his worthy and respectable colleague, (Mr. CLARK,) for such he was in every point of view.

The venerable gentleman from Pennsylvania, (Mr. FINDLAY,) when he gave in his recantation of his last year's opinions on this subject, told you that General Washington's Message had no reference to the fraudulency of the act of 1795. He considered it as a *caveat* on behalf of the United States, who claimed a great part of the territory in question. Be it so. Was that notice to subsequent purchasers, or not? How will gentlemen reconcile this inconsistency? Within the disputed limits between the Federal Government and Georgia, five-sixths of this very New England Company's purchase were comprised, besides that valuable part of the Georgia Company's grant contained in the fork of the Alabama and Tombigbee. The United States contended, that the country west of the Chatahoochee, and south of a parallel of latitude which should intersect the mouth of the Yazoo River, never constituted a part of Georgia—that it was within the limits of the province of West Florida, from which being severed by the peace of 1783, it became vested in the Confederacy, and not in the State to which it happened to be contiguous. The far greater part of the grant to the Georgia Mississippi Company is embraced within these limits: the purchase of the New England Company is stated, by themselves, to have been made from that company, twelve months after the President's Message. The gentleman from Pennsylvania, himself, considers this Message as a formal annunciation of the adverse claim of the United States to the land in question, and, in the same breath, avers that the New England Company, subsequent purchasers of that very land, were ignorant of any defect of title in the State of Georgia, or the grantees under her. How will he reconcile this?

The same gentleman has introduced into this debate the names of two persons; one of them, at that time, *a judge of the Supreme Court of the United States, the other a Senator from the State of Georgia*; who, he tells us, were deeply concerned in the transaction of 1795. Both these gentlemen are no more. Private character, always dear, always to be respected, seems almost canonized by the grave. When men go hence, their evil deeds should follow them, and, for me, might sleep oblivious in their tomb. But if the

mouldering ashes of the dead are to be raked up, let it not be for the furtherance of injustice. In every stage of this discussion, whilst I have kept my eye steadily fixed on the enormity of the act of 1795, I have lost sight of the agents. Since, however, some of them have been mentioned, it may not be immaterial to notice the interest which they took in this business. It is too true, sir, that the Senator in question was one of the fathers of the act of 1795. By the Assembly which passed it he was, at the same session, re-elected to the Senate of the United States for six years thereafter. It is equally true, Mr. Speaker, that the notorious British Treaty was ratified by that Senator's casting vote. And as the Yazoo speculation then carried through the British Treaty, now, it seems, the adherents of that treaty are to drag the Yazoo speculation out of the mire. The connection of the two questions at that day is too notorious to be denied. That very Senator, were he now here, would disdain to deny it. With all his faults, he was a man of some noble qualities. Hypocrisy, at least, was not in the catalogue of his vices. The coupling together of the British Treaty and the Yazoo business, cannot surely be unknown to the gentleman from Pennsylvania. He was a member of the House of Representatives which voted the appropriation for carrying that treaty into effect, and is understood to have acted a conspicuous part on the occasion. Can it be matter of surprise that the same Senate that ratified the British Treaty by the casting vote of one of the principal grantees of the act of Georgia of 1795, should refuse to co-operate with the House of Representatives, in measures for obviating the mischiefs of that act? When you see this corruption extending itself to two great departments of Government, can you wonder at the bitterness of its fruit? With their leaders in the Legislature and on the judgment seat, well might the host of corruption feel confident in their strength; even yet they have scarcely laid aside their audacity.

A gentleman from Massachusetts (Mr. EUSTIS) has said, that the claimants from his State had no notice of the fraud; "that he knows they had not;" I cannot have mistaken him, for I took down the words. Sir, I would ask that gentleman whence arises the proverbial difficulty of providing a negative, but from the difficulty of knowing one?

[Mr. EUSTIS rose to explain. If he had said that he knew the claimants had not a knowledge of the fraud, he had said too much. It was impossible that any one should know all that was known or passing in the mind of another.

Without recollecting the precise words used, he had intended to state his own belief that they had no such knowledge or information. He was resident and conversant with those concerned in the transaction, it was the subject of general conversation, and if there had been any knowledge or report of the kind, he thought it must have come to his knowledge; but he also recollected to have stated at the time that this circumstance did not depend on the knowledge or opinion of any individual—as the price paid for the land precluded any idea or belief, that the purchasers could have had any knowledge of the fraud.]

Mr. RANDOLPH resumed. The facts which I am about to mention are derived from such a source that I could almost pledge myself for their truth: When the agent of the Georgia Mississippi Company (under whom the New England Land Company claim) arrived in the Eastern States, he had great difficulty in disposing of his booty. The rumor of the fraud by which it was acquired had gone before him. People did not like to vest their money in this new Mississippi scheme. He accordingly applied to some leading men of wealth and intelligence, offering to some as high as 200,000 acres, to others less, for which they were neither to pay money, nor pass their paper, but were to stand on his books as purchasers at so much per acre. These were the decoy-birds to bring the ducks and geese into the net of speculation. On the faith of these persons, under the idea that men of their information would not risk such vast sums without some prospect of return, others resolved to venture, and gambled in this new land fund, laid out their money in the Yazoo lottery and have drawn blanks. And these, sir, are the innocent purchasers by whom we are beset; purchasers without price, who never paid a shilling, and never can be called upon for one; the vile panders of speculation. And in what do their dupes differ from the losers in any other gambling or usurious transaction? The premium was proportioned to the risk. As well may your buyers and sellers of stock, your bulls and your bears of the alley, require indemnification for their losses at the hands of the nation. There is another fact, too little known, but unquestionably true, in relation to this business. This scheme of buying up the Western Territory of Georgia did not originate there. It was hatched in Philadelphia and New York, (and I believe Boston; of this, however, I am not positive,) and the funds with which it was effected were principally furnished by moneyed capitalists in those towns. The direction of these resources devolved chiefly on the Senator who has been mentioned. Too wary to commit himself to

writing, he and his associates agreed upon a countersign. His re-election to the Senate was to be considered as evidence that the temper of the Legislature of Georgia was suited to their purpose, and his Northern confederates were to take their measures accordingly. In proof of this fact, no sooner was the news of his reappointment announced at New York, than it was publicly said in a coffee house there, “then the Western Territory of Georgia is sold.” Does this require a comment? Do you not see the strong probability that many of those, who now appear in the character of purchasers from the original grantees named in the act of 1795, are in fact partners, perhaps instigators and prime movers of a transaction in which their names do not appear? Amidst such a complication of guilt, how are you to discriminate; how fix the Proteus? The Chairman of the Committee of Claims, who brought in this report, under the lash of whose criticism we have all so often smarted, that he is generally known as the pedagogue of the House, will give me leave on this subject to refer him to an authority. It is one with which he is no doubt familiar, and, however humble, well disposed to respect. The authority which I am about to cite is Dillworth’s Spelling Book, and if it will be more grateful to the gentleman, not our common American edition, but the Royal English Spelling Book. In one of the chapters of that useful elementary work it is related, that two persons going into a shop on pretence of purchase, one of them stole a piece of goods and handed it to the other to conceal under his cloak. When challenged with the theft, he who stole it said he had it not, and he who had it said he did not take it. Gentlemen, replied the honest tradesman, what you say may all be very true, but, at the same time, I know that between you I am robbed. And such precisely is our case. But I hope, sir, we shall not permit the parties, whether original grantees who took it, or subsequent purchasers who have it, to make off with the public property.

The rigor of the Committee of Claims has passed into a proverb. It has more than once caused the justice of this House to be questioned. What, then, was our surprise, on reading their report, to find that they have discovered “Equity” in the pretensions of these petitioners. Sir, when the war-worn soldier of the Revolution, or the desolate widow and famished offspring of him who sealed your independence with his blood, ask at the door of that Committee for *bread*, they receive the statute of limitation. On such occasions you hear of no equity in the case. Their claims have not the stamp and seal of iniquity upon them. *Summum jus* is the measure dealt out

to them. The equity of the committee is reserved for those claims which are branded with iniquity and stamped with infamy. This reminds me of the story of a poor, distressed female in London applying for admittance into the Magdalen Charity. Being asked who she was, her wretched tale was told in a few words—"I am poor, innocent, and friendless." "Unhappy girl," replied the director, "your case does not come within the purview of this institution. Innocence has no admission here; this is a place of reception for prostitutes; you must go and qualify yourself before you can partake of our relief." With equal discretion the directors of the Committee of Claims suffer nothing to find support in their asylum but what is tainted with corruption, and stamped with fraud. Give it these properties and they will give it "equity."

I have said, and I repeat it, that the aspect in which this thing presents itself, would, alone, determine me to resist it. In one of the petitioners I behold an executive officer, who receives and distributes a yearly revenue of \$300,000, yielding scarcely any net profit to Government. Offices in his disposal to the annual amount of \$94,000, and contracts more lucrative making up the residue of the sum. A patronage limited only by the extent of our country. Is this right? Is it even decent? Shall political power be made the engine of private interest? Shall such a suspicion tarnish your proceedings? How would you receive a petition from the President of the United States, if such a thing can be supposed possible? Sir, I wish to see the same purity pervading every subordinate branch of the Administration, which, I am persuaded, exists in its great departments. Shall persons holding appointments under the great and good man who presides over our councils, draw on the rich fund of his well-earned reputation, to eke out their flimsy and scanty pretensions? Is the relation in which they stand to him, to be made the cloak and cover of their dark designs? To the gentleman from New York, (Mr. ROOT,) who takes fire at every insinuation against his friend, I have only to observe, on this subject, that what I dare to say, I dare to justify. To the House I will relate an incident, from which it may judge how far I have lightly conceived or expressed an opinion to the prejudice of any man. I owe an apology to my informant for making public what he certainly did not authorize me to reveal. There is no reparation which can be offered by one gentleman and accepted by another, that I shall not be ready to make him; but I feel myself already justified to him, since he sees the circumstances under which I act. A few evenings since, a

profitable contract for carrying the mail was offered to a friend of mine who is a member of this House. You must know, sir, that the person so often alluded to maintains a jackal, fed, not (as you would suppose) upon the offal of contract, but with the fairest pieces in the shambles; and, at night, when honest men are in bed, does this obscene animal prowl through the streets of this vast and desolate city, seeking whom he may tamper with. Well, sir, when this worthy plenipotentiary had made his proposal, in due form, the independent man to whom it was addressed, saw at once its drift. "Tell your principal," said he, "that I will take his contract, but I shall vote against the Yazoo claim, notwithstanding." Next day, he was told that there had been some misunderstanding of the business, that he could not have the contract, as it was previously bespoken by another!

Sir, I well recollect, when first I had the honor of a seat in this House, we were members then of a small minority; a poor, forlorn hope; that this very petitioner appeared in Philadelphia, on behalf of another great land company on Lake Erie. He then told us as an inducement to vote for the Connecticut reserve (as it was called) that if that measure failed, it would ruin the republicans and the cause in that State. You, sir, cannot have forgotten the reply he received: "That we did not understand the republicanism that was to be paid for; that we feared it was not of the right sort, but spurious." And, having maintained our principles through the ordeal of that day, shall we now abandon them, to act with the men and upon the maxims which we then abjured? Shall we now condescend to means which we disdained to use in the most desperate crisis of our political fortune? This is, indeed, the age of monstrous coalitions; and this corruption has the quality of cementing the most inveterate enmities, personal as well as political. It has united in close concert those, of whom it has been said, not in the figurative language of prophecy, but in the sober narrative of history: "I have bruised thy head, and thou hast bruised my heel." Such is the description of persons who would present to the President of the United States an act to which, when he puts his hand, he signs a libel on his whole political life. But he will never tarnish the unsullied lustre of his fame; he will never sanction the monstrous position, (for such it is, dress it up as you will,) "that a legislator may sell his vote, and a right, which cannot be divested, will pass under such sale." Establish this doctrine, and there is an end of representative government; from that moment republicanism receives its death-blow.

FRIDAY, February 1.

Postmaster-General.

The SPEAKER laid before the House the following letter from Gideon Granger, Postmaster-General of the United States:—

FEBRUARY 1, 1805.

Hon. NATHANIEL MACON, *Speaker of the House of Representatives of the Congress of the United States.*

SIR,—I have received information, from various sources, that both my public and private character and conduct have been arraigned on the floor of the House of Congress by a member of that House, in a debate of the 29th, and in another of the 31st ultime, in a case where no examination of my official conduct was proposed. As there is not, within my knowledge, any instance of a similar abuse offered to an officer of Government, I know not of any precedent whereby to regulate my conduct. I wish at all times, and more especially on an occasion so extraordinary and unprecedented, to approach the representatives of the nation with all that respect and regard to which they are entitled. My feelings do not allow me, at present, to exercise that coolness and judgment which I might call to my aid in a case less interesting.

Conscious of the purity of my conduct, and that no charge can be made or supported against me consistent with truth and justice, it is a duty which I owe to my country—to the government which has confided in me—to myself and my family—to declare (and I do now most solemnly declare) that every charge or insinuation which has been made against my private or public character, or against my fairness and impartiality, or of my attempting, by bribery, or in any improper manner, to influence any member of Congress upon any question pending before that honorable body, is absolutely and altogether untrue, and founded at least in error only.

The high respect due to your body and every member of it during your sessions, will not allow me to hazard a conjecture as to the motives of the gentleman who has proclaimed these charges.

I court and solicit of Congress an investigation into my official (and if they please my private) conduct, from the first moment the Post-Office Department was committed to my charge to the present period. Nor have I any favor to ask, save only this, that an investigation may be had the present session.

I pray you to communicate this to the House of Representatives; and I tender to that honorable body, and to you, their Speaker, the assurance of my high esteem and respect.

GIDEON GRANGER. [\[24\]](#)

Mr. VARNUM moved that the letter of the Postmaster-General be referred to a select committee to inquire into the subject.

Mr. NELSON hoped the motion would not prevail, as no good purpose could be answered by the inquiry. It appeared to him to be an affair of honor between two gentlemen, and Congress had nothing to do with it. If, upon investigation, the charges were found to be true, Congress had no power to remove the Postmaster-General from office. For what purpose, then, were they to waste the time of the House in such an inquiry? That was not the proper place to make the application; it should have been made to the President, if made at all, as he had the power of removing officers. The session was far advanced and limited in its duration. A variety of important business still remained unfinished, and he feared some of it would remain so; yet, notwithstanding, the House was called upon to take up private quarrels between gentlemen. He hoped the motion would not prevail, and that the gentlemen would be left to settle the dispute themselves.

Mr. BRYAN called for the yeas and nays.

Mr. ELLIOT.—This House was informed by a member, (Mr. RANDOLPH,) in language too strong to be misunderstood, that corruption had found its way within these walls, and that indirect advantages had been taken to influence the decision of the House upon a question pending before them. An officer of the Government, who considered his conduct much implicated, has informed the House, by letter, that he has been informed that his public conduct has been arraigned, and prays an investigation into it. In my opinion, nothing can be more just and reasonable than to grant it.

Mr. NICHOLSON.—I recollect but a single instance in which the conduct of an officer of the Government has been inquired into, at his request; that was the case of Mr. Wolcott, the late Secretary of the Treasury, who, upon his resignation, addressed a letter to the House, requesting an investigation into his conduct. That letter was couched in decent terms, and the language

was such that no member could take umbrage at. Had the letter of the Postmaster-General been written in the same style, I should have had no objection to the investigation, although I can see no good likely to result from it. But it is couched in such language as this House ought not to listen to. We are told in it, that charges made by a member of this House are untrue. Are we to sit here, and suffer such language to be used? I trust not, sir; had I known the language of the letter, I should have opposed its being read. If gentlemen wish an investigation into their conduct, they ought to ask it in decent terms; and I should not oppose it, although, as I before observed, I can see no good likely to result, for I trust that the Postmaster-General will never be dignified with an impeachment. If the charges against him are true, the President ought to remove him, and it is to him that he ought to justify himself. If, however, gentlemen are anxious that an investigation should take place, let them lay a resolution to that effect on the table, and I will give it no opposition; but I will never agree that such a letter as the one now on the table be referred to a committee, and, by that means, give a sanction to the language contained in it.

Mr. GREGG regretted that such business had been brought before the House, especially at so late a period of the session. He did not know for what purpose an inquiry was to be made; for, supposing the charges to be true, the House had no power to remove him. The Postmaster-General was not one of those officers who could be impeached; and the President was the only one that could remove him. He was opposed to the motion, conceiving that too much important business remains unfinished, to take up new matters, which would answer no good purpose whatever.

Mr. CLARK was opposed to the reference of the letter, on account of the language which it contained. It charged a member of the House with having uttered falsehood. In his opinion, such language ought not to receive any sanction from the House.

Mr. LYON.—I feel, Mr. Speaker, a sympathy for the Postmaster-General, who, as well as myself, was so egregiously belied yesterday by the member from Virginia, (Mr RANDOLPH.)

[Here Mr. NICHOLSON called Mr. LYON to order, whereupon the latter sat down, when the SPEAKER decided that the words were out of order.]

After this decision was made, Mr. LYON again rose to proceed, and was again called to order, but the SPEAKER determining that he was in order,

Mr. BRYAN appealed to the House, and

Mr. NICHOLSON called for the yeas and nays.

The question was then taken, "Is the decision of the Chair correct?" And it was determined in the affirmative—yeas 81, nays 34.

Mr. LYON, upon this, immediately said, I give up my right; and would not proceed.

Mr. ELLIOT.—However surprising it may appear to some gentlemen, it is not so to me, that the language of innocence should be warm and pointed. We have been told that the letter is couched in disrespectful terms. For my part, I cannot perceive any thing of the kind in it; and I am surprised that, as it respects the gentleman who made the charges against him, that he is so moderate. Gentlemen have said that an inquiry would be of no service; because, if the charges are true, the officer cannot be impeached. If gentlemen will advert to the constitution they will find that "all civil officers are liable to impeachment," and removal from office. Surely it will not be contended that the Postmaster-General is not a civil officer. The gentleman from Maryland (Mr. NICHOLSON) differs very widely from his friend from Virginia (Mr. RANDOLPH) as to the Postmaster-General. The former considers him as holding an office too insignificant to be dignified with an impeachment, while the latter deems his patronage and influence sufficient to influence or to bribe the majority of this House. However insignificant the gentleman from Maryland may think the Postmaster-General, still he is a civil officer, and as such is liable to be impeached, and removed from office. We have been told that a combination has taken place between some of those who have avowed themselves republicans and the federalists, and that the liberties of the country will be endangered. Sir, we have no danger to apprehend from monarchists, aristocrats, or federalists.

Our liberty can only be endangered by those description of persons against whom the gentleman from New York (Mr. ROOT) so emphatically exclaimed—I mean political demagogues and popular leaders! They have been the curse and destruction of every Republic, and I fear will be our destruction. We are cursed with them in this country, and even in this

House. But I trust that the majority of this House are opposed to them. The great objection which gentlemen make to the inquiry is, that the letter is couched in too disrespectful terms. Will they please to bear in mind the charges made against the officer, and, viewing them, is it not a matter of astonishment that he is so mild? As the letter respects this House, it is remarkably respectful. Upon what ground, then, can the investigation be refused? If the charges made are true, the officer ought to be removed; if untrue, this House ought in justice to him whose character has been so assailed to declare that they are so. The gentleman from Virginia (Mr. RANDOLPH) informed us yesterday that the Postmaster-General kept in his pay a jackall, who went prowling about this desolate city at midnight, when honest men ought to be asleep, offering bribes to the members. Sir, the gentleman must have keen optics to discover this jackall, when he is asleep; for he informs us that he only goes about when honest men ought to be asleep; and surely the gentleman is one of that description. Upon every view which I can take of this subject, I can see no objection to the inquiry, but the strongest reason in its favor; and justice demands that it should be made.

Mr. NELSON would offer a few remarks to the House, why he was opposed to the motion. He would not undertake to give an opinion as to the character of the Postmaster-General, or whether the charges made against him could be substantiated. His objection was, that the House had nothing to do with charges made by a member against any individual. If the charges were true, the President (and not the House) was the proper person to apply to, to remove the officer. But it had been said that the House had the power to impeach all civil officers, and, therefore, could impeach the Postmaster-General. But because the House was invested with that power, he asked whether they were bound to exercise it? Surely not. And he hoped they would not, when they could get rid of the officer by a more summary mode. Late experience had taught them the trouble and expense attendant on impeachments, and he trusted that no officer would ever be impeached that could be removed by the President. It would be better to let them remain in office, although guilty of misbehavior, than to spend so much time as they would be obliged to do in cases of impeachment. Suppose the motion should be agreed to, and the committee appointed, he asked what power they would possess? Were they to declare whether the charges were true or false? A determination either way would have no effect upon the House,

because they could not, he trusted, impeach the officer. He was not disposed to do any thing to hurt the character of the Postmaster-General, but he would not give his sanction to a measure which would spend so much of the time of the House in deciding what he considered an affair of private honor and private feelings between two gentlemen. He also considered that the adoption of the resolution would pass a censure upon the gentleman who made the charges, and he asked whether the House were disposed to censure one of its members for any warm and unguarded expressions about an officer of the Government? He trusted not. How many times had charges been made in the House against the President of the United States; but that officer had never thought it proper to apply to the House for an inquiry into his conduct; nor did the House ever pass a vote of censure on the members who made them. He looked upon this as a question of dispute between two gentlemen, and no tribunal could be erected in the House to decide on it. He should, therefore, vote against the motion of the gentleman from Massachusetts, (Mr. VARNUM,) and hoped it would not prevail.

Mr. HUGER knew not what was the opinion of any gentleman as to the merits of the question, but he was satisfied that a calm decision of it could not take place at that time. They were about to establish a precedent, which might be of importance, and it ought to be done after the utmost deliberation. He called upon gentlemen to say, whether it was possible that a calm and impartial decision could be given after so much irritation had been displayed in the debate? In order to afford an opportunity to gentlemen to give the subject a cool and dispassionate investigation, he moved to postpone the further consideration thereof until Monday.

The question was taken thereon, and determined in the affirmative—yeas 93.

The resolution (Mr. Varnum's motion to refer Mr. Granger's letter to a select committee) was never after called up.

Georgia Claims.

The unfinished business of yesterday on the Yazoo claims was resumed—the amendment offered by Mr. CLARK, under consideration.

Mr. HOLMES observed that as he was a member of the Committee of Claims, from whom the report under consideration emanated, he thought it his duty to state to the House the part he acted on that occasion. I was, said Mr. H., in all our deliberations upon this subject, decidedly opposed to the adoption of the report, and in every stage of its progression used all fair means in my power to produce a different result; in this, however, I was unsuccessful. My conduct was governed by a firm conviction that the present claimants had no right in law or equity to the lands in question, and that policy did not demand the interference of the National Legislature. Most of the arguments that operated upon my mind then, and will influence my vote now, have been adduced by gentlemen who preceded me. It is not my intention to detain the House with a repetition of them; one or two, however, have occurred to me as worthy of consideration, that have not been urged. This must be my apology for addressing you after the able and lengthy discussion the subject has received. I am of the opinion, Mr. Speaker, that the Legislature of Georgia, of 1795, were not authorized to dispose of the lands in question, even if they had been honestly inclined to do so.

Mr. MATTHEW LYON.—From the drift of the speeches delivered by the member from Virginia, from his call for the Postmaster-General's report of a list of his contracts, and from the invitation he has given to an examination of that report, I am led to consider it a duty I owe to myself, in this House, and in the face of the world, to take up that report, and explain the nature of the contracts which there appear in my name. I find my name seven times mentioned in that report: the first is in the 12th page, for a contract for carrying the mail from Cincinnati to Detroit; the second in the same page, and is from Marietta to Cincinnati; these two contracts I never solicited or bid for, but the Postmaster-General having advertised for proposals, and having received none that he thought reasonable, they being new routes and to be let for one year only, he wrote to me offering the price they stand there at, and I undertook to get the business done. For the performance of the latter contract I gave every cent I received, and without saving one penny for a great deal of trouble, risk, and perplexity, I had taken upon myself to get it effected. From the other I saved a few dollars toward paying me for the care, trouble, and responsibility I had sustained on the occasion. Long before these contracts were out, I informed the Postmaster-General that I should take neither of them again, and the

contract from Cincinnati to Detroit was let to another person at \$105 60 more than was given to me; this may be seen in the 22d line of page 20 of the same report.

The third time my name is mentioned is in the same 12th page, and is from Hartford to Fort Massac, a distance of about 180 or 190 miles, for which \$654 75 is paid; out of this \$65 is to be paid for ferriage. For some parts of this route I am obliged to give much more than a proportionate share of what I receive; some other parts I give a trifle less; sometimes my own horses carry the mail. I cannot with precision tell what is lost or gained in it, but it cannot be \$50 either way. The fourth contract is also in the same page, it is from Russelsville to Eddygrove, or, rather, Eddyville; it is 80 miles, for which \$240 is paid; this is as low if not lower than the price given any where south or west of this place, and I give to the person who performs it the whole amount of what I receive. The fifth and sixth time my name is mentioned in that report is in the 28th page—those are merely a renewal of the two last-mentioned contracts, which had expired in 1803; all of those contracts were made before I was elected to my present seat in this House, before I had the pleasure of a personal acquaintance with the present Postmaster-General, and before I ever spoke with him.

The seventh contract is noticed in the last page of the Postmaster-General's report, which is from Massac to New Madrid, from Kaskaskias to Girardeau, from Cahoka to St. Louis, a distance of more than 200 miles, for \$515, out of which more than \$150 must be paid for ferriage, at the rate ferriages stood at the time of the contract.

This is the true history of the contracts by which it is insinuated that the Postmaster-General has bribed me. I never was bribed, sir; it is not all the lands and negroes my accuser owns that could tempt me to do a thing which honor or conscience dictated to me to avoid. I could, sir, if it was pertinent, show how the over-vigilance of the present Postmaster-General has deprived me of the benefit of the only profitable contract I ever made with the Government—a contract made with his predecessor which he very improperly, in my opinion, considered void on account of some words in it not being exactly consonant with the intention of the contracting parties; believing, however, that the Postmaster-General designed to do what he thought right, he has not lost my esteem, nor do I think his character can be injured by the braying of a jackall or the fulminations of a madman.^[25]

Mr. J. CLAY.—It was not my intention to have troubled the House with any observations on the subject, but I think a view may be taken different from any exhibited by the gentlemen who have preceded me. Some of the gentlemen who have advocated the appropriation of the land to satisfy the New England Mississippi Land Company, have been content to rest the claim upon the ground of policy. They have said that if some mode should not be taken to satisfy the Yazoo speculators, they would be incessantly troubling Congress. If these men have any title, it must be by right of pre-emption; and yet that title it was not practicable for them to acquire, as the State of Georgia could not extinguish the Indian title. Notwithstanding, however, their imbecility, the Legislature of Georgia, of 1796, undertook to grant an estate in fee simple. It will require more time to examine this question, and perhaps more abilities than I possess; but I cannot conceive how Georgia had a pre-emption title to the land, while the Indian title still existed. The Congress of the United States possessed the sole power of extinguishing the Indian title to lands within their territories; no individual State has either the right or the power of extinguishing the Indian title to any lands they may claim. Of course, Georgia had no right to grant a title in fee simple.

We are told of the policy of compromising with these speculators, and that they are innocent purchasers. How are they so? Are they not the very men who purchased a fraudulent claim, and does not their deed carry on the face of it a proof that they knew it to be fraudulent? There is also a strange coincidence: These people's deeds are dated February 13th, 1796, the very day that the rescinding act was passed, but these instruments were not all executed until May following. [Here Mr. J. Clay read several passages from the pamphlet published by the agents of the New England Yazoo Company, and compared them with the resolution of Congress passed on that subject, from which he inferred an acknowledgment of the present claimants, that they purchased a disputed title.] He went on to state that Governor Strong, who was at that time a Senator of the United States, was made acquainted with the whole transaction; and it could not but be presumed that he and the Massachusetts delegation communicated to their constituents the circumstance.

The general notoriety of the fraud, said Mr. CLAY, is such as to convince any man that the present claimants are not innocent purchasers. The very

conditions under which they purchased, demonstrate this. They undertake to stand in the shoes of men who had defrauded the State of Georgia through a corrupt Legislature, and when they paid their money, they conditioned that it should not be repaid them, by reason of any defect in the title. The petitioners take it for granted, that, whatever was the fate of the original compact, though bottomed in fraud and consequently null, they have no other resource than in the mercy of this House. Why did they make that stipulation in their deed? Why not take a general warrantee? If the deeds had been executed in the usual manner, they could have recovered their money from the party who had practised upon them. But, notwithstanding that article, I still think they should have recourse to the original grantees; let them go to them, and a court of equity will do them justice.

I have no idea of supporting questions of property upon grounds of mere policy; I shall never be inclined to squander millions of the public money, because a gang of swindling speculators may enter this House and prove troublesome to its members. The agents of these men have accidentally acknowledged that they cannot extinguish the Indian title, and, therefore, they cannot get possession of the land. What is a man to get by a contract, when it is impossible to comply with the terms? I was in hopes, that the representation from the State of Pennsylvania would have been unanimous on this question: they ought to know, from the salutary experience of their own State respecting land speculations, whether it relates to the Connecticut, Susquehanna, or Delaware Companies, who have kept a part of our State in a continual broil for fifty years, while another set of men, under the garb of the Population and Holland companies, have thrown their warrants over the north-western corner of the State, and are likely to defeat the great objects which the Legislature had in view, when they disposed of the lands to actual settlers alone. I trust, however, that they will be defeated, and that the courts of justice will determine the case in the manner in which it was recently decided. I regret that the oldest member of Congress from our State, should, at this late hour, abandon those republican principles which he has so long and so ably maintained, to support a band of Yazoo speculators. For my part, I must be an altered man indeed, if I ever consent to a compromise with a gang of speculators holding a title founded in fraud and speculation.

The yeas and nays were then taken on the resolution of the Committee of Claims, and decided in the affirmative—yeas 63, nays 58, as follows:

YEAS.—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phaniel Bishop, Adam Boyd, John Boyle, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findlay, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Simon Larned, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, and Marmaduke Williams.

NAYS.—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, John Whitehill, Alexander Wilson, Joseph Winston, and Thomas Wynns.

The resolution was of consequence agreed to.

Mr. J. RANDOLPH.—On this question I have nothing more to say than to congratulate my friends on the vote just taken. We are strong in the cause of truth, and gentlemen will find that truth will ultimately prevail. When I compare the votes of this session with some of the votes of the last, my objections to refer this subject are almost done away. In whatever shape the subject may be again brought before the House, it will be my duty, and that of my friends, to manifest the same firm spirit of resistance, and to suffer no opportunity to pass of defeating a measure so fraught with mischief.

[On a subsequent day, a bill was introduced for compromising the claims; but it was not acted upon by the House during the remainder of the session.]
[\[26\]](#)

WEDNESDAY, February 6.

Post Roads.

The House resolved itself into a Committee of the Whole on a motion of the seventh of December last, respecting “the establishment of a post road from Knoxville, in the State of Tennessee, to the settlement on the Tombigbee River, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the settlements on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee;” to which Committee of the whole House were also referred on the tenth of the said month of December, and on the first instant, the report of a select committee, and a Message from the President of the United States, on the same subject.

Mr. G. W. CAMPBELL observed, that having introduced this resolution, he would very briefly state some of the reasons that induced him to do so, and the grounds upon which he expected the committee to adopt it. He stated the object of the measure to be two-fold: 1st. To obtain a direct route for the transportation of the mail from Knoxville, and also from Georgia, to the Tombigbee settlements, and thence to New Orleans, in order to facilitate the communication with those places by means of the mail. And 2d. To open a communication from East Tennessee to the same places for commercial purposes. This measure, he said, was important to the citizens of East

Tennessee, in both those points of view. The mail was conveyed at present, he observed, by a circuitous route, from Knoxville to Nashville, two hundred miles, thence to Natchez, at least five hundred miles, and thence to New Orleans, nearly three hundred miles; making in the whole, from Knoxville to New Orleans, one thousand miles. Whereas the distance from Knoxville to New Orleans by the route proposed to be opened, would not much, if any, exceed five hundred. A gentleman of undoubted veracity, who resided some years in the country through which this road will pass, in the service of the Government, estimates this route in the following manner: From Knoxville to Tellico, thirty-three miles. This part of the route passes through a settled country, and is at present a good road. From Tellico, to a place called the Hickory Ground, in the Creek Nation, near the junction of the Coosa River with the Tallapoosa, where they form the Alabama and about twenty miles from the Tuckabatchee settlements, two hundred and twenty miles. From thence to Fort St. Stephen's on the Tombigbee River, about one hundred miles; and thence to New Orleans, a direct course, about one hundred and fifty miles, making in all five hundred and three miles; and the largest calculations, as I had been informed, made by the Postmaster-General, of this road from Knoxville to New Orleans, was five hundred and fifty miles; making very little more than half the present route. Add to this the distance from Washington to Knoxville, according to the estimated post route, five hundred and forty-seven miles, and the whole distance from Washington to New Orleans, passing by Knoxville—and from thence the proposed route will be about one thousand and fifty miles. This saving of between four and five hundred miles, in transporting the mail from Knoxville to New Orleans, is certainly a very important object to all those who may communicate with the latter place, by means of this route. This road is still more necessary, for the purpose of affording a communication from East Tennessee to the settlement on the Tombigbee, or the eastern parts of the Mississippi Territory. The only mode of communication at present with that country, is by the post road already stated, by Nashville to Natchez, seven hundred—and thence to the Tombigbee, about two hundred; making nine hundred miles. Whereas the real distance along the proposed route, as has been stated, will not exceed three hundred and fifty, or at most between that and four hundred.

The effect of this circuitous route is, at present, to cut off the communication almost entirely with that country.

But the second object for which we wish this road opened, viz: for commercial purposes, is still more important to our citizens; and is essential for the prosperity of our country.

The only mode by which the people of that country can, at this time, convey their produce to market, is by boating it down the river Tennessee into the Ohio, then along that to the Mississippi, and down that river to New Orleans. Our boatmen employed in this trade are obliged to return by land, as the same boats that carry produce down those rivers, cannot ascend them, and there is but little navigation yet, in boats of any kind, up those waters into the State of Tennessee; and no boats of any considerable burden can pass up the river Tennessee, through the Muscle Shoals, to the eastern part of the State. The only route by which those boatmen can now return from New Orleans, is that already stated, on which the mail is conveyed, being between four and five hundred miles more than they would have to travel by the proposed route. The present road also passes over the Cumberland mountain, a part of which is very bad, and a wilderness at this part of the route, subject to the Indian claim, of between seventy and one hundred miles, without inhabitants. It also passes through another wilderness between Nashville and Natchez, subject to the Indian claim, of about four hundred miles, a considerable part of which is stated to be very bad road in winter, and that there are many large water courses to be passed. The difficulties are so great that few of our citizens are willing to embark in this trade, and our farmers, having no convenient vent for their surplus produce, have little or no inducement to industry beyond what may be necessary to produce the ordinary supplies of subsistence. This in a very great degree retards the progress of agriculture, and consequently the prosperity of our country. It is therefore hoped that this House will feel disposed to encourage the farming interests of our infant country by removing those obstacles to its progress that the State authority is incompetent to effect, and that prove so materially injurious to the interests of our citizens. Here it may be proper to remark that this proposed road, so far as it is desired to be established by this measure, passes through a country belonging entirely to the United States, except about sixty miles, and most of it subject to the claim of Indian tribes, being the Mississippi Territory until it enters West Florida, or Orleans Territory. This distance of about sixty miles alluded to, is from Tellico, on the frontiers of the settlements in East Tennessee, to a point beyond the south boundary of that State in the State of Georgia, and near

the limits of the Mississippi Territory, being also subject to the Indian claim. A road has already been authorized to be opened in this direction; has been viewed and designated by commissioners appointed for that purpose from our State, at the expense of the State, and it is expected, by this time, has been opened, being designed to afford us a communication with the State of Georgia. This road will answer the proposed route—at least as far as the limits of our State—being, as before stated, about sixty or seventy miles from Tellico, and about one hundred from Knoxville. There will therefore remain only about one hundred miles (or very little more, if any) to be opened, to the point at which the road proposed from Georgia will intersect this route. From this view of the subject, it will appear we do not require the United States to be at any expense in opening a road within the limits of the State of Tennessee, but only to open it through a country belonging exclusively, except the Indian claim, to the United States. With regard to the roads proposed to be opened from Georgia to the Tombigbee settlements, so as to intersect the former road at the most convenient point between Tellico and the said settlements, what has been advanced to show the necessity of the former road will apply with equal force to this. The only route by which the people of Georgia can at present communicate with New Orleans, by means of the mail, or travel to that place along any authorized road, is that already stated, from Knoxville; thence by Natchez to New Orleans; and the people, even on the frontiers of that State, have to travel nearly three hundred miles to Knoxville to take this route, and are not then much, if any, nearer New Orleans than when they set out. This in a great degree cuts off this communication with that country. The road proposed to be opened from Georgia, according to the best information, will intersect the road from Knoxville, near the junction of Coosa and Tallapoosa Rivers, and about two hundred miles, or somewhat more, from the latter place—of which, as already stated, one hundred miles at least are opened, and only about one hundred remain to be opened. The country through which the road from Knoxville will pass, is represented, by those who are acquainted with it, and who have resided many years among the Indian nations that inhabit it, to be a fine, open country, generally dry without being broken by any mountains, and very few streams of any considerable size to be crossed, and no large rivers until you arrive at the Tombigbee. It will pass along the high lands that lie between the waters falling into the Tennessee River, and those that are discharged into the Coosa and Alabama Rivers, and will require but

little expense to be made a good road. We hope, therefore, upon viewing all those circumstances, Congress will agree to afford us the aid we require, and which is essentially necessary to enable us to resort to the only market that will compensate our farmers for their industry, encourage agriculture and commerce, and promote the prosperity of our country.

When Mr. W. had concluded, the committee rose, and had leave to sit again.

TUESDAY, February 12.

Counting Electoral Votes.

On motion it was

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected, of their election; and to regulate the time, place, and manner of administering the oath of office to the President.

Ordered, That Mr. JOSEPH CLAY, Mr. VARNUM, Mr. DENNIS, Mr. THOMAS MOORE, and Mr. DICKSON, be appointed a committee, pursuant to said resolution; and that the Clerk of this House do carry the resolution to the Senate, and desire their concurrence.

A message from the Senate notified the House that the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday, the thirteenth of February, at noon, for the purpose of being present at the opening and counting the votes for President and Vice President of the United States: That one person be appointed a teller on the part of the Senate to make a list of votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and if it shall appear that a choice had been made agreeably to the constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Amy Dardin.

Mr. CLAIBORNE, from the committee appointed yesterday, presented a bill for the relief of Amy Dardin, and the legal representatives of David Dardin, deceased; which was read twice, and committed to a Committee of the whole House to-morrow.

WEDNESDAY, February 13.

Counting Electoral Votes.

A message was received from the Senate informing the House that Mr. SMITH of Maryland has been appointed a teller of the votes of President and Vice President of the United States, on the part of the Senate, conformably with their vote of the twelfth instant, and are now ready, in the Senate Chamber, to proceed therein: Whereupon, Mr. SPEAKER, attended by the House, proceeded to the Senate Chamber, and took seats therein; when, both Houses being assembled, the PRESIDENT of the Senate, in the presence of both Houses, proceeded to open the certificates of the Electors of the several States, beginning with the State of New Hampshire; and as the votes were read, the tellers on the part of each House counted and took lists of the same; which, being compared, were delivered to the President of the Senate, and are as follows:

[Given in the Senate proceedings of the same day.]

The PRESIDENT of the Senate, in pursuance of the duty enjoined upon him, announced the state of the votes to both Houses, and declared that THOMAS JEFFERSON, of Virginia, having the greatest number, and a majority of the votes of the Electors appointed, was duly elected President of the United States, for the term commencing on the fourth day of March next; and that GEORGE CLINTON, of New York, having also the greatest number, and a majority of the votes of all the Electors appointed, was duly elected Vice President of the United States, for the term commencing on the fourth day of March next.

The two Houses then separated, and the House of Representatives being returned to their Chamber, Mr. SPEAKER resumed the Chair.

The list of the votes of the Electors for President and Vice President of the United States, as declared by the PRESIDENT of the Senate, and herein before recited, was read at the Clerk's table.

THURSDAY, February 14.

A new member, to wit, GEORGE CLINTON, jr., returned to serve as a member of this House, for the State of New York, in the place of Samuel L. Mitchill, appointed a Senator of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, February 18.

Ordered, That Mr. ROGER GRISWOLD, Mr. J. CLAY, Mr. BLACKLEDGE, Mr. HUGER, and Mr. NICHOLAS R. MOORE, be appointed of the said committee, on the part of this House; and that the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House proceeded to the further consideration of the bill authorizing the Secretary of War to issue military land warrants, and for other purposes, to which the Committee of the whole House, to whom it had been committed, reported no amendment, on the thirteenth instant; and the said bill being twice read and amended at the Clerk's table, was, together with the amendments, ordered to be engrossed, and read the third time tomorrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith; and, after some time spent therein, the committee rose, reported progress, and were discharged from the further consideration thereof, and the bill was recommitted to the Committee of Commerce and Manufactures.

TUESDAY, February 19.

Richard Taylor.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the thirteenth instant, to whom was referred the memorial of Richard Taylor, of the State of Kentucky; and, after some time spent therein, the committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the memorial of Richard Taylor is reasonable, and ought to be granted.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

FRIDAY, March 1.

Presidential Oath of Office.

The SPEAKER laid before the House a letter addressed to him signed, “Th. Jefferson,” notifying, that “he shall take the oath which the constitution prescribes to the President of the United States, before he enters on the execution of his office, on Monday, the fourth instant, at twelve o’clock, in the Senate Chamber.”

Ordered to lie on the table.

Eodem Die, 4 o’clock, P. M.

Removal of Federal Judges.

On a motion made by Mr. JOHN RANDOLPH, that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures

of three-fourths of the said States, shall be valid and binding, as a part of the Constitution of the United States:

The judges of the Supreme and all other Courts of the United States, shall be removed by the President, on the joint address of both Houses of Congress, requesting the same, any thing in the Constitution of the United States to the contrary notwithstanding:

A motion was made and seconded that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas 68, nays 33, as follows:

YEAS.—Willis Alston, jr., Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, John W. Eppes, William Findlay, John Fowler, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Jas. Holland, David Holmes, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Oliver Phelps, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Alexander Wilson, Richard Wynn, and Thomas Wynns.

NAYS.—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, Benj. Huger, Simon Larned, Thomas Lowndes, Nahum Mitchell, Erastus Root, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits,

Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative.

Recall of Senators.

On a motion made by Mr. NICHOLSON,

Resolved, That the following article, when adopted by two-thirds of both Houses of Congress, and by the Legislatures of three-fourths of the respective States, shall become a part of the Constitution of the United States, viz:

That the Legislature of any State may, whenever the said Legislature shall think proper, recall, at any period whatever, any Senator of the United States, who may have been elected by them; and whenever a vote of the Legislature of any State, vacating the seat of any Senator of the United States, who may have been elected by the said State, shall be made known to the Senate of the United States, the seat of such Senator shall thenceforth be vacated:

A motion was made and seconded, that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas, 53, nays 46, as follows:

YEAS.—Willis Alston, junior, Isaac Anderson, David Bard, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, John Dawson, John B. Earle, Peter Early, J. W. Eppes, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore,

Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Ebenezer Seaver, James Sloan, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Whitehill, Alexander Wilson, Richard Wynn, and Thomas Wynns.

NAYS.—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findlay, John Fowler, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, John G. Jackson, William Kennedy, Simon Larned, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Oliver Phelps, Erastus Root, John Smilie, Henry Southard, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was then made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative—yeas 70, nays 28.

SATURDAY, March 2.

The House resolved itself into a Committee of the Whole on the bill, sent from the Senate, entitled “An act to amend an act, entitled ‘An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels,’” to which the Committee of Ways and Means, to whom it had been referred, reported no amendment, on the eighteenth of January last; and, after some time spent therein, the Committee reported the same to the House without amendment.

The House then proceeded to consider the said bill: Whereupon a motion was made and seconded that the further consideration thereof be postponed

until the first Monday in December next, and the question being put thereon, it passed in the negative—yeas 43, nays 46, as follows:

YEAS.—David Bard, Silas Betton, Adam Boyd, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Frederick Conrad, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, John W. Eppes, Calvin Goddard, Peterson Goodwyn, Andrew Gregg, Gaylord Griswold, Roger Griswold, John Hoge, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Beriah Palmer, Thomas Plater, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sanford, Henry Southard, Richard Stanford, William Stedman, John Stewart, Samuel Taggart, Benj. Tallmadge, Samuel Tenney, Samuel Thatcher, and George Tibbits.

NAYS.—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, William Blackledge, Walter Bowie, Robert Brown, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, John Dawson, John Fowler, Josiah Hasbrouck, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, Thomas Mann Randolph, Jacob Richards, James Sloan, John Smilie, Joseph Stanton, Philip R. Thompson, Abram Trigg, Joseph B. Varnum, John Whitehill, Lemuel Williams, Alexander Wilson, Richard Wynn, Joseph Winston, and Thomas Wynns.

And then the main question being taken, that the said bill do pass, it was resolved in the affirmative.

An engrossed bill further to provide for the accommodation of the President of the United States, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled “An act supplementary to an act, entitled ‘An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty;’” to which they desire the concurrence of this House.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate have passed the bill, entitled “An act supplementary to the act, entitled ‘An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes,’” with an amendment; to which they desire the concurrence of this House; also, the bill, entitled “An act further to alter and establish certain post roads, and for other purposes,” with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled “An act supplementary to the act, entitled ‘An act making provision for the disposal of the public lands in the Indiana Territory and for other purposes:’” Whereupon,

Resolved, That this House doth agree to the said amendment.

SUNDAY, March 3.

Importation of Slaves.

Mr. VARNUM, one of the members for the State of Massachusetts, presented to the House a letter from the Governor of the said State, enclosing an attested copy of two concurrent resolutions of the Senate and House of Representatives of the State of Massachusetts, passed the fifteenth of February in the present year, “instructing the Senators and requesting the Representatives in Congress, from the said State, to take all legal and necessary steps, to use their utmost exertions, as soon as the same is practicable, to obtain an amendment to the Federal Constitution, so as to authorize and empower the Congress of the United States to pass a law, whenever they may deem it expedient, to prevent the further importation of slaves from any of the West India islands, from the coast of Africa, or elsewhere, into the United States, or any part thereof:” Whereupon, a motion was made and seconded, that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as a part of the said constitution, to wit:

“That the Congress of the United States shall have power to prevent the further importation of slaves into the United States and the Territories thereof.”

The said proposed resolution was read, and ordered to lie on the table.

Commodore Preble.

The resolutions sent from the Senate, “expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron,” together with the amendments agreed to this day, were read the third time; and on the question that the same do pass, it was unanimously resolved in the affirmative.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate insist on their amendments disagreed to by this House to the bill, entitled “An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase,” and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers, on their part.

The Senate have agreed to the amendments proposed by this House to the resolutions “expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron,” with amendments; to which they desire the concurrence of this House.

Divorces.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill to authorize the Circuit Court of the District of Columbia to decree divorces in certain cases, being called for, a motion was made, and the question being put, that the said order of the day be postponed until the first Monday in December next, it was resolved in the affirmative.

A motion was then made and seconded, that the House do come to the following resolutions:

Resolved, That the Clerk of this House be, and he is hereby, directed to pay out of the contingent fund of this House, to every witness summoned on behalf of the House of Representatives, to attend the Senate in support of the impeachment of Samuel Chase, for every day's attendance, the sum of three dollars, and the further sum of twenty cents for each mile in coming from and returning to his place of abode.

Resolved, That the Clerk be likewise directed to pay, out of the said fund, any other expense incurred by order of the managers of the said impeachment, and certified by their chairman.

On which motion, various efforts were made to obtain a decision of the House on the previous question, "that the House do now proceed to consider the said motion;" but no result could, in any instance, be obtained for the want of a quorum.

Adjournment.

After which, a quorum being present,

A message from the Senate informed the House, that the Senate have appointed a committee, on their part, jointly with such committee as may be appointed on the part of this House, to wait on the President of the United States, and notify him of the proposed recess of Congress.

The House proceeded to consider the foregoing message of the Senate, and

Resolved, That this House do agree to the same, and that Mr. JOHN RANDOLPH, Mr. HUGER, and Mr. NELSON, be appointed of the said committee, on the part of this House.

Mr. JOHN RANDOLPH, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them that he had no further communication to make during the present session.

A message from the Senate informed the House that the Senate, having finished the legislative business before them, are now ready to adjourn.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn, without day; and that the Clerk of this House do go with the said message.

The Clerk, accordingly, went with the said message; and, being returned,

The SPEAKER adjourned the House, *sine die*.^[27]

NINTH CONGRESS.—FIRST SESSION.

BEGUN AT THE CITY OF WASHINGTON, DECEMBER 2, 1805.

PROCEEDINGS IN THE SENATE.

LIST OF MEMBERS OF THE SENATE.

New Hampshire.—William Plumer, Nathaniel Gilman.

Vermont.—Stephen R. Bradley, Israel Smith.

Massachusetts.—John Quincy Adams, Timothy Pickering.

Rhode Island.—James Fenner, Benjamin Howland.

Connecticut.—James Hillhouse, Uriah Tracy.

New York.—Samuel L. Mitchill, John Smith.

New Jersey.—John Condit, Aaron Kitchel.

Pennsylvania.—George Logan, Samuel Maclay.

Delaware.—Samuel White, James A. Bayard.

Maryland.—Samuel Smith, Robert Wright.

Virginia.—Andrew Moore.

North Carolina.—David Stone, James Turner.

South Carolina.—Thomas Sumter, John Gaillard.

Georgia.—Abraham Baldwin, James Jackson.

Tennessee.—Daniel Smith, Joseph Anderson.

Kentucky.—Buckner Thruston, John Adair.

Ohio.—Thomas Worthington, John Smith.

MONDAY, December 2, 1805.

The first session of the Ninth Congress conformably to the Constitution of the United States, commenced this day, at the city of Washington, and the Senate assembled.

PRESENT:

WILLIAM PLUMER and NICHOLAS GILMAN, from New Hampshire.

JOHN QUINCY ADAMS and TIMOTHY PICKERING, from Massachusetts.

JAMES HILLHOUSE and URIAH TRACY, from Connecticut.

JAMES FENNER, from Rhode Island.

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont.

SAMUEL L. MITCHILL, from New York.

JOHN CONDIT and AARON KITCHEL, from New Jersey.

GEORGE LOGAN and SAMUEL MACLAY, from Pennsylvania.

SAMUEL WHITE, from Delaware.

SAMUEL SMITH, from Maryland.

DAVID STONE, from North Carolina.

THOMAS SUMTER and JOHN GAILLARD, from South Carolina.

ABRAHAM BALDWIN, from Georgia.

DAVID SMITH, from Tennessee.

THOMAS WORTHINGTON, from Ohio.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tem.*, as the constitution provides, and the Honorable SAMUEL SMITH was appointed.

The credentials of the following Senators were read, viz:

Of ABRAHAM BALDWIN, appointed a Senator by the Legislature of the State of Georgia, for the term of six years, from the 3d day of March last; of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, for the term of six years, from the 3d day of March last; of JAMES FENNER, appointed a Senator by the Legislature of the State of Rhode

Island, for the term of six years, from the 3d day of March last; of NICHOLAS GILMAN, appointed a Senator by the Legislature of the State of New Hampshire, for the term of six years, from the 3d day of March last; of AARON KITCHEL, appointed a Senator by the Legislature of the State of New Jersey, to serve during the term limited by the constitution; of TIMOTHY PICKERING, appointed a Senator by the Legislature of the State of Massachusetts, for the term of six years, to commence on the 4th day of March last; of DANIEL SMITH, appointed a Senator by the Legislature of the State of Tennessee, for the term of six years, from the 3d of March last; and of BUCKNER THRUSTON, appointed a Senator by the Legislature of the State of Kentucky.

The oath was administered by the President to the following Senators, as the law prescribes: Mr. BALDWIN, Mr. FENNER, Mr. GILMAN, Mr. KITCHEL, Mr. PICKERING, and Mr. SMITH of Tennessee; also, to Mr. SUMTER, appointed a Senator by the Legislature of the State of South Carolina, for the term of six years, commencing on the 4th day of March last.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the Vice President, they have elected the Honorable SAMUEL SMITH President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

Ordered, That Messrs. SUMTER and MITCHILL be a committee, on the part of the Senate, with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States and notify him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

TUESDAY, December 3.

JOSEPH ANDERSON, from the State of Tennessee; BUCKNER THRUSTON, from the State of Kentucky; and ROBERT WRIGHT, from the State of Maryland, attended.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled, and have appointed

NATHANIEL MACON, Esq., one of the Representatives for North Carolina, their Speaker, and are ready to proceed to business. The House of Representatives have appointed a committee on their part, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them. The House of Representatives agree to the resolution of the Senate for the appointment of two Chaplains.

Mr. SUMTER reported, from the committee appointed yesterday to wait on the President of the United States, that they had performed the service, and that the President of the United States informed the committee that he would make his communications to the two Houses at twelve o'clock this day.

The oath prescribed by law was administered to Mr. THRUSTON.

The following message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States of America:

At a moment when the nations of Europe are in commotion, and arming against each other, and when those with whom we have principal intercourse are engaged in the general contest, and when the countenance of some of them towards our peaceable country threatens that even that may not be unaffected by what is passing on the general theatre, a meeting of the Representatives of the nation in both Houses of Congress has become more than usually desirable. Coming from every section of our country they bring with them the sentiments and the information of the whole, and will be enabled to give a direction to the public affairs, which the will and the wisdom of the whole will approve and support.

Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested, and our harbors watched, by private armed vessels, some of them without commissions, some with illegal commissions, others with those of legal form, but committing piratical acts beyond the authority of their commissions. They have captured in the very entrance of our harbors, as well as on the high seas, not only the vessels of our friends coming to trade with us, but our

own also. They have carried them off under pretence of legal adjudication; but, not daring to approach a court of justice, they have plundered and sunk them by the way, or in obscure places, where no evidence could arise against them; maltreated the crews, and abandoned them in boats in the open sea, or on desert shores, without food or covering. These enormities appearing to be unreachd by any control of their sovereigns, I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts, within the limits of the Gulf Stream, and to bring the offenders in for trial as pirates.

The same system of hovering on our coasts and harbors, under color of seeking enemies, has been also carried on by public armed ships, to the great annoyance and oppression of our commerce. New principles, too, have been interpolated into the law of nations, founded neither in justice nor the usage or acknowledgment of nations. According to these, a belligerent takes to itself a commerce with its own enemy which it denies to a neutral, on the ground of its aiding that enemy in the war. But reason revolts at such an inconsistency, and the neutral, having equal right with the belligerent to decide the question, the interests of our constituents, and the duty of maintaining the authority of reason, the only umpire between just nations, impose on us the obligation of providing an effectual and determined opposition to a doctrine so injurious to the rights of peaceable nations. Indeed, the confidence we ought to have in the justice of others still countenances the hope that a sounder view of those rights will, of itself, induce from every belligerent a more correct observance of them.

With Spain, our negotiations for a settlement of differences have not had a satisfactory issue. Spoliations during a former war, for which she had formally acknowledged herself responsible, have been refused to be compensated but on conditions affecting other claims in nowise connected with them. Yet the same practices are renewed in the present war, and are already of great amount. On the Mobile, our commerce passing through that river continues to be obstructed by arbitrary duties and vexatious searches. Propositions for adjusting amicably the boundaries of Louisiana have not been acceded to. While, however, the right is unsettled, we have avoided changing the state of things by taking new posts or strengthening ourselves in the disputed territories, in the hope that the other power would not, by a contrary conduct, oblige us to meet their example, and endanger conflicts of

authority the issue of which may not be easily controlled. But in this hope we have now reason to lessen our confidence. Inroads have been recently made into the territories of Orleans and Mississippi, our citizens have been seized and their property plundered in the very parts of the former which had been actually delivered up by Spain, and this by the regular officers and soldiers of that Government. I have, therefore, found it necessary, at length, to give orders to our troops on that frontier to be in readiness to protect our citizens, and to repel by arms any similar aggressions in future. Other details, necessary for your full information of the state of things between this country and that, shall be the subject of another communication. In reviewing these injuries from some of the belligerent powers, the moderation, the firmness, and the wisdom, of the Legislature will all be called into action. We ought still to hope that time and a more correct estimate of interest, as well as of character, will produce the justice we are bound to expect. But should any nation deceive itself by false calculations, and disappoint that expectation, we must join in the unprofitable contest of trying which party can do the other the most harm.

Considerable provision has been made, under former authorities from Congress, of materials for the construction of ships of war of seventy-four guns. These materials are on hand, subject to the further will of the Legislature.

An immediate prohibition of the exportation of ammunition is also submitted to your determination.

Turning from these unpleasant views of violence and wrong, I congratulate you on the liberation of our fellow-citizens who were stranded on the coast of Tripoli and made prisoners of war. In a Government bottomed on the will of all, the life and liberty of every individual citizen become interesting to all. In the treaty, therefore, which has concluded our warfare with that State, an article for the ransom of our citizens has been agreed to. An operation by land, by a small band of our countrymen, and others engaged for the occasion, in conjunction with the troops of the ex-bashaw of that country, gallantly conducted by our late Consul Eaton, and their successful enterprise on the city of Derne, contributed, doubtless, to the impression which produced peace; and the conclusion of this, prevented opportunities of which the officers and men of our squadron, destined for Tripoli, would have availed themselves to emulate the acts of valor

exhibited by their brethren in the attack of the last year. Reflecting with high satisfaction on the distinguished bravery displayed, whenever occasions permitted, in the late Mediterranean service, I think it would be a useful encouragement, as well as a just reward, to make an opening for some present promotion, by enlarging our peace establishment of captains and lieutenants.

With Tunis some misunderstandings have arisen, not yet sufficiently explained, but friendly discussions with their Ambassador, recently arrived, and a mutual disposition to do whatever is just and reasonable, cannot fail of dissipating these. So that we may consider our peace on that coast, generally, to be on as sound a footing as it has been at any preceding time. Still, it will not be expedient to withdraw, immediately, the whole of our force from that sea.

The law providing for a Naval Peace Establishment fixes the number of frigates which shall be kept in constant service in time of peace, and prescribes that they shall be manned by not more than two-thirds of their complement of seamen and ordinary seamen. Whether a frigate may be trusted to two-thirds only of her proper complement of men, must depend on the nature of the service on which she is ordered. That may sometimes for her safety, as well as to ensure her object, require her fullest complement. In adverting to this subject, Congress will, perhaps, consider whether the best limitation on the Executive discretion in this case, would not be by the number of seamen which may be employed in the whole service, rather than by the number of vessels. Occasions oftener arise for the employment of small than of large vessels, and it would lessen risk as well as expense, to be authorized to employ them of preference. The limitation suggested by the number of seamen would admit a selection of vessels best adapted to the service.

Our Indian neighbors are advancing, many of them, with spirit, and others beginning to engage in the pursuits of agriculture and household manufacture. They are becoming sensible that the earth yields subsistence with less labor and more certainty than the forest, and find it their interest, from time to time, to dispose of parts of their surplus and waste lands for the means of improving those they occupy, and of subsisting their families while they are preparing their farms. Since your last session, the northern tribes have sold to us the lands between the Connecticut Reserve and the

former Indian boundary, and those on the Ohio, from the same boundary to the Rapids, and for a considerable depth inland. The Chickasaws and Cherokees have sold us the country between and adjacent to the two districts of Tennessee, and the Creeks the residue of their lands in the fork of Ocmulgee, up to the Ulcofauhatche. The three former purchases are important, inasmuch as they consolidate disjoined parts of our settled country, and render their intercourse secure; and the second particularly so, as, with the small point on the river, which we expect is by this time ceded by the Piankeshaws, it completes our possession of the whole of both banks of the Ohio, from its source to near its mouth, and the navigation of that river is thereby rendered for ever safe to our citizens settled and settling on its extensive waters. The purchase from the Creeks too has been for some time particularly interesting to the State of Georgia.

The several treaties which have been mentioned will be submitted to both Houses of Congress for the exercise of their respective functions.

Deputations, now on their way to the seat of Government, from various nations of Indians inhabiting the Missouri and other parts beyond the Mississippi, come charged with assurances of their satisfaction with the new relations in which they are placed with us, of their dispositions to cultivate our peace and friendship, and their desire to enter into commercial intercourse with us. A state of our progress in exploring the principal rivers of that country, and of the information respecting them hitherto obtained, will be communicated so soon as we shall receive some further relations which we have reason shortly to expect.

The receipts at the Treasury during the year ending on the 30th day of September last, have exceeded the sum of thirteen millions of dollars, which, with not quite five millions in the Treasury at the beginning of the year, have enabled us, after meeting other demands, to pay nearly two millions of the debt contracted under the British treaty and convention, upwards of four millions of principal of the public debt, and four millions of interest. These payments, with those which had been made in three years and a half preceding, have extinguished of the funded debt nearly eighteen millions of principal.

Congress, by their act of November 10, 1803, authorized us to borrow \$1,750,000, towards meeting the claims of our citizens, assumed by the

convention with France. We have not, however, made use of this authority; because, the sum of four millions and a half, which remained in the Treasury on the same 30th day of September last, with the receipts which we may calculate on for the ensuing year, besides paying the annual sum of eight millions of dollars, appropriated to the funded debt, and meeting all the current demands which may be expected, will enable us to pay the whole sum of three millions seven hundred and fifty thousand dollars, assumed by the French convention, and still leave us a surplus of nearly a million of dollars at our free disposal. Should you concur in the provisions of arms and armed vessels, recommended by the circumstances of the times, this surplus will furnish the means of doing so.

On the first occasion of addressing Congress, since, by the choice of my constituents, I have entered on a second term of administration, I embrace the opportunity to give this public assurance, that I will exert my best endeavors to administer faithfully the Executive Department, and will zealously co-operate with you in every measure which may tend to secure the liberty, property, and personal safety, of our fellow-citizens, and to consolidate the republican forms and principles of our Government.

In the course of your session, you shall receive all the aid which I can give, for the despatch of public business, and all the information necessary for your deliberations, of which the interests of our own country, and the confidence reposed in us by others, will admit a communication.

TH. JEFFERSON.

DECEMBER 3, 1805.

The Message was read and three hundred copies thereof ordered to be printed for the use of the Senate.

WEDNESDAY, December 4.

Chaplain.

The Senate proceeded to the election of a Chaplain, on their part, in pursuance of the resolution of the two Houses, and the ballots being collected, were, for Doctor GANTT, 15; Bishop CLAGGETT, 5; Mr.

McCORMICK, 2. So the Reverend Doctor GANTT was elected a Chaplain to Congress, on the part of the Senate, during the present session.

MONDAY, December 9.

JAMES JACKSON, from the State of Georgia, attended.

JOHN ADAIR, appointed a Senator by the Legislature of the State of Kentucky, in place of John Breckenridge, Esq., resigned, produced his credentials, which were read; and the oath prescribed by law having been administered, he took his seat in the Senate.

A confidential Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the Senate and House of Representatives of the United States:

The depredations which have been committed on the commerce of the United States during a preceding war, by persons under the authority of Spain, are sufficiently known to all. These made it a duty to require from that Government indemnifications for our injured citizens; a convention was accordingly entered into between the Minister of the United States at Madrid, and the Minister of that Government for Foreign Affairs, by which it was agreed that spoliations committed by Spanish subjects, and carried into ports of Spain, should be paid for by that nation; and that those committed by French subjects, and carried into Spanish ports, should remain for further discussion. Before this convention was returned to Spain with our ratification, the transfer of Louisiana by France to the United States took place; an event as unexpected as disagreeable to Spain. From that moment she seemed to change her conduct and dispositions toward us. It was first manifested by her protest against the right of France to alienate Louisiana to us; which, however, was soon retracted, and the right confirmed: then high offence was manifested at the act of Congress establishing a collection district on the Mobile, although, by an authentic declaration, immediately made, it was expressly confined to our acknowledged limits; and she now refused to ratify the convention signed by her own Minister, under the eye of his sovereign, unless we would

consent to alterations of its terms, which would have affected our claims against her for the spoliations by French subjects carried into Spanish ports.

To obtain justice, as well as to restore friendship, I thought a special mission advisable; and accordingly appointed James Monroe, Minister Extraordinary and Plenipotentiary, to repair to Madrid, and, in conjunction with our Minister resident there, to endeavor to procure a ratification of the former convention, and to come to an understanding with Spain as to the boundaries of Louisiana. It appeared at once that her policy was to reserve herself for events, and, in the mean time, to keep our differences in an undetermined state. This will be evident from the papers now communicated to you. After nearly five months of fruitless endeavor to bring them to some definite and satisfactory result, our ministers ended the conferences, without having been able to obtain indemnity for spoliations of any description, or any satisfaction as to the boundaries of Louisiana, other than a declaration that we had no rights eastward of the Iberville, and that our line to the west was one which would have left us but a string of land on that bank of the river Mississippi. Our injured citizens were thus left without any prospect of retribution from the wrong-doer; and, as to boundary, each party was to take its own course. That which they have chosen to pursue, will appear from the documents now communicated. They authorize the inference that it is their intention to advance on our possessions, until they shall be repressed by an opposing force. Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions, to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them, but, when necessary to repel an inroad, or to rescue a citizen or his property; and the Spanish officers remaining at New Orleans are required to depart without further delay. It ought to be noted here, that since the late change in the state of affairs in Europe, Spain has ordered her cruisers and courts to respect our treaty with her.

The conduct of France, and the part she may take in the misunderstandings between the United States and Spain, are too important to be unconsidered. She was prompt and decided in her declarations, that

our demands on Spain for French spoiliations carried into Spanish ports were included in the settlement between the United States and France: she took at once the ground that she had acquired no right from Spain, and had meant to deliver us none, eastward of the Iberville; her silence as to the western boundary, leaving us to infer her opinion might be against Spain in that quarter. Whatever direction she might mean to give to these differences, it does not appear that she has contemplated their proceeding to actual rupture, or that, at the date of our last advices from Paris, her Government had any suspicion of the hostile attitude Spain had taken here; on the contrary, we have reason to believe that she was disposed to effect a settlement on a plan analogous to what our ministers had proposed, and so comprehensive as to remove, as far as possible, the grounds of future collision and controversy on the eastern as well as western side of the Mississippi.

The present crisis in Europe is favorable for pressing such a settlement, and not a moment should be lost in availing ourselves of it. Should it pass unimproved, our situation would become much more difficult. Formal war is not necessary—it is not probable it will follow; but the protection of our citizens, the spirit and honor of our country, require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace.

But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. To them I communicate every fact material for their information, and the documents necessary to enable them to judge for themselves. To their wisdom, then, I look for the course I am to pursue; and will pursue, with sincere zeal, that which they shall approve.

TH. JEFFERSON.

DECEMBER 6, 1805.

The Message was read, and ordered to lie for consideration.

TUESDAY, December 10.

ANDREW MOORE, from the State of Virginia, attended.

MONDAY, December 16.

GEORGE CLINTON, Vice President of the United States and President of the Senate, attended.

JOHN SMITH, from the State of Ohio, also attended.

FRIDAY, December 20.

JOHN SMITH, from the State of New York, attended.

Trade with St. Domingo.

Agreeably to notice given on the 18th instant, Mr. LOGAN asked leave to bring in a bill to suspend the commercial intercourse between the United States of America and the French island of St. Domingo.

Mr. L. observed that the attention of Congress had been called to this subject by the President of the United States, at the commencement of the last session of Congress, in the following words:

“While noticing the irregularities committed on the ocean by others, those on our own part should not be omitted, nor left unprovided for. Complaints have been received, that persons residing within the United States have taken on themselves to arm merchant vessels, and to force a commerce into certain ports and countries in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be permitted in a well-ordered society. Its tendency to produce aggressions on the laws and rights of other nations, and to endanger the peace of our own, is so obvious, that I doubt not you will adopt measures for restraining it effectually in future.”

Mr. L. observed that the commerce as carried on by the citizens of the United States is not only a violation of the law of nations, which the United States as an independent nation is bound to obey, but is in direct violation of a treaty made in 1800, between the United States and France—a treaty on

the most liberal principles as to the rights of neutrals, and highly advantageous and honorable to both nations.

To remedy the evils complained of, a law was enacted during the last session of Congress to regulate the clearance of armed merchant vessels; this act has operated as a deception, as, since the publication of the law, the trade with St. Domingo has been carried on to as great if not greater extent than formerly. The only merit of the arming law is, that in a national view it removes the responsibility from the individual who may be engaged in the trade, to the Government by which it is authorized.

Mr. ADAMS.—Mr. President: Had the gentleman who asks leave to introduce this bill, assigned any new reasons as the foundation of his motion, whatever my opinion might have been upon their merits, I should not think it proper to combat them at this time; but the object of the bill is so simple, that its details are immaterial. Its purpose is totally to prohibit a branch of our commerce, which at the last session of the Legislature was proved to be of great importance to the country. Unless, therefore, a majority of the Senate should be of opinion that the bill ought to pass, it appears to me that the present is the stage at which it ought to be arrested: since the mere discussion of the question, and pendency of the measure before Congress, may have an unfavorable effect upon the commercial interest, or at least injuriously affect individual merchants, in the course of their affairs.

Mr. JACKSON seconded Mr. LOGAN's motion, and in reply to Mr. ADAMS said, that he wished Mr. LOGAN to make it an annual motion, as Mr. Sawbridge had, in the Parliament of England, to reduce septennial Parliaments, but with more effect, until the trade so highly dishonorable to national character was annihilated. As to Mr. ADAMS's observations that the bill was not allowed to be brought in last session, and that he had heard no new arguments, he would answer the gentleman by asking what new arguments had been advanced on the bill to prohibit the importation of slaves, when leave was given two days since to bring in the bill, and the same arguments had been rung in our ears by Quakers and others, ever since the constitution had been in operation, and not a new one had been produced. He said that the day would come when this dishonorable traffic would be rued by the United States; that day must arrive when a general peace would take place, when the present hostilities must cease; that it must

and would then become the interest of every nation of Europe, having colonies in the West Indies, to extirpate this horde or ship them off to some other place. That the United States, by affording them succor, arms, ammunition, and provisions, must be considered by them as their allies—their supporters and their protectors. That he believed the United States would be viewed in this light by the French Government and by themselves, and that they would demand and expect us to grant them an asylum as allies and protectors, and send them to our coast. This was no novelty; and he had received information from a late celebrated French General, given in a public company at the city of Washington where he boarded, and the General was one who dined there, that arrangements had been made, if General Le Clerc had been victorious, to send those brigands to the Southern States. This was a melancholy subject for South Carolina and Georgia, and one of those brigands introduced into the Southern States was worse than a hundred importations of blacks from Africa, and more dangerous to the United States.

Mr. S. SMITH.—We are told that a celebrated French General, since here, has said, that had General Le Clerc succeeded, he meant to have landed all the blacks of St. Domingo on our southern shores. This may be—but, sir, it is not probable. If such, however, had been his intention, it could not have arisen from resentment on account of our commerce, for we had been of the greatest utility to him and his army, and had then carried on no commerce that was not fully sanctioned by France. Nay, I might say, that owing to the supplies from the United States, the colony of St. Domingo had been preserved to the mother country until the arrival of General Le Clerc. Unless, Mr. President, the honorable mover shall produce some new information, I shall be under the necessity of voting against leave to bring in this bill.

Mr. MITCHILL, in a speech of considerable length and detail, stated his objections to giving leave.

During the last session of Congress, the whole of the intercourse with St. Domingo had undergone a full investigation. While the bill regulating the clearance of armed merchant vessels was under discussion, that part of our foreign commerce had been minutely examined. It would be remembered that the bill had been committed, recommitted, amended, and modified, with the utmost labor and skill. Besides the talents which the Senate

afforded, all the sources of Executive information had been drained, to aid their researches. And the letters of the British and French Ministers, complaining of the conduct of our merchants in forcing this trade, were opened to our view. The crude material of the bill had been hammered at and worked upon so elaborately, as to have at last received the complete burnish of a law. With all the knowledge that could be derived from so many quarters, the bill was at length passed to check the violence of our navigators, and to restrain the adventurous zeal of our merchants. The provisions of this law were such as it was deemed just and proper that a neutral nation should take. And this was a liberal condescension to the wishes of the two great maritime and belligerent powers, without forgetting the respect that we owed to our own. With both these he wished to cultivate peace and good understanding; but to neither of them would he consent to yield any portion of our neutral and national rights.

The difficulties exhibited in the ministerial correspondence, Mr. M. said, were thus removed. With a promptitude that deserved to be admired, Congress interposed its authority, for the purpose at once of doing justice to our neighbors, regulating our commerce, and tranquillizing the Mexican seas. With these salutary provisions, he believed the two complaining nations had been satisfied. At least we had done so much that they ought in all reason to be content. Congress had already manifested a due regard to all that France and Great Britain had offered upon the branch of West Indian commerce, and in the true spirit of good neighborhood, and correct principle, had modified and restricted the intercourse with Hayti. And so fully did the Europeans seem to acquiesce in our conduct, that he had not heard any further remonstrances made by either of them about it. He thought the observations of the gentleman from Massachusetts (Mr. ADAMS) very much in point. Under a conviction that we had done as much as public faith and national honor required, he had given his vote against the introduction of a similar bill during the last session. Nothing had occurred from that time to this day, to alter the circumstances of the case, or to make it necessary for him to change his conduct.

For my own part, said Mr. M., I think the St. Domingo commerce is no great thing in itself. We might do exceedingly well without it; and I am very far from approving the means by which it has been carried on; but I dislike the idea of forbidding it, at the mandate of a foreign power. Like our

Revolutionary patriots, let us put our foot here, and hence refuse to budge. It is not for us to legislate at the nod or bidding of any nation. I hope we understand our business better than to register edicts for them; while we pay due respect to others, it becomes us also to respect ourselves. The precedent is a dangerous one. If we agree to interdict this intercourse, we may, at the next session, be informed that we ought to withdraw from some other important port or region. When we are found to be so complying to one nation, we shall be subjected to a like request or menace from another, until, sir, our flag shall be furled in one foreign port after another, and nothing be left us but the coasting trade at home. The sad consequences have been ably portrayed by the gentleman from Maryland, (Mr. SAMUEL SMITH.)

Mr. HILLHOUSE said, he hoped the question would be taken by yeas and nays, because he confidently expected there would be a great majority of the Senate opposed to giving leave to bring in the bill, for he considered the measure not only as improper, but as ill-timed.

The gentleman from Georgia has told us that the conflict in St. Domingo is that of masters attempting to reclaim their slaves, and that if the United States suffer the trade to be carried on, we shall be considered as aiding and upholding those slaves, and give offence to France. And that when peace shall take place in Europe, the French will transport those negroes by thousands to the shores of South Carolina and Georgia, to the endangering the lives of the citizens of those States. This Mr. H. considered as a bugbear, with which we ought not to be frightened, for, as to the warfare in St. Domingo being a mere conflict between master and slave, it will be well remembered that the French Republic long ago liberated all the slaves in that island, and declared them free. As to the citizens of the United States carrying arms and military stores to the enemies of France, the law of nations has declared the penalty, which is a forfeiture of the property, and the United States can in no way be implicated thereby. And as to France landing those negroes on our shores, he said there was power, and he believed there would be found a disposition in the people of the United States to repel such an insult; for if we cannot prevent France or any other power from invading our territory and insulting our national honor, by landing their outcasts upon our shores, we shall no longer deserve the name of an independent nation.

Mr. JACKSON, in reply to Mr. SMITH and Mr. MITCHILL, confessed he had seen no official document, other than what the honorable mover had read, but he had seen at Newcastle, in Delaware, a whole fleet bound to St. Domingo, to force a trade which even captains of vessels, true Americans, cried shame on. That the honorable gentleman had called out, why had not the mover brought forward a resolution against Britain or some other power who had committed depredations on our commerce! Mr. J. said he wished to begin here, by preventing our own merchants from doing injury to other nations, and then to strike at those who insulted us. He for himself was prepared and willing to attack the first power who had insulted us with far more superior weapons than arming our ships. He was an agricultural man, and would suffer with the flour-makers; but he would call on the honorable gentleman either from Maryland, from New York, from Massachusetts, or Connecticut, to strike at Great Britain or any other nation who had injured us, by a resolution of prohibition of trade or intercourse, and he was the man who would second it and keep it on till the injuring nation should cry *peccavi*—keep it on one twelvemonth, and you would see them all at your feet. Look at the Legislature of Jamaica petitioning their Governor from time to time for American intercourse. Look at Trinidad, the same, in a state of famine. Sir, we have no favors to ask the nations of the earth; they must ask them of us, or their West India colonies must starve.

That, however, with respect to documents, he would inform the gentleman from Maryland, that he had seen, though not official, a letter from General Ferrand, Governor of St. Domingo, and which was published in all the principal newspapers of the United States, complaining to the French Government on this subject, and laying all the blame to the American Government, if not in direct, in the most severe indirect terms. That as to the total separation of the self-created Emperor and nation of Hayti, and its independence of the parent country, and under which gentlemen declared our rights of trade founded on the laws of nations—the late attack on that General by the Emperor proved it did not exist; he was defeated, his army scattered and driven to the mountains; that Ferrand held the island as French Governor for the French nation, and the separation was not such as to warrant the arguments used for a right to trade. It would be a fatal argument used against us as respected our Southern States by other powers. On the same grounds, a parcel of runaways and outcasts from South Carolina and Georgia, to the amount of some hundreds, now

collected on or near the Okefonokee^[28] swamp in Georgia, might be termed an independent society; or if an insurrection took place in those States, the rebellious horde, on creating an emperor, be supplied with arms and ammunition, as a separate and independent nation. This, as the honorable gentleman from Connecticut had been pleased to term his fears bugbears, might be no bugbear to him, safe and remote from the scene of action, near New Haven; but it was a serious bugbear to him, and would be to the whole southern country, where the horrid scenes of that island would be reacted, their property destroyed, and their families massacred.

After a few replicatory remarks from Mr. LOGAN, the consideration of the subject was postponed to Monday.

TUESDAY, January 7, 1806.

JAMES TURNER, appointed a Senator by the Legislature of the State of North Carolina, for the term of six years, from the third of March, 1805, produced his credentials, which were read, and the oath prescribed by law having been administered, he took his seat in the Senate.

MONDAY, January 13.

Hamet Caramalli, ex-Bashaw of Tripoli.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I lay before Congress the application of Hamet Caramalli, elder brother of the reigning Bashaw of Tripoli, soliciting from the United States attention to his services and sufferings in the late war against that State. And, in order to possess them of the ground on which that application stands, the facts shall be stated according to the views and information of the Executive.

During the war with Tripoli, it was suggested that Hamet Caramalli, elder brother of the reigning Bashaw, and driven by him from his throne,

meditated the recovery of his inheritance, and that a concert of action with us was desirable to him. We considered that concerted operations by those who have a common enemy were entirely justifiable, and might produce effects favorable to both without binding either to guarantee the objects of the other. But the distance of the scene, the difficulties of communication, and the uncertainty of our information, inducing the less confidence in the measure, it was committed to our agents as one which might be resorted to, if it promised to promote our success.

Mr. Eaton, however, (our late Consul,) on his return from the Mediterranean, possessing personal knowledge of the scene, and having confidence in the effect of a joint operation, we authorized Commodore Barron, then proceeding with his squadron, to enter into an understanding with Hamet, if he should deem it useful; and as it was represented that he would need some aids of arms and ammunition, and even of money, he was authorized to furnish them to a moderate extent, according to the prospect of utility to be expected from it. In order to avail him of the advantages of Mr. Eaton's knowledge of circumstances, an occasional employment was provided for the latter as an agent for the Navy in that sea. Our expectation was, that an intercourse should be kept up between the ex-Bashaw and the Commodore, that while the former moved on by land, our squadron should proceed with equal pace, so as to arrive at their destination together, and to attack the common enemy by land and sea at the same time. The instructions of June 6th to Commodore Barron show that a co-operation only was intended, and by no means a union of our object with the fortune of the ex-Bashaw; and the Commodore's letters of March 22d and May 19th, prove that he had the most correct idea of our intentions. His verbal instructions, indeed, to Mr. Eaton and Captain Hull, if the expressions are accurately committed to writing by those gentlemen, do not limit the extent of his co-operation as rigorously as he probably intended; but it is certain, from the ex-Bashaw's letter of January 3d, written when he was proceeding to join Mr. Eaton, and in which he says, "your operations should be carried on by sea, mine by land," that he left the position in which he was, with a proper idea of the nature of the co-operation. If Mr. Eaton's subsequent convention should appear to bring forward other objects, his letter of April 29th and May 1st, views this convention but as provisional; the second article, as he expressly states, guarding it against any ill effect, and his letter of June 30th confirms this construction.

In the event it was found, that, after placing the ex-Bashaw in possession of Derne, one of the most important cities and provinces of the country, where he had resided himself as governor, he was totally unable to command any resources, or to bear any part in co-operation with us. This hope was then at an end, and we certainly had never contemplated, nor were we prepared to land an army of our own, or to raise, pay, or subsist, an army of Arabs to march from Derne to Tripoli, and to carry on a land war at such a distance from our resources. Our means and our authority were merely naval, and that such were the expectations of Hamet, his letter of June 29th is an unequivocal acknowledgment. While, therefore, an impression from the capture of Derne might still operate at Tripoli, and an attack on that place from our squadron was daily expected, Colonel Lear thought it the best moment to listen to overtures of peace, then made by the Bashaw. He did so, and while urging provisions for the United States, he paid attention also to the interests of Hamet, but was able to effect nothing more than to engage the restitution of his family, and even the persevering in this demand, suspended for some time the conclusion of the treaty.

In operations at such distance, it becomes necessary to leave much to the discretion of the agents employed, but events may still turn up beyond the limits of that discretion. Unable in such a case to consult his government, a zealous citizen will act as he believes that would direct him, were it apprised of the circumstances, and will take on himself the responsibility. In all these cases the purity and patriotism of the motives should shield the agent from blame, and even secure a sanction where the error is not too injurious. Should it be thought by any, that the verbal instructions said to have been given by Commodore Barron to Mr. Eaton amount to a stipulation that the United States should place Hamet Caramalli on the throne of Tripoli, a stipulation so entirely unauthorized, so far beyond our views, and so onerous, could not be sanctioned by our Government, or should Hamet Caramalli, contrary to the evidence of his letters of January 3d and June 29th, be thought to have left the position which he now seems to regret, under a mistaken expectation that we were at all events to place him on his throne, on an appeal to the liberality of the nation, something equivalent to the replacing him in his former situation might be worthy its consideration.

A nation, by establishing a character of liberality and magnanimity, gains in the friendship and respect of others more than the worth of mere money. This appeal is now made by Hamet Caramalli to the United States. The ground he has taken being different, not only from our views, but from those expressed by himself on former occasions, Mr. Eaton was desired to state whether any verbal communications passed from him to Hamet, which had varied what he saw in writing. His answer of December 5th, is herewith transmitted, and has rendered it still more necessary, that, in presenting to the Legislature the application of Hamet, I should present them at the same time an exact statement of the views and proceedings of the Executive, through this whole business, that they may clearly understand the ground on which we are placed. It is accompanied by all the papers which bear any relation to the principles of the co-operation, and which can inform their judgment in deciding on the application of Hamet Caramalli.

TH. JEFFERSON.

JANUARY 13, 1806.

The Message and documents therein referred to were read, and ordered to lie for consideration,

And on motion, the House adjourned.

TUESDAY, January 14.

Inhabitants of Galliopolis.

Mr. WORTHINGTON presented the petition of a number of French settlers of Galliopolis, grantees, on the 3d of March, 1795, of 20,000 acres of land, situated on the Ohio River, and nearly opposite the mouth of Little Sandusky, on condition that they settle the same within five years from the date of the letters patent, and stating that they, being ignorant of this condition, are liable to lose their lands, although for the space of four years they have paid the taxes thereon, and praying the interposition of Congress in their behalf; and the petition was read and referred to Messrs. WORTHINGTON, SMITH of Tennessee, and ADAIR, to consider and report thereon.

FRIDAY, January 17.

Aggressions on Commerce.

On motion, the galleries were cleared, and the doors of the Senate Chamber were closed; and, after the considerations of the confidential business,

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In my Message to both Houses of Congress at the opening of their present session, I submitted to their attention, among other subjects, the oppression of our commerce and navigation by the irregular practices of armed vessels, public and private; and by the introduction of new principles, derogatory of the rights of neutrals, and unacknowledged by the usages of nations.

The memorials of several bodies of merchants of the United States are now communicated, and will develop these principles and practices, which are producing the most ruinous effects on our lawful commerce and navigation.

The right of a neutral to carry on commercial intercourse with every part of the dominions of a belligerent, permitted by the laws of the country, (with the exception of blockaded ports and contraband of war,) was believed to have been decided between Great Britain and the United States, by the sentence of their commissioners mutually appointed to decide on that and other questions of difference between the two nations, and by the actual payment of the damages awarded by them against Great Britain for the infractions of that right. When, therefore, it was perceived that the same principle was revived, with others more novel, and extending the injury, instructions were given to the Minister Plenipotentiary of the United States at the Court of London, and remonstrances duly made by him on the subject, as will appear by documents transmitted herewith. These were followed by a partial and temporary suspension only, without any disavowal of the principle. He has, therefore, been instructed to urge this subject anew,

to bring it more fully to the bar of reason, and to insist on rights too evident and too important to be surrendered. In the mean time the evil is proceeding, under adjudications founded on the principle which is denied. Under these circumstances the subject presents itself for the consideration of Congress.

On the impressment of our seamen, our remonstrances have never been intermitted. A hope existed at one moment of an arrangement which might have been submitted to, but it soon passed away, and the practice, though relaxed at times in the distant seas, had been constantly pursued in those in our neighborhood. The grounds on which the reclamations on this subject have been urged, will appear in an extract from instructions to our minister at London now communicated.

TH. JEFFERSON.

JANUARY 17, 1806.

The message and document therein referred to were in part read, and ordered to lie for consideration.

Purchase of Florida.

A confidential message from the House of Representatives, by Messrs. BIDWELL and EARLY, two of their members, as follows:

Mr. PRESIDENT: We are directed by the House of Representatives, in confidence, to bring to the Senate a bill, entitled "An act making provision for defraying any extraordinary expenses attending the intercourse between the United States and foreign nations;" in which they request the concurrence of the Senate.

The bill was read and passed to the second reading.

Ordered, That the message and bill last read, be considered confidential, and that secrecy be observed by the members and officers of the Senate.

FRIDAY, January 24.

JAMES A. BAYARD, appointed a Senator for the State of Delaware, for the term of six years, commencing on the fourth of March last, produced his credentials, which were read; and, the oath prescribed by law having been administered, he took his seat in the Senate.

FRIDAY, January 31.

Purchase of Florida.

The third reading of the bill, entitled “An act making provision for defraying any extraordinary expenses attending the intercourse between the United States and foreign nations,” was resumed; and, on the question to amend the bill, as follows: After the words “United States,” sec. 1, insert “for the purpose of obtaining by negotiation, or otherwise, as he may deem most expedient, the free navigation of the river St. Lawrence, as His Britannic Majesty’s territory, lying south and east thereof, or any other territory lying east of the Mississippi, and south of the aforesaid river St. Lawrence not owned or possessed by citizens of the United States.”

It was determined in the negative—yeas 10, nays 21, as follows:

YEAS.—Messrs. Adams, Bayard, Bradley, Hillhouse, Pickering, Plumer, Smith of Vermont, Tracy, White, and Wright.

NAYS.—Messrs. Adair, Anderson, Baldwin, Condit, Fenner, Gaillard, Gilman, Howland, Kitchel, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Sumter, Thruston, Turner, and Worthington.

WEDNESDAY, February 5.

The PRESIDENT laid before the Senate the report of the Commissioners of the Sinking Fund, stating that the measures which have been authorized by the Board subsequent to their report of 5th February, 1805, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to the Board, dated the 4th of the present month; and in the statements therein referred to, which are herewith transmitted, and prayed

to be considered as part of the report. And the report was read, and ordered to lie for consideration.

Mr. SMITH of Maryland, from the committee appointed the 15th of January last, on that part of the Message of the President of the United States which relates to the spoliation of our commerce on the high seas, and informs us of new principles assumed by the British Courts of Admiralty, as a pretext for the condemnation of our vessels in their prize courts, made report, and the report was read, and ordered to lie for consideration.

The motion, that it be

Resolved, That a committee be appointed to inquire why the expenditures in the Navy Department, for the year 1805, have so far exceeded the appropriations for the same, and report thereon to the Senate;

was resumed and adopted; and ordered that it be referred to the committee appointed on the 28th January last, to make inquiry into the specific expenditures of the respective departments, to report thereon.

The bill making provision for the compensation of witnesses who attended the trial of the impeachment of Samuel Chase, was read the second time, and ordered to the third reading.

THURSDAY, February 6.

Purchase of Florida.

The Senate resumed the third reading of the bill, entitled “An act making provision for defraying any extraordinary expenses attending the intercourse between the United States and foreign nations;” and,

On motion that the bill, and message from the House of Representatives accompanying the same, be referred to a select committee, with instructions to inquire and report to the Senate their opinion, whether West Florida was or was not included in the cession of Louisiana to the United States by the treaty with France, concluded on the 30th of April, 1803, together with the

evidence upon which such an opinion may be supported; it was determined in the negative—yeas 8, nays 23, as follows:

YEAS.—Messrs. Adair, Adams, Bayard, Hillhouse, Pickering, Plumer, Tracy, and White.

NAYS.—Messrs. Anderson, Baldwin, Bradley, Condit, Fenner, Gaillard, Gilman, Howland, Kitchel, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Tennessee, Smith of Vermont, Stone, Sumter, Thruston, Turner, Worthington, and Wright.

On motion to postpone the further consideration of the bill at this time, and to take up the following resolution:

Resolved, That the President be requested to lay before the Senate the instructions given to Messrs. Monroe and Pinckney, late Ministers of the United States to the Court of Spain, together with the facts and arguments exhibited by them, in their negotiation, in support of their claims to territories eastward of the Mississippi, as far as the river Perdido, and of territory on the western side of the Mississippi, as far as the Rio Bravo; the essay of Mr. Cevallos, the Minister of His Catholic Majesty, in answer to our Ministers, in relation to the western limits; and any other documents in his possession, tending to establish the rightful boundaries of Louisiana:

It passed in the negative.

FRIDAY, February 7.

Purchase of Florida.

The Senate resumed the third reading of the bill, entitled “An act making provision for defraying any extraordinary expenses attending the intercourse between the United States and foreign nations;” and,

On motion to postpone the further consideration of the bill at this time, and take up the following resolution:

Resolved, That the President of the United States be requested to renew our negotiations with the Spanish Government, in such a manner as may bring every subject in controversy between the two countries to a speedy termination, equally advantageous to both:

It passed in the negative.

On motion to strike out of the bill the words “two millions,” section one, and in lieu thereof, insert “one million;” a division was called for, and the question on striking out was determined in the negative—yeas 13, nays 18, as follows:

YEAS.—Messrs. Adair, Adams, Bayard, Bradley, Gilman, Hillhouse, Logan, Mitchill, Pickering, Plumer, Stone, Tracy, and White.

NAYS.—Messrs. Anderson, Baldwin, Condit, Fenner, Gaillard, Howland, Kitchel, Maclay, Moore, Smith of Maryland, Smith of New York, Smith of Tennessee, Smith of Vermont, Sumter, Thruston, Turner, Worthington, and Wright.

On motion to amend the bill by inserting after the word “applied,” in the first section, the words “for the purchase from the Spanish Government of their territories lying on the Atlantic Ocean and Gulf of Mexico, and eastward of the river Mississippi,” it passed in the negative—yeas 9, nays 20, as follows:

YEAS.—Messrs. Adair, Adams, Bayard, Gilman, Hillhouse, Pickering, Plumer, Tracy, and White.

NAYS.—Messrs. Anderson, Baldwin, Bradley, Condit, Fenner, Gaillard, Howland, Kitchel, Maclay, Moore, Smith of Maryland, Smith of New York, Smith of Tennessee, Smith of Vermont, Stone, Sumter, Thruston, Turner, Worthington, and Wright.

On motion to postpone the consideration of the bill until Monday next, it passed in the negative.

On motion to agree to the final passage of the bill, it passed in the affirmative—yeas 17, nays 11, as follows:

YEAS.—Messrs. Anderson, Baldwin, Condit, Fenner, Gaillard, Howland, Kitchel, Maclay, Moore, Smith of Maryland, Smith of New York, Smith of Tennessee, Smith of Vermont, Thruston, Turner, Worthington, and Wright.

NAYS.—Messrs. Adair, Adams, Bayard, Gilman, Hillhouse, Pickering, Plumer, Stone, Sumter, Tracy, and White.

So it was *Resolved*, That this bill pass.^[29]

MONDAY, February 10.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported to the bill to suspend the commercial intercourse between the United States and the French island of St. Domingo; and, having amended the report, it was in part adopted, and the bill was reported to the House accordingly; and the bill having been further amended,

Ordered, That it pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled “An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;” a bill, entitled “An act declaring the consent of Congress to an act of the State of South Carolina, passed on the 21st day of December, 1804, so far as the same relates to authorizing the City Council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports;” also, a bill, entitled “An act to regulate and fix the compensation of officers of the Senate and House of Representatives;” in which bills they desire the concurrence of the Senate.

The bills brought up for consideration were read, and ordered to the second reading.

Mr. WRIGHT, from the committee to whom was referred, on the 31st of January last, the bill for the protection and indemnification of American seamen, reported it without amendment.

Mr. THRUSTON, from the committee to whom was referred, on the 5th instant, the bill, entitled “An act for altering the time for holding the circuit court in the district of North Carolina,” reported the bill with amendments; which were read, and ordered to lie for consideration.

WEDNESDAY, February 12.

British Aggressions.

The Senate resumed the report of the committee, of the fifth instant, on that part of the Message of the President of the United States, which relates to the spoliation of our commerce on the high seas, and of the new principles assumed by the British Courts of Admiralty, as a pretext for the condemnation of our vessels, in their prize courts, to wit:

1. *Resolved*, That the capture and condemnation, under the orders of the British Government, and adjudications of their Courts of Admiralty, of American vessels and their cargoes, on the pretext of their being employed in a trade with the enemies of Great Britain, prohibited in time of peace, is an unprovoked aggression upon the property of the citizens of these United States, a violation of their neutral rights, and an encroachment upon their national independence.

2. *Resolved*, That the President of the United States be requested to demand and insist upon the restoration of the property of their citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations; and to enter into such arrangements with the British Government, on this and all other differences subsisting between the two nations, and particularly respecting the impressment of American seamen, as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves and their citizens, by amicable negotiation, that justice to which they are entitled.

3. *Resolved*, That it is expedient to prohibit by law the importation into the United States of any of the following goods, wares, or merchandise, being the growth, produce, or manufacture, of the United Kingdom of Great Britain and Ireland, or the dependencies thereof, that is to say: woollens, linens, hats, nails, looking glasses, rum, hardwares, slate, salt, coal, boots, shoes, ribbons, silks, and plated and glass wares. The said prohibition to commence from the —— day of ——, unless previously thereto equitable arrangements shall be made between the two Governments, on the differences subsisting between them; and to continue until such arrangements shall be agreed upon and settled.

And, on the question to adopt the first resolution, as reported by the committee, it was determined unanimously in the affirmative—yeas 28.

THURSDAY, February 13.

British Aggressions.

The report of the committee, made on the 5th instant, on that part of the Message of the President of the United States which relates to the spoliation of our commerce, and of the new principles assumed by the British Courts of Admiralty, was resumed.

Mr. ISRAEL SMITH said that he was extremely sorry that he could not bring his mind to assent to the second resolution; because he viewed it of great importance that there should be unanimity upon a subject of this nature. He was not opposed to it from any constitutional objection, arising from a belief that the Senate had no right to give their advice and consent to the Executive as to the course and conditions upon which they desired that an accommodation might be brought about; but he was opposed to it from the peculiar impropriety of so doing, deduced from the whole circumstances of the case, as it now presented itself for consideration. It would be recollected by the Senate, that many of our complaints against the British Government were of long continuance; that they had been the subject of our pointed and repeated remonstrances, and in a particular manner, the impressment of American seamen; that, on a former occasion, they had committed vast spoliations on our commerce, not under the sanction of the

laws of nations, as their subsequent transactions with our Government have acknowledged; but under the authority of the particular orders of their Government, thereby subjecting the property of our merchants upon the high seas, not only to the restrictions and forfeitures incurred by the law of nations, but also exposing it to all the vexations and forfeitures growing out of the caprice of British orders of capture. The late encroachments on our rights as a neutral nation, and which are now the subject of consideration, are of a nature similar to those we have before experienced, and proceed from the same unwarrantable cause; and, further, are continued in full force and operation at the very moment our Government is pressing upon their consideration the injustice of their proceedings, by argument too strong and convincing to admit of doubt. And how are they answered? By procrastination, and hints that the necessity of the case is a sufficient justification. The Executive, indignant at this evasion, and despairing of redress by any further appeal to their justice and magnanimity, has turned to the National Legislature, and informed them that what remained to be done on this interesting subject must rest on the wisdom and firmness of Congress.

Mr. ANDERSON.—Mr. President: In discussing the merits of the resolution now under consideration, it will be necessary that we keep constantly in view the great principle of the one which has already passed this House by a unanimous vote, because this second resolution is predicated upon the principle of the first. In the first we declare, that the capture and condemnation, under the orders of the British Government, and adjudication of their Courts of Admiralty, of American vessels and their cargoes, on the pretext of their being employed in a trade with the enemies of Great Britain, prohibited in time of peace, is an unprovoked aggression upon the property of the citizens of the United States, a violation of their neutral rights, and an encroachment upon their national independence.

In order to show that the ground we have taken is correct, I will take leave to refer to a book (entitled *An Examination of the British Doctrine which subjects to capture a neutral trade, not open in time of peace*) ascribed to a gentleman high in office, who has deservedly acquired great celebrity in the political world. It will be found that the principle contended for in the resolution I have cited, obtained as early as the first rise of regular commerce, and was even reduced to system as early as 1338. To this

doctrine Great Britain acceded by treaty with Sweden, in 1655, and afterwards, in 1674, she actually claimed and enjoyed the benefit of a free trade, she being at that time in peace and the Dutch in war with France. With what kind of pretext can Great Britain pretend to deprive us of the exercise of the very rights which she herself has claimed and exercised, upon precisely the same principles? Besides, those neutral rights have, by constant and very long usage, become the established law of nations, and have from time to time been ingrafted into many treaties even where Great Britain was herself a party. Upon this doctrine, thus sustained, we request the President to demand and insist upon the restoration of the property of our citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace, and upon the indemnification of such American citizens for their losses and damages sustained by these captures and condemnations.

It has been objected that the language of this resolution is too strong, that the words *demand* and *insist* go too far; and that the absolute restoration of our vessels, &c., will, by these words being retained, be made *sine qua non* of an accommodation with Great Britain. If, sir, we were to express ourselves in less forcible language, we should, in my opinion, subvert our own principles, and recede from the high ground we have taken, which might eventually radically destroy our neutral rights, and completely paralyze our commerce.

The words *demand* and *insist* are diplomatic, and as such most proper to be used, and the more so, as they seem to be appropriate to the principle of the first resolution. But, Mr. President, the latter part of this resolution, by which indemnification may be made, and new arrangements entered into with Great Britain, so far ameliorates those precedent words that the President will possess ample powers, according to a true exposition of the whole taken together, and he will not, in my opinion, be trammelled in the manner the gentleman from Ohio conceives. In settling national differences, it has ever been necessary in some points to give a little, and in others to take, according to the peculiar circumstances upon which the negotiation might happen to turn; either upon a point of national honor, or an interesting point of national commerce, or both so connected as not well to be severed.

Mr. MITCHELL said he hoped the resolution would be adopted in its full extent. On this subject he differed wholly from the honorable gentleman

from Vermont, (Mr. ISRAEL SMITH.)

As the proposition recommended to the Senate by the select committee was now before them in its most broad and extensive sense, he should apply his remarks to the principle, rather than to the form of the resolution under debate.

Toward the end of 1803, more than half the articles of the treaty between our Government and that of Great Britain had ceased. Since that event commercial intercourse had been carried on by the two nations, under their respective laws, without any convention or pact between them. Inconveniences had been experienced in various ways from that time to the present. An attempt indeed had been made two years ago to remove a considerable part of them by a repeal of the countervailing duties; but that effort not corresponding with the feelings of the nation, had been relinquished.

The war which was rekindled in Europe soon after the expiration of the temporary articles of the treaty had embarrassed the commerce of the great maritime powers, and thrown into the hands of neutrals an extraordinary proportion of the colonial and carrying trade. The citizens of the United States, among others, had profited by the opportunity, and engaged extensively in this neutral commerce. But it had been the policy of Great Britain, the strongest maritime nation among the belligerents, to interrupt this intercourse of neutrals with the colonies of her colonies, as if they had been her own colonies. A series of outrageous proceedings had been the result; such as had excited the most lively indignation against them from Maine to Georgia, and roused the nation with one voice to resist and repel them.

Mr. BAYARD.—Mr. President, if there be any objection to the resolution now before us, it is that it shelters the Executive Government from that responsibility as to its measures which properly ought to attach to it. The duty prescribed by the resolution is of an Executive nature, and the President is charged with the care of those interests for which the resolution provides. By prescribing a course of conduct to the Executive, we release that branch of Government from responsibility as to the event, and take it upon ourselves. But, sir, though I feel this objection, yet at the present moment it is outweighed by other considerations. The state of our public

affairs is critical, and at such a time I think it becomes every branch and member of the Government to co-operate with cordiality and zeal in support of each other, and to strive to do more rather than less than their respective duty.

The design of this resolution, sir, presents itself to my mind in a very different point of view from that in which it appears to the gentleman from Vermont, (Mr. SMITH.) That honorable member is opposed to it, because he thinks it gives just cause of offence to the President: that we prescribe to the President a duty which he ought certainly to perform without our injunction, and of consequence we betray doubts that he will do what belongs to his office without our interference.

For my part, sir, I do not consider the resolution as intended in any degree for the President, but as designed for the British Government. I suppose without the resolution the President would take the course which it marks out. But we intend to manifest by it, that it is not simply the opinion of the President that specific redress should be granted for the wrongs we have suffered, but that it is the concurrent sense of this branch of the Government, that such redress should be insisted on. I do not mean that we should be considered as offering an empty menace to the British cabinet, but a demonstration of the union of different branches of our Government in demanding satisfaction for the wrongs done us. Foreign Governments calculate much on our divisions, our union will disappoint those calculations.

On motion, the Senate now adjourned.

FRIDAY, February 14.

British Aggressions.

The Senate resumed the consideration of the report of the committee, made on the 5th instant, on that part of the Message of the President of the United States which relates to the violation of neutral rights, and the impressment of American seamen.

The second resolution being still under consideration, as follows:

“2. Resolved, That the President of the United States be requested to demand and insist upon the restoration of the property of their citizens, captured, and condemned, on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace: and upon the indemnification of such American citizens, for their losses and damages sustained by those captures and condemnations: and to enter into such arrangements with the British Government, on this and all other differences subsisting between the two nations, (and particularly respecting the impressment of American seamen,) as may be consistent with the honor and interest of the United States, and manifest their earnest desire to obtain for themselves and their citizens, by amicable negotiation, that justice to which they are entitled.”

Mr. WORTHINGTON.—On further consideration of the resolution now before the Senate I confess I feel more opposed to it, and do believe, on the whole, it will be best not to pass it in its present form. The resolution must mean something, or it must mean nothing. It must intend to convey to the President the opinions and advice of this body, or not to convey it. Now, sir, if it is intended to convey to the President the opinion and advice of the Senate, which is certainly my understanding of it, I beg gentlemen to reflect a little before they adopt it. The advice of this Senate I trust will never be given to the President without having the desired effect; and let me add, sir, that from the intimate connection which exists between this and the Executive branch of the Government, I must believe that the President would not feel himself justified, nor would he be willing to take so much responsibility on himself as entirely to reject it. Sir, I could not justify him if he did. We are equally responsible with him in our executive capacity, and can we for a moment believe that he would act contrary to the decided opinion of the Senate, who can at all times control or defeat him by rejecting a treaty made contrary to their advice and opinions? What, sir, is the object of the resolution?

We request the President “to demand and insist upon the restoration of the property of their citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens for

their losses and damages sustained by these captures and condemnations:" and afterwards "to enter into such arrangements with the British Government, on this and all other differences subsisting between the two nations, (and particularly respecting the impressment of American seamen,) as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves and their citizens, by amicable negotiation, that justice to which they are entitled."

Mr. ADAIR.—Mr. President, the motion before the Senate is to recommit the resolution to a special committee. Gentlemen in favor of the resolution as it stands, have called upon us to point out the alterations we wish to make in it, as a cause of commitment; I will do so by stating my objections to it in its present shape. The first resolution on the paper which I hold in my hand, and which met with a unanimous vote of the Senate two days past, contains a mere declaration of their opinion on an abstract principle; to this resolution I fully and freely assent, although I did not vote for it, being that day unwell and absent. But this second resolution, if it is to have any effect at all, is meant to convey an instruction to the President of the United States. It contains a request to him, not only that he will endeavor to obtain an adjustment of our differences by treaty, but that prior to this he will "demand and insist upon the restoration of the property of our citizens captured and condemned on the pretence of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens for their losses and damages sustained by these captures and condemnations;" that he will enter into arrangements, &c. This, Mr. President, is the part of the resolution I object to. It is going too far. It is circumscribing the powers of the President, and tying him down to a particular point. It is making that the *sine qua non*, the basis on which alone he is to treat; at least it is doing this so far as an opinion of the Senate, expressed in this way, can do it. It really looks to me, as if, on this particular point of the restitution, we were afraid to trust our Chief Magistrate. I presume there is not a member who hears me, who does not fully believe the captures and condemnations alluded to in the resolution were unjust; that they are an infringement of our rights; and that we are entitled to restitution. But let it be remembered that these condemnations are the solemn decisions of a court of very high authority in Great Britain; a court that, it is well known, acts under the counsels (if not the control) of the cabinet. May we not then reasonably suppose that the

British Government are as fully assured (in their own minds) that these condemnations are just and warranted, under the law of nations, as we are that they are unjust and unwarranted; and that they will be as unwilling to acknowledge in the face of the whole world that they have been wantonly robbing us of our property, as we will be to acknowledge that we have paid so much without a cause? It has been well observed by an honorable member from Tennessee, that in forming commercial treaties of this kind, there will be various points to consider, and it may not be necessary to contend for strict justice in every punctilio; arrangements or treaties, when there are existing differences to settle, must always be a bargain of compromise and forbearance; in one point we may give a little, that we may obtain an equivalent in another. So it may turn out in settling our disputes with Great Britain. Why then are we not satisfied with expressing our opinion on the great principle of right; and leave it altogether with our Chief Magistrate to enter into and point out the details?

MESSRS. J. QUINCY ADAMS, SAMUEL SMITH, PICKERING, TRACY, and MACLAY, delivered their sentiments.

The motion to recommit the resolution for the purpose of amending it, was lost—yeas 15, nays 16.

MR. WORTHINGTON then moved to strike out the words in *italics*, from the second to the eleventh line.

MESSRS. S. SMITH, and WHITE, opposed the motion, which was disagreed to—yeas 13, nays 16, as follows:

YEAS.—Messrs. Adair, Baldwin, Bradley, Gaillard, Howland, Logan, Maclay, Moore, Plumer, Smith of Vermont, Sumter, Turner, and Worthington.

NAYS.—Messrs. Adams, Anderson, Bayard, Gilman, Hillhouse, Kitchel, Mitchill, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Thruston, Tracy, White, and Wright

MR. THRUSTON moved to postpone the resolution, for the purpose of previously taking up and acting upon the third, which prohibits the importation into the United States of a variety of articles, the growth,

produce, or manufactures of Great Britain, after the —— day of —— next, unless equitable arrangements shall be made between the United States and Great Britain.

This motion was lost—yeas 13.

MESSRS. ISRAEL SMITH and BRADLEY then spoke against agreeing to the resolution. The principal ground taken by them was that it became the Senate to take stronger ground, and to adopt vigorous measures, before they requested the Executive to resume negotiation.

Mr. TRACY advocated the resolution. He did not think negotiation exhausted. He thought it became the Senate to make one further attempt towards negotiating our differences, before a resort was had to warlike measures. The President would be enabled to take this step, by the Senate, who were a branch of the war-declaring power, expressing their support of the measures he had taken, at the same time that they requested a renewal of the negotiation.

Mr. MOORE moved to strike out the words “and insist;” which motion prevailed.

Mr. WORTHINGTON said that, so modified, he should vote for the resolution.

Mr. KITCHEL observed that he was sorry to intrude upon the patience of the Senate at that late hour; but the observations of the gentleman who had just sat down induced him to beg their indulgence for a few moments. The gentleman, in the course of his observations, seems to have made two propositions as the ground of his objection, viz: that the resolution now under consideration contains a censure upon the President, as not having done his duty in negotiating; and that by passing it we are going to sacrifice the honor and interests of the United States and its citizens.

Mr. President, I would ask in what manner we shall do either? How shall we censure the President? He has negotiated until there appears no prospect of obtaining that justice to which we are entitled; and he has now submitted the matter to Congress to pursue such measures as shall appear to them prudent.

And what are we about to do? Sir, we have already unanimously passed one resolution, in which we say that the capture and condemnation of the

vessels and cargoes of our citizens is an unprovoked violation of our independence, and an aggression upon the property of our citizens. And if that declaration is correct what are we to do further? Are we, upon the strength of that declaration, to sit down and fold our hands together, and expect Britain to do us justice, or are we to declare war? Sir, are we prepared at this moment to declare war? Will it be wise? Will it be prudent, without one effort to avoid it, with all its horrors of blood and destruction? Are the people now prepared to meet it, without our making one more attempt to negotiate? Will they say we have acted wisely? I believe not. Sir, we are one component part of Congress, who have the sole power of declaring war; and by this resolution we are going to say to Britain—not by ourselves, for we are not by the constitution authorized to speak to foreign nations in this way; but we are about to request the President, in our behalf, and in our name, and in the name of the whole people of the United States, to say to Britain—you have injured us by your unprovoked aggressions, and we demand satisfaction. We can bear these insults no longer; therefore, make us compensation for past injuries, and do us justice in future; and we are willing still to be friends. Wherein does this censure the President? He has pursued negotiation until he finds it unavailing. We now ask of him to make one last effort in our behalf, before we appeal to the last resort of war, and I trust we shall arm him with power that will give energy to this last negotiation. And wherein are we going to sacrifice the honor of the United States or the interests of the citizens? Does it sacrifice our honor to endeavor to settle our differences in an amicable way, rather than to fly to arms and deluge the earth with blood? Will it fix a stigma upon us in the eyes of any rational men or nations? I believe not. And how are we going to sacrifice the interests of our citizens? Do we do it by demanding justice for them of Britain? I believe that they themselves will not view it in that light, when they see it followed by the third resolution, which I hope will be passed. And, indeed, had it not have been for the expectations of that resolution being carried into effect, in such a manner as to give energy to this, I should have withheld my vote from the first. But, under the full expectation that the third resolution will pass, and as I do not believe it contains any censure upon the President, and as I believe it will do honor to the United States and will have a tendency to secure reparation to our citizens, I shall cheerfully give it my vote.

Messrs. LOGAN and PICKERING spoke in favor of the resolution, and Mr. ISRAEL SMITH against it; when, after some verbal amendments, the question was taken upon it, by yeas and nays, and the resolution carried—yeas 23, nays 7, as follows:

YEAS.—Messrs. Adams, Anderson, Baldwin, Bayard, Gaillard, Gilman, Hillhouse, Howland, Kitchel, Logan, Maclay, Mitchill, Moore, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Tracy, Turner, White, Worthington, and Wright.

NAYS.—Messrs. Adair, Bradley, Plumer, Smith of Vermont, Stone, Sumter, and Thruston.

So it was *Resolved*, That the President of the United States be requested to demand the restoration of the property of their citizens captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in a time of peace; and the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations; and to enter into such arrangements with the British Government, on this and all other differences subsisting between the two nations, (and particularly respecting the impressment of American seamen,) as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves and their citizens, by amicable negotiation, that justice to which they are entitled.

WEDNESDAY, February 19.

Lewis and Clarke's Expedition.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In pursuance of a measure proposed to Congress, by a Message of January 18th, 1803, and sanctioned by their approbation, for carrying it into execution, Captain Meriwether Lewis, of the first regiment of infantry, was

appointed, with a party of men, to explore the river Missouri from its mouth to its source, and crossing the high lands by the shortest portage, to seek the best water communication thence to the Pacific Ocean; and Lieutenant Clarke was appointed second in command. They were to enter into conference with the Indian nations on their route, with a view to the establishment of commerce with them. They entered the Missouri, May 14, 1804, and on the 1st of November, took up their winter quarters near the Mandan towns, sixteen hundred and nine miles above the mouth of the river, in latitude $47^{\circ} 21' 47''$ north, and longitude $99^{\circ} 24' 45''$ west, from Greenwich. On the 8th of April, 1805, they proceeded up the river in pursuance of the objects prescribed to them. A letter of the preceding day, April 7, from Captain Lewis, is herewith communicated. During his stay among the Mandans, he has been able to lay down the Missouri, according to courses and distances taken on his passage up it, corrected by frequent observations of longitude and latitude, and to add to the actual survey of this portion of the river, a general map of the country between the Mississippi and Pacific, from the 34th to the 54th degrees of latitude. These additions are from information collected from Indians, with whom he had opportunities of communicating during his journey, and residence with them. Copies of this map are now presented to both Houses of Congress. With these, I communicate, also a statistical view, procured and forwarded by him, of the Indian nations inhabiting the Territory of Louisiana and the countries adjacent to its northern and western borders, and of other interesting circumstances respecting them.

TH. JEFFERSON.

FEBRUARY 19, 1806.

THURSDAY, February 20.

Trade with St. Domingo.

The Senate resumed the third reading of the bill to suspend the commercial intercourse between the United States and the French island of St. Domingo.

Mr. WHITE.—Mr. President, it will be recollected that the bill, as originally introduced on this subject by the gentleman from Pennsylvania, (Mr. LOGAN,) was variant in every shape and feature from that now before us. The first bill I considered altogether impotent, and had little or no concern as to its fate; but that now under consideration, as presented by the committee, is of a very different complexion, and goes the full length of interdicting all commerce between this country and the island of St. Domingo.

Our local situation, Mr. President, gives to us advantages in the commerce of the West Indies over all the nations of the world; and it is not only the right and the interest, but it is the duty of this Government, by every fair and honorable means, to protect and encourage our citizens in the exercise of those advantages. If, in other respects, we pursue a wise policy, and remain abstracted from the convulsions of Europe, that for many years to come are not likely to have much interval; enjoying, as we shall, all the advantages of peace-wages, peace-freight, peace-insurance, and the other peace privileges of neutral traders, we must nearly acquire a monopoly of this commerce. We can make usually a treble voyage; that is, from this continent to the West Indies, thence to Europe, and back to America again, in the time that the European vessels are engaged in one West India voyage. This circumstance of itself, properly improved, at a period perhaps not very remote, whenever others of those islands may be released from, or refuse longer submission to their present colonial restrictions upon commerce, will enable us to rival even the British in transporting to the markets of Europe the very valuable productions of the West Indies, such as sugar, molasses, coffee, spirits, &c. Again, sir, I state nothing new when I say that the produce of this country is essential to the West India islands, and the facility with which we can convey it to them, must at all times enable us to furnish them much cheaper than they can be furnished by any other people. It requires not indeed the spirit of prophecy to foretell, that the time must come when the very convenient and commanding situation we occupy, in every point of view, relative to the most valuable of those islands, will place in our hands the entire control of their trade; that is, if we pursue a wise and politic system of measures in relation to them; holding fast upon all the great advantages nature has given us, and promptly availing ourselves of such others as circumstances may throw in our way. As a source of public revenue; as a means of increasing our national capital; and, though last, not

least, as a nursery for our seamen, the importance of this commerce to the United States is incalculable, and should be guarded with a jealous eye; we should never suffer our rightful participation in it to be diminished by others, much less have the folly to diminish it ourselves. Those islands are situated in our very neighborhood, and but for the arbitrary colonial restrictions upon commerce, to which they are now subject, no other nation could hold a successful competition with us in their markets, unless some such ill-judged, baleful, anti-commercial measure, as has now fallen to the genius of the gentleman from Pennsylvania to contrive, should enable them to do so.

I will now, sir, notice the relative hostile situations of France and St. Domingo, and see how far gentlemen are borne out in their positions—that the people of St. Domingo can be considered only as revolted slaves, or, at best, as French subjects now in a state of rebellion; that they are nationally in no respect separated from France; that to trade with them is a violation of the laws of nations, and that we have no right to do so. This, so far as I could understand them, forms a summary of the points that have been urged in support of the present measure, and in opposition to the trade; each of which deserves some attention. If I am wrong in these points, the friends of the bill will please now to correct me; and I hope gentlemen will become convinced during the discussion, that the case which so many of them have stated, of any foreign power succoring and protecting the revolted slaves of the Southern States, is not the parallel of that before us. As to the first point, it is to be recollected, that some years past, to quote from high authority, “during the agonizing spasms of infuriated man, seeking through blood and slaughter his long lost liberties,” when our enlightened sister Republic of France was, in her abundant kindness, forcing liberty upon all the world, and propagating the rights of man at the point of the bayonet, in one of her paroxysms of philanthropy, she proclaimed, by a solemn decree of her Convention, the blessings of liberty and equality to the blacks of St. Domingo too; invited them to the fraternal embrace, and to the honors of a Conventional sitting. The wisdom or the policy of this proceeding, it is not my business to inquire into, but it certainly affords some excuse, if any be necessary, for the subsequent conduct of those unfortunate people. The decree abolishing for ever slavery in the West Indies, (French,) and extending all the blessings of citizenship and equality to every human creature, of whatever grade or color, then under the Government of France,

passed the Convention in February, seventeen hundred and ninety-four. The existence of such a paper I did not expect would have been doubted here till the gentleman from New Jersey (Mr. Kitchel) actually denied it. In the new Annual Register, of ninety-four, is the following account of it, page 347: "La Croix rose to move the entire abolition of slavery in the dominions of France. The National Convention rose spontaneously to decree the proposition of La Croix. On motion of Danton, on the 5th, the Convention resolved to refer to the Committee of Public Safety the decree of emancipation, in order that they might provide the most effectual and safest means of carrying it into effect." But here is the decree itself, as taken from the Gentleman's Magazine, and furnished to me by a friend: "National Convention, 1794, February 4th. The National Convention decrees that slavery is abolished in all the French colonies. It decrees in consequence that all the inhabitants of the French colonies, of whatever color, are French citizens, and from this day forward shall enjoy those rights which are secured to them by the declaration of rights, and by the constitution." And this same principle the Convention frequently recognized, by receiving at their bar, in the most complimentary manner, various deputations of blacks from the West Indies, thanking them for the boon conferred upon them. One of these instances, among many others, I will submit, as a curiosity in legislative proceedings, to the Senate: "National Convention. Order of the day. A band of blacks of both sexes, amidst the sound of martial music; and escorted by a great band of Parisians, came into the hall to return thanks to the Legislature for having raised them to the rank of men. The President gave the fraternal kiss to an old negress, 114 years old, and mother of eleven children. After which she was respectfully conducted to an armed chair and seated by the side of the President, amid the loudest bursts of applause." By the original decree, the liberty of the blacks was established. This ceremony, it seems, was only to show their equality; and certainly, sir, the President could not have given a much stronger, or a much kinder evidence of it to the old lady. But, Mr. President, the claim of those people to freedom does not rest here. I have in my hand a document of much more recent date, and even more to be relied upon. It is the proclamation of the then First Consul, now the Emperor and King, to the people of St. Domingo, when General Le Clerc went there, in the winter of 1801, at the head of the French forces, which I will read. First, a short proclamation of General Le Clerc's:

LIBERTY. EQUALITY.

PROCLAMATION.

On board the Ocean, off the Cape, the 15th of Pluviose, 10th year of the
French Republic, (Feb. 6, 1802.)

*Le Clerc, General-in-chief of the Army of St. Domingo, Captain General of
the Colony, to the inhabitants of St. Domingo:*

Inhabitants of St. Domingo! Read the proclamation of the First Consul of the Republic. It assures to the blacks that liberty for which they have so long fought; to commerce and to agriculture that prosperity without which there can be no colonies. His promises will be faithfully fulfilled; to doubt it would be a crime.

The General-in-chief,

LE CLERC, *Captain General.*

By order of the General-in-chief,

LENOIR.

Extract from the Register of the Deliberations of the Consuls of the Republic, Paris, the 17th Brumaire, 10th year of the French Republic, one and indivisible, (November 8, 1801.)

PROCLAMATION.

The Consuls of the Republic to the Inhabitants of St. Domingo.

Inhabitants of St. Domingo! Whatever may be your origin and your color, ye are all Frenchmen; ye are all free, and all equal before God and the Republic.

France, like St. Domingo, has been a prey to factions, and torn by civil and foreign wars. But all is changed! Every people have embraced Frenchmen, and have sworn to them peace and friendship! All Frenchmen have likewise embraced each other, and have sworn to be all friends and brothers. Come ye, also, and embrace Frenchmen, and rejoice to see your friends and your brothers of Europe.

The Government sends you the Captain General, Le Clerc. He carries with him great forces to protect you against your enemies, and against the enemies of the Republic. If it should be told you these forces are intended to tear from you your liberty, answer, the Republic has given us liberty. The Republic will not suffer that it should be taken from us. Rally round the Captain General; he restores you abundance and peace. Rally round him; he who shall dare to separate himself from the Captain General will be a traitor to his country, and the vengeance of the Republic shall devour him as fire devours your dried canes.

Given at Paris, in the palace of Government, the 17th Brumaire, 10th year of the French Republic.

BONAPARTE.

By the First Consul,

H. B. MARET, *Secretary*.

A true copy,

LE CLERC, *Captain General*.

This, sir, is proof irresistible; after which it can never be said that the liberation of those people has been the rash act, or the mere ebullition, of the heat and convulsion of a revolution. We have here their liberty solemnly recognized and proclaimed to the world eight years afterwards by the man who was then and still is at the head of the French Government; or rather, who is now the Government itself. I cite these papers to show that the French have now no claim, either in right, in justice, or in law, to any portion of the people of St. Domingo as slaves; that they are individually free, if the highest authorities in France could constitute them so, which will surely not be questioned; and in order to rebut a fallacious idea that has been taken up, and urged by some, that our merchants are conducting this commerce with slaves, the property of freemen, and not with freemen themselves, thus ingeniously endeavoring to draw a distinction between the situation of St. Domingo and that of any other colony that has ever heretofore attempted to separate itself from the mother country; to make theirs, according to the language of the gentleman from Virginia, (Mr. MOORE,) a totally new, unprecedented case, and in this manner to take them

out of the humane provisions of the laws of nations. I grant, sir, their case does form a distinction from any other, and in this it consists: the people of St. Domingo are fighting to preserve not only their independence as a community, but their liberty as individuals; to prevent a degradation from the exalted state of freemen to the debased condition of slaves, struggling against the manacles that have been forged for them by the lawless ambition of power. We are told, however, they are at least not free as a people, as a body politic; but in such a state of rebellion that no nation has a right to trade with them.

Let us now, Mr. President, attend to the present state of St. Domingo; but first to the circumstances that have led to it, and see how far this doctrine will apply. After the bands of the political society that had connected France and her colonies together were broken asunder; when the old Government of that country was completely dissolved, and one usurpation succeeded day after day to the places and to the vices of another; when the axe of the guillotine had extinguished the magic lustre of royalty, and even that grace and beauty, [a very superb likeness of the late Queen of France was hanging directly before him,] that had reigned so long unrivalled, the pride and idol of the nation, had to yield herself to the rudeness of a common executioner, and was humbled in death before a scoffing multitude; when the constitution that had been recently established by the voice of the nation, and under which it was hoped they would flourish and be happy, had fallen into the ruthless fangs of the Jacobins, and the patriots who supported it had found refuge in exile, or mingled their blood upon the scaffold; when all rightful, civil, and legal authority was at an end, and the Revolutionary sabre alone gave law, the people of St. Domingo, as did the people of these States under other circumstances, declared themselves free and independent, determined to take their stand among the nations of the world, and now refuse allegiance to any foreign power. They have organized a Government for themselves; they are *de facto* the governors of the country, and in every respect act as an independent people. They have waged, and carried on with France, for many years, a most serious war, in defence of what they say are their rights; and the French, by force of arms, have been endeavoring to subjugate them. And now let me ask if the United States, or any other power upon earth, is competent to decide this great controversy between them? They each claim to be free and independent, and therefore acknowledge no superior; the struggle is between themselves, and no other

nation has a right to interfere by direct acts of hostility, or by any commercial restrictions that can go to effect injuriously either of the parties, and to do so is a departure from neutral ground, and an infraction of the laws of nations, as I think will be within my power to show from the most incontestable authorities. For this purpose I will advert again to *Vattel*.

Vattel, b. 2, ch. 4, sec. 56, says: "When the bands of the political society are broken, or at least suspended between the sovereign and his people, the contending parties may then be considered as two distinct powers; and since they are both equally independent of all foreign authority, nobody has a right to judge between them. Either may be in the right." B. 3, ch. 15, sec. 295, says: "When a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, the State is dissolved, and the war between the two parties stands on the same ground in every respect as a public war between two different nations." Again, sir, section 293 of the same book and chapter says: "A civil war breaks the bands of society and Government, or at least suspends their force and effect. It produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the State, and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or the wrong belongs? On earth they have no common superior. They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and, being unable to come to an agreement, have recourse to arms."

We have been exultingly told by Mr. Talleyrand, and it has been echoed from this Chamber by the gentleman from New York, (Mr. MITCHILL,) that even the British consider St. Domingo a colony of France, and upon this principle condemn our vessels for trading there. I grant that such a pretext, among many others, has been resorted to in order to destroy our commerce; I grant that such an infringement of our neutral rights has been committed, and the reasons that have induced it must be obvious to the most superficial observer. The British, with a monopoly of this commerce themselves, and those same Englishmen who now condemn our vessels for trading to St. Domingo, upon the ground of its being a French colony, heretofore, when it

suited their purposes, so far acknowledged the independence of those very people as to enter into a Commercial Treaty with them, and are now not only in the constant practice of trading there themselves, but of granting licenses to others to do so. I hope, however, the day has not come when our commerce is to be under the control of the Lords of the Admiralty, or our national rights dependent upon the judicial opinions of Sir William Scott; and the learned gentleman from New York must indeed have been pressed with the barrenness of his case when he had to resort to such an argument, derived from such a source. The gentleman from New Jersey, (Mr. KITCHEL,) I must in candor say, has, in support of the present measure, assumed premises totally new and different. His reasons, like most of those we have been accustomed lately to hear, were in the true style of modern legislation, enveloped in all the mysteries of secrecy. He tells us that we had better give up this commerce, because it is not valuable. Where the gentleman obtained this piece of information is utterly beyond the comprehension of my understanding: none such, certainly, has ever been laid before us; nor did he condescend to give us a clue to its source; but as if sufficient to urge it upon our faith with all the confidence of apostolic inspiration—to us who doubted, he refused even an opportunity of acquiring knowledge through any other channel; voted against the propositions of my friend and colleague, which went to ask of the Executive the actual state of this commerce, and to ascertain its real value. To do strict justice to the gentleman's argument, it is simply this, that whenever any foreign power may please to demand of us the surrender of a right, however just and honest it may be; however it may comport with the dignity of the Government to preserve it; if, in a pecuniary point of view, if upon a cool peddling calculation of risk, profit, and loss, it cannot be deemed of high value, we are at once to give it up. This argument, I will confess, is worthy of the bill. So striking, and of such a kind is their affinity, that they seem peculiarly calculated to expose each other, and to excite in every mind valuing the honor, the dignity, and the character of the nation, like sentiments of disgust. The case cited by the gentleman from Pennsylvania, (Mr. MACLAY,) of the Indians, I think in 1755, under the avowed authority, direction, and support of the French Government, ravaging our frontiers, surely can have no relation to the question before us. Has this Government ever furnished arms and ammunition, or done any other act in order to assist and encourage the people of St. Domingo in attacking the countries of their

neighbors? I cannot conceive what subject that might have been before Congress during our present session, the gentleman must have had in his mind, to which he supposed this case could apply; certainly not the present; it is infinitely more distant in point of analogy than of date. I have been exerting my imagination to discern any object or bearing it can have, that I might endeavor to meet it, but the total impossibility of the one, will save me the trouble of the other.

I rejoice that the President has expressed, in his late Message, a disposition to take into the protection of the Government the commerce of the United States, though little has yet been done, or attempted. This project of the gentleman from Pennsylvania I hope forms no part of the new system, and he would have acted wisely before he submitted it to have examined better its consequences, and to have looked for a moment at the present condition of our commerce. What is it? Plundered upon every coast and in every sea, your flag, instead of being a protection against insult, seems to have become an invitation to injury. The British, the French, and the Spaniards, in the ratio of their force, treat us with like indignities; this is the only point in which they can agree. The former have adopted, and openly avow a system of measures that, if not counteracted, must go to deprive us of the most important of our neutral rights; while the two latter are anxiously rivalling each other in the most lawless and piratical depredations upon our defenceless trade; even the commissioned vessels of our Government have not been suffered to pass the high seas without insult and violence. The British and the French, whenever it suits their views, blockade our very ports; the British take their position off New York, so as to be convenient to the courts of Halifax; and our friends, the French, to whom the gentleman from Pennsylvania has told us we should be so particularly civil, take occasionally into their holy keeping, the commerce of Charleston and New Orleans, so as to be at a convenient distance from the British. Our trade with St. Domingo, indeed, the French have not been able to stop, nor have even the British yet assumed to themselves this maritime right; but the gentleman from Pennsylvania, in his great good faith and abundant charity, will now anticipate their wishes, and do it for them. This, indeed, surpasses even Christian meekness; it is not only, when smitten upon one cheek, turning the other also, but chastening ourselves with more than monkish severity, in the most vulnerable part.

On motion, by one of the majority, to reconsider the fourth section which restricts the operation of the law to one year, it passed in the negative.

On motion, to agree to the final passage of the bill, it was determined in the affirmative—yeas 21, nays 8, as follows:

YEAS.—Messrs. Anderson, Baldwin, Bradley, Condit, Fenner, Gaillard, Gilman, Howland, Kitchel, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Sumter, Turner, Worthington, and Wright.

NAYS.—Messrs. Adams, Bayard, Hillhouse, Pickering, Plumer, Stone, Tracy, and White.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be “An act to suspend the commercial intercourse between the United States and certain parts of the island of St. Domingo.”

MONDAY, March 3.

Privileges of Foreign Ministers.

The Senate resumed, as in Committee of the Whole, the amendment reported by the select committee to the bill to prevent the abuse of the privileges and immunities enjoyed by foreign Ministers within the United States.

Mr. ADAMS.—There are two points of view, Mr. President, in which it appears to me to be important that the provisions of this bill should be considered—the one as they relate to the laws of nations, and the other as they regard the Constitution of the United States. From both these sources have arisen inducements combining to produce conviction upon my mind of the propriety, and indeed the necessity of some measure similar in principle to that which I have had the honor to propose. I shall take the liberty to state them in their turns, endeavoring to keep them as distinct from each other as the great and obvious difference of their character requires, and that their combination on this occasion may appear in the striking light which may render it the most effectual.

By the laws of nations, a foreign Minister is entitled, not barely to the general security and protection which the laws of every civilized people extend to the subjects of other nations residing among them. He is indulged with many privileges of a high and uncommon nature—with many exemptions from the operation of the laws of the country where he resides, and among others, with a general exemption from the jurisdiction of the judicial courts, both civil and criminal. This immunity is, in respect to the criminal jurisdiction, without limitation; and an Ambassador, though guilty of the most aggravated crimes of which the heart of man can conceive or his hand commit, cannot be punished for them by the tribunals of the Sovereign with whom he resides. Should he conspire the destruction of the constitution or government of the State, no jury of his peers can there convict him of treason. Should he point the dagger of assassination to the heart of a citizen, he cannot be put to plead for the crime of murder. In these respects he is considered as the subject, not of the State to which he is sent, but of the State which sent him, and the only punishment which can be inflicted on his crimes is left to the justice of his master.

In a republican government, like that under which we have the happiness to live, this exemption is not enjoyed by any individual of the nation itself, however exalted in rank or station. It is our pride and glory, that all are equal in the eyes of the law; that, however adorned with dignity, or armed with power, no man owing allegiance to the majesty of the nation can screen himself from the vindictive arm of her justice; yet even the nations whose internal constitutions are founded upon this virtuous and honorable principle of equal and universal rights, have, like all the rest, submitted to this great and extraordinary exception. In order to account for so singular a deviation from principles in every other respect deemed of the highest moment and of the most universal application, we must inquire into the reasons which have induced all the nations of the civilized world to this broad departure from the fundamental maxims of their government.

The most eminent writers on the laws of nations have at different times assigned various reasons for this phenomenon in politics and morals. It has sometimes been said to rest upon *fictions* of law. The reasoning has been thus: every Sovereign Prince is independent of all others, and as such cannot, even when personally within the territories of another, be amenable to his jurisdiction. An ambassador represents the person of his master, and

therefore must enjoy the same immunities. But this reasoning cannot be satisfactory; for, in the first place, a foreign Minister does not necessarily represent the person of his master—he represents him only in his affairs; and besides representing him he has a personal existence of his own, altogether distinct from his representative character, and for which, on the principles of common sense, he ought, like every other individual, to be responsible. At other times, another fiction of law has been alleged, in this manner; the foreign Minister is not the subject of the State to which he is sent, but of his own Sovereign: he is therefore to be considered as still residing within the territories of his master, and not in those of the Prince to whom he is accredited. But this fiction, like the other, forgets the personal existence of the Minister. It is dangerous, at all times, to derive important practical consequences from fictions of law, in direct opposition to the fact. If the principle of personal representation, or that of *extritoriality* annexed to the character of a foreign Minister be admitted at all, it can in sound argument apply only to his official conduct—to his acts in the capacity of a Minister, and not to his private and individual affairs. The Minister can represent the person of the Prince, no otherwise than as any agent or factor represents the person of his principal; and it would be an ill compliment to a Sovereign Prince to consider him as personally represented by his Minister in the commission of an atrocious crime. Another objection against this wide-encroaching inference from the doctrine of personal representation, is, that it is suitable only to Monarchies. The Minister of a King may be feigned to represent in all respects the person of his master, but what person can be represented by the Ambassador of a Republic? If I am answered, the *moral person* of the nation, then I reply, *that* can be represented by no individual, being itself a fiction in law, incapable of committing any act, and having no corporeal existence susceptible of representation. I have said thus much on this subject, because I have heard in conversation these legal fictions alleged against the adoption of the bill on your table, and because they may perhaps be urged against it here.

But it is neither in the fiction of *extritoriality*, nor in that of personal representation, that we are to seek for the substantial reason upon which the customary law of nations has founded the extraordinary privileges of ambassadors; it is in the nature of their office, of their duties, and of their situation.

By their office, they are intended to be the mediators of peace, of commerce, and of friendship, between nations; by their duties they are bound to maintain with firmness, though in the spirit of conciliation, the rights, the honor, and the interests of their nation, even in the midst of those who have opposing interests, who assert conflicting rights, and who are guided by an equal and adverse sense of honor; by their situation they would, without some extraordinary provision in their favor, be at the mercy of the very Prince against whom they are thus to maintain the rights, the honor, and the interest of their own. As the ministers of peace and friendship, their functions are not only of the highest and most beneficial utility, but of indispensable necessity to all nations having any mutual intercourse with each other. They are the only instruments by which the miseries of war can be averted when it approaches, or terminated when it exists. It is by their agency that the prejudices of contending nations are to be dissipated—that the violent and destructive passions of nations are to be appeased—that men, as far as their nature will admit, are to be converted from butchers of their kind, into a band of friends and brothers. It is this consideration, sir, which, by the common consent of mankind, has surrounded with sanctity the official character of Ambassadors; it is this which has enlarged their independency to such an immeasurable extent; it is this which has loosed them from all the customary ties which bind together the social compact of common rights and common obligations.

But immunities of a nature so extraordinary cannot, from the nature of mankind, be frequently conferred, without becoming liable to frequent abuse. Ambassadors are still beings subject to the passions, the vices, and infirmities of man. However exempted from the danger of punishment, they are not exempt from the commission of crimes. Besides their participation in the imperfections of humanity, they have temptations and opportunities peculiar to themselves, to transgressions of a very dangerous description, and a very aggravated character. While the functions of their office place in their hands the management of those great controversies, upon which whole nations are wont to stake their existence; while their situations afford them the means, and stimulate them to the employment of the base but powerful weapons of faction, of corruption, and of treachery, their very privileges and immunities concur in assailing their integrity by the promise of security, even in case of defeat—of impunity, even after detection.

The experience of all ages and of every nation has therefore pointed to the necessity of erecting some barrier against the abuse of those immunities and privileges, with which foreign Ministers have at all times and every where been indulged. In some aggravated instances the rulers of the State where the crime was committed have boldly broken down the wall of privilege under which the guilty stranger would fain have sheltered himself, and in defiance of the laws of nations have delivered up the criminal to the tribunals of the country for trial, sentence, and execution; at other times the popular indignation, by a process still more irregular, has, without the forms of law, wreaked its vengeance upon the perpetrators of those crimes, which otherwise must have remained unwhipped of justice. Cases have sometimes occurred when the principles of self-preservation and defence have justified the injured Government, endangered in its vital parts, in arresting the person of such a Minister during the crisis of danger, and confining him under guard until he could with safety be removed. But the practice which the reason of the case and the usage of nations has prescribed and recognized, is, (according to the aggravation of the offence,) to order the criminal to depart from the territories whose laws he has violated, or to send him home, sometimes under custody, to his Sovereign; demanding of him that justice, reparation, and punishment, which the nature of the case requires, and which he alone is entitled to dispense. This power is admitted by the concurrent testimony of all the writers on the laws of nations, and has the sanction of practice equally universal. It results, indeed, as a consequence absolutely necessary from the independence of foreign Ministers on the judicial authority, and is perfectly reconcilable with it. As respects the offended nation, it is a measure of self-defence, justified by the acknowledged destitution of every other remedy. As respects the offending Minister, it is the only means of remitting him for trial and punishment to the tribunals whose jurisdiction he cannot recuse; and as respects his Sovereign, it preserves inviolate his rights, and at the same time manifests that confidence in his justice which civilized nations living in amity are bound to place in each other.

On these principles, thus equitable and moderate in themselves, and thus universally established, is founded every provision of the bill before you, so far as it implicates the law of nations. I have been fully aware that, although by the Constitution of the United States Congress are authorized to define and punish offences against the law of nations, yet this did not imply a

power to innovate upon those laws. I could not be ignorant that the Legislature of one individual in the great community of nations has no right to prescribe rules of conduct which can be binding upon all; and therefore, in the provisions of this bill, it was my primary object not to deviate one step from the worn and beaten path—not to vary one jot or one tittle from the prescriptions of immemorial usage and unquestioned authority.

In consulting for this purpose the writers, characterized by one of our own statesmen in a pamphlet recently laid on our tables, as “the luminaries and oracles to whom the appeal is generally made by nations who prefer an appeal to law rather than to power,” I found that they distinguished the offences which may be committed by foreign Ministers into two kinds—the one against the municipal laws of the country where they reside, and the other against the Government or State to which they are accredited; and that they recommended a correspondent modification of the manner in which they are to be treated by the offended Sovereign. The first section of the bill therefore directs the mode of treatment towards foreign Ministers guilty of heinous offences against the municipal laws; for, as to those minor transgressions which are usually left unnoticed by other States, I have thought no provision necessary for them. The section points out the mode by which the insulted State or injured individual may apply to the Chief Magistrate of the Union for redress, and by what process the President may obtain reparation from the offender’s Sovereign, or, in case of refusal, dismiss the offender from the territories of the United States.

The second section provides for the case of offences against the Government of the nation. If the insult is direct upon the President of the United States himself, it authorizes him at once to discard the offender; if the injury be against the nation, by any conspiracy or other act of hostility, it offers the means of removing at once so dangerous a disturber of the public tranquillity. This also will be found exactly conformable to the directions in *Vattel*.

The third section brings me to the consideration of the relation which the bill bears to the Constitution of the United States. It contains a regulation, the object of which is at once to prevent all misunderstanding by the offending Minister’s Sovereign of the grounds upon which he should be ordered to depart or sent home, and to mark by a strong line of discrimination the cases when a foreign Minister is dismissed for

misconduct, from those when he is expelled on account of national differences. In this latter case, by the general understanding and usage of nations, an order to depart given to a foreign Minister is equivalent to a declaration of war. In the European Governments, where the power of declaring war and that of negotiating with foreign States are committed to the same hands, this nice discrimination of the specific reasons for which a Minister may be dismissed is far less important than with us. The power of declaring war is with us exclusively vested in Congress; and as the order to depart, when founded on national disputes, amounts to such a declaration, it appears to me, by fair inference, that for such cause the President of the United States cannot issue such an order without the express request or concurrence of Congress to that effect. It was from this view of the subject that, in the present bill, the power vested in the President to send home a culpable Minister is so precisely limited to the cases when the Minister shall have deserved that treatment by his personal misconduct. This distinction between the causes for which a foreign Minister may be sent home has been solemnly recognized in a remarkable manner by this Government in the treaty with Great Britain of the 19th November, 1794, in the twenty-sixth article.

Here, sir, the sending home a Minister for national causes is recognized to be the very test of a rupture, and exactly tantamount to a declaration of war. But the same act, done for the Minister's personal misconduct, is acknowledged to be a right of both parties, which they agree to retain; and it is stipulated that it shall not in that case be deemed equivalent to a rupture. The expressions used imply that the parties did not consider themselves as introducing in this part of the article a new law, but as explaining the old. It is merely declaratory, "for greater certainty," and the previous existence of the right is recognized by the stipulation that both parties shall retain it. This is one of the articles of the treaty which have expired; but as expressing the sense both of our own nation and of Great Britain upon the subject to which it relates, it is as effectual as it ever could be. Its provisions are still binding upon both parties as part of the law of nations, though they have ceased to be obligatory as positive stipulations.

It may now perhaps be expected, sir, that I should give some explanation of the more immediate circumstances in which the bill originated. And here I am sensible that I tread upon delicate ground. So highly honorable and

respectable is the office of a foreign Minister, that to treat him with disrespect in common discourse, and still more in legislative deliberation, would be without excuse, were his own conduct altogether unexceptionable. Should the occasion ever happen that a foreign Minister by his own violation of all the common decencies of social intercourse towards the Government to which he was accredited, should forfeit every right to personal respect or esteem, still I hope, sir, I should not forget the consideration due to the credentials of his Sovereign; still I should think myself bound to observe all that moderation of expression which can be consistent with the sentiments of indignation involuntarily excited in my breast by an insult upon the Government of my country.

Within a few days after the Message of the President at the commencement of the present session of Congress was made public, the Spanish Minister^[30] addressed to the Secretary of State a letter couched in terms which it cannot be necessary for me to particularize, and containing, not only strictures of the most extraordinary nature upon all the parts of that Message respecting Spain, but complaints no less extraordinary at what it did not contain. Consider this procedure in its real light, sir, and what is it? A foreign Minister takes to task the President of the United States for the manner in which he has executed one of the most important functions enjoined upon him by the constitution. He not only charges him with misrepresentation in what he did say, but he presumes to dictate to him what he should have said. I forbear all comment upon this conduct as it relates to the present Chief Magistrate. I ask you, sir, and I entreat every member of this Senate to ask himself, What is its tendency as it relates to our country? The Constitution of the United States makes it one of the President's most solemn duties to communicate to Congress correct information relating to the state of our public affairs. In every possible case of disputes and controversies of right between the United States and any foreign nation, the Minister of that nation must have an interest—and the strongest interest, to give a gloss and coloring to the objects in litigation—opposite to the interest of our country. If, whenever the President of the United States, upon the high and solemn responsibility which weighs upon every act of his official duty, gives to Congress that account of our foreign relations which is necessary to enable them to adapt their measures to the circumstances for the general welfare of the Union, a foreign Minister, under color of his official privileges, is to contradict every part of his

statements, to impeach the correctness of his facts, and to chide him even for his omissions, to what an abyss of abasement is the Chief Magistrate of this Union to be degraded! The freedom which a Spanish Minister, unproved, can take to-day, a French Minister would claim as a right to-morrow, and a British Minister would exercise without ceremony the next day. A diplomatic censorship would be established over the Supreme Executive of this nation, and the President would not dare to exhibit to Congress the statement of our national concerns, without previously submitting his Message for approbation to a Cabinet Counsel of foreign Ministers. Under the British Constitution, the speeches of the Sovereign to his Parliament are all settled in his Privy Council, and the Royal lips are understood to give utterance only to the words of the Minister. The reason of this is, that by the forms of their constitution the Sovereign himself is above all responsibility, and the Minister is the person accountable to the nation for the substance of the discourse delivered by his master. In their practice, therefore, the speech is made by him on whom the responsibility rests. But if this new assumption of the Spanish Minister is submitted to, our practice will be an improvement on the British theory of a singular cast indeed; for, while the responsibility will rest upon the President who delivers the Message, its contents will be dictated by persons not only loosed from all responsibility to our country, but bound in allegiance, in zeal, in duty, to the very Princes with whom we have to contend. The same control which by this measure is attempted to be usurped over the acts of the President, will at the next step, and by an easy transition, be extended to the Legislature; and, instead of parcelling out the Message among several committees for their consideration, we shall have to appoint committees upon every part of the Message relating to any foreign Power to wait upon the Minister of that Power, and inquire what it is the pleasure of his master that we should do.

That such is the inevitable tendency and the real intention of the proceeding will appear, not only from a due consideration of the act itself, but from a proper estimate of its avowed motive, and from the subsequent conduct of the same Minister. He addressed this letter to the Secretary of State, not for the purpose of asking any explanation—not for the purpose of giving any satisfaction—not for any of the usual and proper purposes of a diplomatic communication—but (as he himself declares) for our Government to publish, with a view to counteract the statements of the

President's Message. It was a challenge to the President to enter the lists of a pamphleteering war against him, for the instruction of the American people and the amusement of foreign Courts; and having failed in this laudable project, he addresses, after the expiration of forty days, a circular letter to the other foreign Ministers residing in the United States, with copies of his letter to the Secretary of State, as if these foreign Ministers were the regular umpires between him and our Government. Not content however with this appeal, he authorizes them to give copies of his letters to ensure that publication with which our Government had not gratified him, and calls at once upon the American people, and upon the European Courts, to decide between the President and him. Here, too, sir, I beg gentlemen to abstract the particular instance from the general principle of this transaction. The same act which under one set of circumstances can only excite contempt, under another becomes formidable in the extreme. Of the newspaper appeal to the people I say nothing. The people of this country are not so dull of understanding or so depraved in vice as to credit the assertions of a foreigner, bound by no tie of duty to them—the creature and agent of their adversary—in contradiction to those of their own officer, answerable to them for his every word, and stationed at the post of their highest confidence. But the circular to the other foreign Ministers is a species of appeal hitherto unprecedented in the United States. And what is its object? The information of their Courts; that the Governments of France and Great Britain may learn from him the justice and generosity of his master.

It is probable that both those nations—the ally and the enemy of Spain—have much better materials for estimating the justice and generosity of His Catholic Majesty; but what have they to do in the case? By an anonymous newspaper publication, the idiom of which discovers its origin, a precedent is alleged in justification of this extraordinary step, and the reciprocal communication of diplomatic memorials concerning the affair of Holland in the years 1786 and 1787, between the Ministers of Great Britain, France, and Prussia, at the Hague, is gravely adduced as warranting this innovation of the Spanish Minister here. The very reference to that time, place, and occasion, would of itself be a sufficient indication of the intent at this time. In the years 1786 and 1787, the three Powers I have just mentioned undertook, between them, not only to interfere in the internal government of Holland, but to regulate and control it according to a plan upon which they

were endeavoring to agree. Their Ministers, therefore, very naturally communicated to each other the memorials which they presented to the Dutch Government. And what was the result? Two of those three Powers fixed between themselves the doom of Holland—raised a tyrannical faction upon the ruins of that country's freedom, and marched the Duke of Brunswick, at the head of thirty thousand men, into Amsterdam, to convince the Hollanders of the King of Prussia's *justice* and *generosity*.

This, sir, is the precedent called to our recollection for the purpose of reconciling us to the humiliation of our condition. We are patiently to behold a Spanish Minister insulting the President of the United States—dictating to him *his* construction of our constitution—calling upon other foreign Ministers to countenance his presumption—and intrenching himself behind the example of another nation, once made the victim of a like usurpation! The resemblance is but too strong, and will, I hope, not be forgotten by us. If the constitutional powers of a Dutch Stadtholder were prescribed and moulded according to the pleasure and by the interference of foreign Powers, (as undoubtedly they were,) let us remember the fact with a determination never to be so controlled ourselves. It is held up to us as an example: let us take it as warning.

The subsequent proceedings of the Spanish Minister have been all in the same spirit with that under which he presumed to call upon the President to enter the lists of altercation with him before the people of this country. They manifest pretensions to which we ought not to submit—which we ought vigorously to resist. In his last letter to the Secretary of State, he tells him that he will receive no orders but from his own master. Now, if this has any meaning, it must be to deny the United States the right of ordering him away: that is one of the most indisputable rights of every Sovereign Power. When pretensions so destitute of all foundation are advanced, it becomes us immediately to show our sense of them: not to resist them might be construed into acquiescence. It is a virtual dereliction of our rights not to defend them when they are assailed.

I am indeed fully sensible that the operation of the bill I have proposed, should it meet the sanction of Congress, will not be retrospective—that to what has passed no remedy which can now be provided will apply—but we may prevent in future occurrences of a like character, and much more dangerous consequence. We may prevent the spreading of an evil which

threatens the dearest interests of the nation; we may prevent even the repetition of insults and injuries, which, but for the want of the regulations now proposed, in all probability never would have been offered. In my own opinion, the necessity for some legislative provision upon this subject will force itself upon this Government with additional pressure, from year to year, until it can no longer be resisted. If foreign Ministers are to possess in the United States an unbounded independence of all the tribunals of justice, while the United States on their part are to be deprived of the ordinary means of self-defence, enjoyed and exercised by all other Sovereigns, to check the abuse of those formidable privileges, the course of events will, in my belief, at no very distant day, bring us into that unhappy dilemma which will leave no other alternative than to infringe the laws of nations or to sacrifice our constitution—to commit violent outrage upon the rights of others, or to make a dastardly surrender of our own.

The amendment was adopted, and the bill ordered to a third reading.

FRIDAY, March 7.

Privileges of Foreign Ministers.

The Senate resumed the third reading of the bill to prevent the abuse of the privileges and immunities enjoyed by foreign Ministers within the United States.

A motion was made to strike out the first, second, and third sections of the bill. Whereupon, a division of the question was called for; and on the question to strike out the first section, it was determined in the affirmative—yeas 23, nays 7, as follows:

YEAS.—Messrs. Adair, Anderson, Baldwin, Bayard, Bradley, Condit, Gaillard, Gilman, Hillhouse, Howland, Kitchel, Logan, Maclay, Moore, Pickering, Smith of Maryland, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Stone, Sumter, Thruston, and White.

NAYS.—Messrs. Adams, Mitchill, Plumer, Smith of New York, Tracy, Turner, and Worthington.

And on the question to strike out the second section of the bill, it was determined in the affirmative—yeas 21, nays 9, as follows:

YEAS.—Messrs. Anderson, Baldwin, Bayard, Bradley, Condit, Gaillard, Gilman, Hillhouse, Howland, Kitchel, Logan, Maclay, Moore, Pickering, Smith of Maryland, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Stone, Sumter, and Thruston.

NAYS.—Messrs. Adair, Adams, Mitchill, Plumer, Smith of New York, Tracy, Turner, White, and Worthington.

And on the question to strike out the third section of the bill, it was determined in the affirmative—yeas 27, nays 3, as follows:

YEAS.—Messrs. Adair, Adams, Anderson, Baldwin, Bayard, Bradley, Condit, Gaillard, Gilman, Hillhouse, Howland, Kitchel, Logan, Maclay, Moore, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Stone, Sumter, Thruston, Turner, and White.

NAYS.—Messrs. Mitchill, Tracy, and Worthington.

And the bill having been further amended, on the question, Shall this bill pass? it was determined in the negative—yeas 4, nays 24, as follows:

YEAS.—Messrs. Adams, Plumer, Smith of Ohio, and Thruston.

NAYS.—Messrs. Adair, Anderson, Baldwin, Bayard, Bradley, Condit, Gaillard, Gilman, Hillhouse, Howland, Kitchel, Logan, Maclay, Moore, Pickering, Smith of New York, Smith of Tennessee, Smith of Vermont, Stone, Sumter, Tracy, Turner, White, and Worthington.

So the bill was lost.

MONDAY, March 10.

British Aggressions.

The Senate resumed the consideration of the third resolution reported by the committee, on the 5th of February last, to whom was referred that part of the Message of the President of the United States, at the opening of the session, which relates to the spoliations of our commerce.

Mr. S. SMITH.—Mr. President: The subject now before the Senate is, the third resolution reported by your committee on that part of the Message which relates to British spoliations. The first resolution is a declaration of our neutral rights, and has passed the Senate unanimously. The second requests the President to send a special mission to Great Britain to demand restoration of property unlawfully taken from our merchants, and, by a peaceful arrangement, to adjust all differences subsisting between that nation and the United States. The third is now before us. I will take leave to read it.

3. *Resolved*, That it is expedient to prohibit, by law, the importation into the United States of any of the following goods, wares, or merchandise, being the growth, produce, or manufactures of the United Kingdoms of Great Britain and Ireland, or the dependencies thereof, that is to say: woollens, linens, hats, nails, looking-glasses, rum, hardwares, slate, salt, coal, boots, shoes, ribbons, silks, and plated and glass wares. The said prohibition to commence from the —— day of ——, unless, previously thereto, equitable arrangements shall be made between the two Governments, on the differences subsisting between them; and to continue until such arrangements shall be agreed upon and settled.

This resolution is intended, Mr. President, to afford aid to the negotiation recommended in the second. Without this aid, or something similar, I doubt whether Great Britain would not calculate, as heretofore, on an indecisive character in our Government—on its indisposition to lend any aid or protection to commerce; and reasoning thus, whether her Minister might not be induced to believe that he could proceed in safety to the destruction of every part of our commerce with her enemies and their dependencies. This measure, Mr. President, is called a war measure. Is it so? If it is, then does Great Britain maintain a constant war measure against the United States, for she, at all times, prohibits the importation, into her ports, of every article manufactured within our country. She even prohibits our provisions from

being consumed in her kingdoms, except when her wants compel her to admit them. If, then, she has set us the example, and has, by her laws, prohibited every article of our manufacture from being admitted into her kingdoms, how can our prohibiting a part of her manufactures from being imported into the United States, be considered as a war measure? This measure is not intended to take effect immediately. The first of November next is contemplated; which will give full time for negotiation, and for Great Britain to reflect on her cruel and unprovoked conduct towards us—a conduct that has been highly reprobated in England—a conduct that, when examined, has but too much the appearance of a determination to benefit by the plunder of our property, without the authority of law, and directly contrary to the public sanction given to our neutral trade in a correspondence held between Lord Hawkesbury and Mr. King, in 1801.

FRIDAY, March 14.

Captain Peter Landais.

The bill, entitled “An act for the relief of Peter Landais,” was read the third time; and, on motion to strike out the word “six,” and in lieu thereof to insert the word “three,” thereby to reduce the sum proposed for his relief to three thousand dollars, it passed in the negative.

On motion, by one of the majority, it was agreed to reconsider the last vote, and to strike out the word “six.”

On motion, to fill the blank with the word “five,” it passed in the negative; and, on motion, it was agreed to fill the blank with the word “four.”

On the question, shall the bill pass as amended? it was determined in the affirmative—yeas 19, nays 10, as follows:

YEAS.—Messrs. Adair, Adams, Anderson, Bayard, Condit, Gilman, Howland, Kitchel, Maclay, Mitchill, Smith of Maryland, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Thruston, Turner, White, Worthington, and Wright.

NAYS.—Messrs. Baldwin, Bradley, Gaillard, Hillhouse, Moore, Pickering, Plumer, Smith of New York, Sumter, and Tracy.

So it was *Resolved*, That this bill pass as amended.

MONDAY, March 17.

Ex-Bashaw of Tripoli.

Mr. BRADLEY, from the committee appointed on the 16th of January last, to consider the Message of the President of the United States of the 13th of January, respecting the application of Hamet Caramalli, made the following report:

The ex-Bashaw founds his claim on the justice of the United States, from his services and suffering in their cause, and from his having been deceived and amused with the prospect of being placed on his throne, as legitimate Sovereign of Tripoli, and frequently drawn from eligible situations for the purpose of being made the dupe and instrument of policy, and finally sacrificed to misfortune and wretchedness. The committee, from a full investigation of the documents which have been laid before Congress, with other evidence that has come within their knowledge, are enabled to lay before the Senate a brief statement of facts in relation to the ex-Bashaw, and the result of their deliberations thereon.

This unfortunate prince, by the treason and perfidy of his brother, the reigning Bashaw, was driven from his throne, an exile, to the Regency of Tunis, where the agency of the United States, in the Mediterranean, found him; and as early as August, eighteen hundred and one, entered into a convention to co-operate with him, the object of which was to obtain a permanent peace with Tripoli, to place the ex-Bashaw on his throne, and procure indemnification for all expense in accomplishing the same. This agreement was renewed in November following, with encouragement that the United States would persevere, until they had effected the object; and in eighteen hundred and two, when the reigning Bashaw had made overtures to the ex-Bashaw to settle on him the two provinces of Derne and Bengazi, and when the ex-Bashaw was on the point of leaving Tunis, under an escort

furnished him by the reigning Bashaw, the agents of the United States prevailed on him to abandon the offer, with assurance that the United States would effectually co-operate, and place him on the throne of Tripoli.

The same engagements were renewed in eighteen hundred and three, and the plan of co-operation so arranged, that the ex-Bashaw, by his own exertions and force, took possession of the province of Derne; but the American squadron, at that time under the command of Commodore Morris, instead of improving that favorable moment to co-operate with the ex-Bashaw, and to put an end to the war, unfortunately abandoned the Barbary coast, and left the ex-Bashaw to contend solely with all the force of the reigning Bashaw, and who in consequence was obliged, in the fore part of the year eighteen hundred and four, to give up his conquest of Derne, and fly from the fury of the usurper into Egypt. These transactions were, from time to time, not only communicated by our agents to Government, but were laid before Congress in February, eighteen hundred and four, in the documents accompanying the report of the Committee of Claims on the petition of Mr. Eaton, late Consul at Tunis, which committee expressed their decided approbation of his official conduct, and to which report the committee beg leave to refer.

In the full possession of the knowledge of these facts, the Government of the United States, in June, eighteen hundred and four, despatched Commodore Barron, with a squadron, into the Mediterranean, and in his instructions submitted to his entire discretion the subject of availing himself of the co-operation of the ex-Bashaw, and referring him to Mr. Eaton as an agent sent out by Government for that purpose.

After Commodore Barron had arrived on the station, in September, eighteen hundred and four, he despatched Mr. Eaton and Captain Hull into Egypt, to find the ex-Bashaw, with instructions to assure him that the Commodore would take the most effectual measures with the forces under his command, to co-operate with him against the usurper, his brother, and to establish him in the Regency of Tripoli. After encountering many difficulties and dangers, the ex-Bashaw was found in Upper Egypt with the Mamelukes, and commanding the Arabs; the same assurances were again made to him, and a convention was reduced to writing, the stipulations of which had the same objects in view; the United States to obtain a permanent peace and their prisoners, the ex-Bashaw to obtain his throne. Under these

impressions, and with the fullest confidence in the assurances he had received from the agents of the United States, and even from Commodore Barron himself, by one of his (the Bashaw's) secretaries, whom he had sent to wait on the Commodore for that purpose, he gave up his prospects in Egypt, abandoned his property in that country, constituted Mr. Eaton general and commander-in-chief of his forces, and with such an army as he was able to raise and support, marched through the Libyan desert, suffering every hardship incident to such a perilous undertaking; and with his army, commanded by General Eaton, aided by O'Bannon and Mann, three American officers, who shared with him the dangers and hardships of the campaign, and whose names their country will for ever record with honor, attacked the city of Derne in the Regency of Tripoli, on the twenty-seventh day of April, one thousand eight hundred and five, and, after a well-fought battle, took the same; and for the first time planted the American colors on the ramparts of a Tripolitan fort. And in several battles afterwards, one of which he fought without the aid of the Americans, (they having been restrained by orders, not warranted by any policy, issued as appears by Mr. Lear, the American Consul,) defeated the army of the usurper with great slaughter, maintained his conquest, and, without the hazard of a repulse, would have marched to the throne of Tripoli, had he been supported by the co-operation of the American squadron, which in honor and good faith he had a right to expect. The committee would here explicitly declare, that, in their opinion, no blame ought to attach to Commodore Barron. A wasting sickness, and a consequent mental as well as bodily debility, had rendered him totally unable to exercise the duties of commanding the squadron, previously to this momentous crisis, and from which he has never recovered; and to this cause alone may be attributed the final failure of the plan of co-operation which appears to have been wisely concerted by the Government, and hitherto bravely executed by its officers.

But, however unpleasant the task, the committee are compelled, by the obligations of truth and duty, to state further that Mr. Lear, to whom was intrusted the power of negotiating the peace, appears to have gained a complete ascendancy over the Commodore, thus debilitated by sickness; or rather, having assumed the command in the name of the Commodore, to have dictated every measure; to have paralyzed every military operation by sea and land; and finally, without displaying the fleet or squadron before Tripoli, without consulting even the safety of the ex-Bashaw or his army,

against the opinion of all the officers of the fleet, so far as the committee have been able to obtain the same, and of Commodore Rodgers, (as appears from Mr. Lear's letter to the Secretary of State, dated Syracuse harbor, July 5th, 1805,) to have entered into a convention with the reigning Bashaw, by which, contrary to his instructions, he stipulated to pay him sixty thousand dollars, to abandon the ex-Bashaw, and to withdraw all aid and assistance from his army. And although a stipulation was made that the wife and children of the ex-Bashaw should be delivered to him on his withdrawing from the territories of Tripoli, yet that stipulation has not been carried into execution, and it is highly probable was never intended to be. The committee forbear to make any comment on the impropriety of the orders issued to General Eaton to evacuate Derne, five days previous to Mr. Lear's sailing from Malta for Tripoli, to enter on his negotiation; and the honor of the nation forbids any remarks on the unworthy attempt to compel the ex-Bashaw and General Eaton to give up and abandon their conquest, by withholding supplies from the army at Derne, eight days previous to the commencement of the negotiation; nor will the committee condescend to enter into a consideration of pretended reasons, assigned by Mr. Lear to palliate his management of the affairs of the negotiation; such as, the danger of the American prisoners in Tripoli, the unfitness of the ships for service, and the want of means to prosecute the war; they appear to the committee to have no foundation in fact, and are used rather as a veil to cover an inglorious deed, than solid reasons to justify the negotiator's conduct. The committee are free to say, that, in their opinion, it was in the power of the United States, with the force then employed, and a small portion of the sixty thousand dollars, thus improperly expended, to have placed Hamet Caramalli, the rightful sovereign of Tripoli, on his throne; to have obtained their prisoners in perfect safety, without the payment of a cent, with assurance, and probable certainty, of eventual remuneration for all expenses; and to have established a peace with the Barbary Powers, that would have been secure and permanent, and which would have dignified the name and character of the American people.

Whatever Hamet, the ex-Bashaw, may have said, in his letter of June 29th, 1805, to palliate the conduct which first abandoned and then ruined him, the Senate cannot fail to discern that he was then at Syracuse, in a country of strangers to his merits, and hostile to his nation and religion, and

where every circumstance conspired to depress him, which, together with the fear of starving, left him scarcely a moral agent.

Upon these facts, and to carry into effect the principle of duty arising out of them, the only remuneration now left in the power of the United States to make, the committee herewith present a bill for the consideration of the Senate. The committee are confident that the legislature of a free and Christian country can never leave it in the power of a Mahometan to say that they violate their faith, or withhold the operations of justice from one who has fallen a victim to his unbounded confidence in their integrity and honor.

The report was ordered to lie for consideration.

Mr. BRADLEY, from the same committee, also reported a bill “for the relief of Hamet Caramalli, ex-Bashaw of Tripoli;” and the bill was read, and ordered to the second reading.

TUESDAY, March 18.

Thanks to General Eaton, and his Companions.

Mr. Bradley submitted the following resolutions for consideration, which were read:

“Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That Congress entertain a high sense of the patriotism, intrepidity, and valor, of William Eaton, late General-in-chief of the army of the ex-Bashaw of Tripoli, and of Priestly N. O’Bannon, and George Washington Mann, three American officers, who, with a small number of American marines and the forces of the ex-Bashaw, composed of Greeks and Arabs, courageously marched through the Libyan desert, defeated the Tripolitan army near Derne, and took that city on the twenty-seventh day of April, eighteen hundred and five, and for the first time spread the American eagle in Africa, on the ramparts of a Tripolitan fort, and thereby contributed to release three hundred American prisoners from bondage in Tripoli.

“Resolved, As a further testimony of the gratitude of their country, that the President of the United States be requested to cause to be surveyed, within the limits of the public lands of the United States now open for sale, as the said William Eaton shall elect, a township of six miles square, to be called Derne, as a memorial of the conquest of that city, for ever; and to cause to be laid out, surveyed, and granted, to the said William Eaton, in one entire tract, within the said township, ——— thousand acres; and to Priestly N. O’Bannon and George Washington Mann, each ——— thousand acres; and to Arthur Campbell, Bernard O’Brian, David Thomas, and James Owen, the only surviving marines who served as volunteers in that expedition, three hundred and twenty acres each; to be granted to them, respectively, their heirs, and assigns, for ever.”

WEDNESDAY, March 19.

Death of Senator Jackson.

The Senate were informed that JAMES JACKSON, one of their members, from the State of Georgia, had deceased the last night, whereupon,

Resolved, That a committee be appointed to take order for superintending the funeral of JAMES JACKSON, and that the Senate will attend the same; and that notice of the event be given to the House of Representatives; and,

Ordered, That this committee consist of Messrs. ANDERSON, SUMTER, and WRIGHT.

Resolved, unanimously, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of JAMES JACKSON, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.

The Senate adjourned.

THURSDAY, March 20.

A message from the House of Representatives informed the Senate that the House will attend the funeral of JAMES JACKSON, Esquire, late a Senator

of the United States. They have also determined to wear mourning on the left arm, for the space of one month, in testimony of their respect for the memory of that distinguished Revolutionary patriot.

TUESDAY, April 1.

Ex-Bashaw of Tripoli.

The bill for the relief of Hamet Caramalli, ex-Bashaw of Tripoli, being under consideration, on the question, Shall this bill pass? Mr. BRADLEY having finished his remarks in support of the bill—

Mr. ADAMS said: Mr. President, when the question was yesterday stated from the Chair, on the final passage of this bill, and I found myself called on to record my assent to or dissent from it, I felt myself bound in duty to call upon the committee by whom it was reported, for the evidence upon which they had rested the claim of Hamet Bashaw to the grant of money which is proposed by the bill to be made to him. Together with the bill the committee had reported what they term “a brief statement of facts;” upon which they declare the bill itself to be founded, and wherein they consider his claim, not on the generosity, but on the justice of the United States, from his service and sufferings in their cause, and from his having been deceived and amused with the prospect of being placed on his throne, as legitimate sovereign of Tripoli, and frequently drawn from eligible situations for the purpose of being made the dupe or instrument of policy, and finally sacrificed to misfortune and wretchedness. The bill accordingly makes the grant, expressly in consideration of his services and sufferings in our cause; and, in voting for the bill as it now stands, I should consider myself as sanctioning, as far as my vote would go, the report of the committee, upon which the bill is founded. This I could not do without further information. I thought, sir, and have thought, from the moment when I first saw the report, that the statement it contained, far from being supported by the voluminous documents which have been, in the course of the session, communicated to the Senate, respecting all our transactions with Tripoli, was in many respects contradictory to the whole tenor of those documents; my recollection of the documents was, indeed, only of their general tenor; for, amidst the pressure of the various other important business which we have

had before us, I had not found time for a reperusal of them since I had heard them read at your table. But, of their general complexion, my mind had received a clear and very decided impression, with which I found it impossible to reconcile any part of the committee's report. I presumed, however, that the committee were possessed of evidence, not yet communicated to the Senate, which warranted them in those assertions, which all the papers with which I had been made acquainted tended rather to disprove than to confirm. The chairman of the committee has this day informed the Senate of the grounds upon which the report was drawn up, and has communicated what he considers as the additional evidence in its support. He has also favored us with the arguments upon which he thinks the views of the subject, taken in the report, are fully substantiated. I regret, sir, that neither his arguments nor his evidence have been satisfactory to my mind; but that, after giving them what I deem their full share of weight, I still remain convinced that the report is founded upon a supposed state of facts altogether erroneous, and a view of the whole subject altogether incorrect.

The merits of Hamet Bashaw's claim upon the United States must depend upon the nature of the engagements contracted between the United States and him, and upon the transactions under those engagements. With respect to the nature of the engagements, there is a very striking difference between the statement of the committee and the statement of the President of the United States in his Message of the 13th of January last. The statement of the committee is as much at variance with the ideas of Hamet Bashaw himself as with those of the President, and equally in opposition to those of Commodore Barron and Mr. Lear, as they appear in the printed papers.

With regard to the facts material to constitute the peculiar character of the ex-Bashaw's claim, the statement of the committee is no less in flat contradiction to the statements of the President, to the acknowledgments of Hamet Bashaw, and to the tenor of the most substantial documents.

As to the nature of the engagements, the committee represent Hamet Bashaw as having been inveigled, deceived, amused with promises to place him on his throne, and finally betrayed and sacrificed. They appear to think the United States were bound, at all events, and, by their exclusive exertions, to restore him to his dignity, and that the mere act of withdrawing

their aid, without accomplishing that object, was a treacherous violation of their faith plighted to him.

Let us now see what was the real nature of those magnificent offers of the reigning Bashaw to his brother—the armed escort, and the two provinces—upon the abandonment of which, under the influence of our agents, the report raises such a fund of merit and sacrifice on the part of Hamet. The committee take this circumstance from a statement made by Mr. Eaton to the Committee of Claims, in February 7, 1804, printed among the documents of that season. Largely as the chairman of the committee has drawn from that statement in making his report, it is singular that the following passage in it, page 16, has escaped his attention:

“Meantime, I had wrought upon the Bey’s Minister to countenance and aid my project, in consideration of my promise to give him \$10,000, on condition of his fidelity, and in case of its success. I thought it good policy to secure the Minister; not so much for the service he would render, as to check the mischief which seemed impending. He confessed it was the intention of the enemy Bashaw, by this illusive overture, to get possession of the rival brother in order to destroy him; and he permitted my dragoman, under an injunction of secrecy, to communicate the design to Hamet Bashaw. This determined him to go to Malta, under a pretext to his people of evading the Swedish and American cruisers.”

And are these the overtures? Is this the eligible situation, of such precious value to the ex-Bashaw, that this nation, or its Government, is to be charged with perfidy and treachery because our agents prevailed upon him to abandon them? Even so! The reigning Bashaw sends an escort of forty men, with offers of two provinces, to his exiled brother, for the sole purpose of getting him into his possession to destroy him. Our agents discover the project; apprise the destined victim of his intended fate; rescue him from inevitable destruction—and now, we are to be told, that by this act, we were not conferring, but receiving an obligation, which bound us in honor and duty to restore him to his throne.

Thus much, sir, for the nature of the transactions between the agents of the United States and the ex-Bashaw, prior to the year 1804, when Commodore Barron with his squadron were sent into the Mediterranean,

and when he was vested with discretionary powers to avail himself of Hamet's co-operation, and referred to Mr. Eaton as an agent sent out by Government for that purpose.

This discretionary power of Commodore Barron, the chairman of the committee has this day strongly contended was altogether unlimited, and such is the idea given of it in the report; but this I apprehend to be a mistake of the utmost importance. It is in direct contradiction to the statement of the President's Message, and to the testimony of Commodore Barron himself. The President's Message says:

“We authorized Commodore Barron, then proceeding with his squadron, to enter into an understanding with Hamet, if he should deem it useful; and as it was represented that he would need some aid of arms and ammunition, and even of money, he was authorized to furnish them to a moderate extent, according to the prospect of utility to be expected from it. The instructions of June 6th, to Commodore Barron, show that a co-operation only was intended, and by no means a union of our object with the fortunes of the ex-Bashaw; and the Commodore's letters of March 22, and May 19, prove that he had the most correct idea of our intentions.”

Thus, sir, the discretionary power of Commodore Barron, to avail himself of Hamet's co-operation, was not unlimited—neither by the intention of the Executive, nor in his own understanding. It was limited both as to the nature of the engagement he was to contract, and as to the sum appropriated for the purpose; co-operation is a term of reciprocal import—it certainly means that there should be some operation on both sides. The operation in this case by sea, was to be conducted entirely and exclusively by the squadron of the United States. Hamet Bashaw could contribute, and was expected to contribute, nothing to that. His operation was to be by land; and, upon principles of ordinary reciprocity, it might have been required that this also should be exclusively at his expense. The Government, however, were willing to furnish him some aid even there. And the sum of twenty thousand dollars had been appropriated for that purpose. This was going as far as prudence would warrant, or as good faith could require. Hamet himself could have entertained no other expectation, since, in his letter to Mr. Eaton, of 3d January, he says: “Your operations should be carried on by sea;

mine by land.” And even after the peace was made, in his letter to Mr. Eaton, of 20th June, he acknowledges, as clearly as language can express it, that the failure of co-operation was not on our part, but his own; that his means had not been found to answer our reasonable expectations; and that he was “satisfied with all our nation has done concerning him.”

If Hamet, after the capture of Derne, was totally unable to command any resources, or bear any part in co-operation with us, how can it be said that he would, without the hazard of a repulse, have marched to the throne of Tripoli, had he been supported by the co-operation of our squadron? But, further, I ask what were the means, what were the resources, of this sovereign prince, from the hour when Mr. Eaton received his orders to withdraw from him? The event, sir, is worth a thousand arguments. He could not support himself a day. He was compelled to take instantaneous refuge on board our vessels, and was saved from destruction only by being brought away. Does this look like marching to the throne of Tripoli?

I am aware, sir, that the report has very explicitly declared that no blame ought to attach to Commodore Barron; but it has also declared that a wasting sickness, and consequent mental as well as bodily debility, had rendered him totally unable to command the squadron; that to this cause alone may be attributed the final failure of the plan of co-operation; that Mr. Lear appears to have gained a complete ascendancy over him, thus debilitated by sickness; or rather that Lear, having assumed the command, in the name of the Commodore, paralyzed every military operation by sea and land; and they go so far as to impute to Mr. Lear all the letters of Commodore Barron, subsequent to that of 21st of March, 1805. If the gentleman from Maryland considers all this, sir, as perfectly respectful to the Commodore, I can only say that it appears in a different light to me, nor do I imagine it will bear that complexion to the person immediately interested in it. But the chairman of the committee has gone yet further. He has told you, in so many words, that the Commodore was reduced to a state of perfect childhood; has represented him as equally incapable of thought and of action; in a mere state of dotage. And all this upon what evidence? Why, because, in one of his letters, Commodore Barron says he is unable to write with his own hand; and because, from the 19th to the 22d of May, there appear among the documents, five letters, long letters, says the

gentleman, and yet the Commodore's secretary had an inflammation in his eyes.

MONDAY, April 7.

The bill, entitled "An act further to alter and establish certain post roads, and for other purposes," was read the second time, and referred to Messrs. ANDERSON, WHITE, and STONE, to consider and report thereon.

Importation of Slaves.

Mr. WRIGHT communicated a resolution of the Legislature of the State of Maryland instructing their Senators and Representatives in Congress to use their utmost exertions to obtain an amendment to the Constitution of the United States to prevent the further importation of slaves; whereupon, Mr. WRIGHT submitted the following resolutions for the consideration of the Senate:

Resolved, &c. That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as a part of the said constitution, to wit:

Resolved, That the migration or importation of slaves into the United States, or any territory thereof, be prohibited after the first day of January 1808.

THURSDAY, April 10.

Non-Importation Act.

The Senate took into consideration, in Committee of the Whole, (Mr. ANDERSON having been requested by the PRESIDENT to take the Chair,) the amendments reported by the select committee to the bill, entitled "An act to prohibit the importation of certain goods, wares, and merchandise." And, after debate, the PRESIDENT resumed the Chair, and Mr. ANDERSON, from

the Committee of the Whole, reported that they had disagreed to the amendments of the select committee, but had agreed to an amendment to the bill; which was read, and the bill was amended accordingly; and, on the question, Shall the bill pass to the third reading, as amended? it passed in the affirmative—yeas 19, nays 9, as follows:

YEAS.—Messrs. Adams, Anderson, Baldwin, Condit, Gaillard, Gilman, Howland, Kitchel, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Thruston, Turner, and Wright.

NAYS.—Messrs. Adair, Bradley, Hillhouse, Pickering, Plumer, Stone, Sumter, Tracy, and White.

FRIDAY, April 11.

Potomac Bridge.

The bill, entitled “An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia,” was read the third time; and, on motion to postpone the further consideration thereof until the first Monday in December next, it passed in the affirmative—yeas 19, nays 10, as follows:

YEAS.—Messrs. Adair, Adams, Anderson, Baldwin, Gilman, Hillhouse, Howland, Kitchel, Maclay, Mitchill, Pickering, Smith of Maryland, Smith of New York, Stone, Sumter, Thruston, Tracy, Worthington, and Wright.

NAYS.—Messrs. Bradley, Condit, Gaillard, Moore, Plumer, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Turner, and White.

So the bill was postponed.

SATURDAY, April 12.

Exclusion of Army and Naval officers from civil appointments.

The bill, entitled “An act to prohibit the officers of the Army and Navy from holding or exercising any civil office,” was read the second time; and on motion to postpone this bill to the first Monday in December next, it passed in the affirmative—yeas 17, nays 10, as follows:

YEAS.—Messrs. Adair, Adams, Baldwin, Condit, Gilman, Howland, Kitchel, Logan, Mitchill, Plumer, Smith of Maryland, Smith of New York, Smith of Tennessee, Smith of Vermont, Tracy, White, and Wright.

NAYS.—Messrs. Anderson, Gaillard, Hillhouse, Maclay, Moore, Pickering, Stone, Sumter, Turner, and Worthington.

So the bill was postponed.

MONDAY, April 14.

Tunisian Demand and Threat.

The following Message was received from the PRESIDENT OF THE UNITED STATES, which was read, and ordered to lie for consideration:

To the Senate and House of Representatives of the United States:

During the blockade of Tripoli by the squadron of the United States, a small cruiser, under the flag of Tunis, with two prizes (all of trifling value) attempted to enter Tripoli, was turned back, warned, and attempting again to enter, was taken and detained as prize by the squadron. Her restitution was claimed by the Bey of Tunis, with a threat of war, in terms so serious that, on withdrawing from the blockade of Tripoli, the commanding officer of the squadron thought it his duty to repair to Tunis with his squadron, and to require a categorical declaration, whether peace or war was intended. The Bey preferred explaining himself by an Ambassador to the United States, who, on his arrival, renewed the request that the vessel and her prizes should be restored. It was deemed proper to give this proof of friendship to the Bey, and the Ambassador was informed the vessels would be restored. Afterwards he made a requisition of naval stores to be sent to the Bey, in order to secure a peace for the term of three years, with a threat of war, if

refused. It has been refused, and the Ambassador is about to depart without receding from his threat or demand.

Under these circumstances, and considering that the several provisions of the act of March 25th, 1804, will cease, in consequence of the ratification of the treaty of peace with Tripoli, now advised and consented to by the Senate, I have thought it my duty to communicate these facts, in order that Congress may consider the expediency of continuing the same provisions for a limited time, or making others equivalent.

TH. JEFFERSON.

APRIL 14, 1806.

TUESDAY, April 15.

Non-Importation Act.

The bill, entitled “An act to prohibit the importation of certain goods, wares, and merchandise,” was read the third time; and the amendment adopted was again considered and rejected.

A motion was made to postpone the bill for the purpose of considering the following resolution:

Resolved, That, in consequence of a more favorable course of conduct on the part of Great Britain, in respect to the disturbance of the trade of the United States; and entertaining a hope that the British Ministry, lately established, will be disposed to a reasonable arrangement of all affairs of difference between the two nations, the Senate do hereby postpone the further consideration of the bill, entitled “An act to prohibit the importation of certain goods, wares, and merchandise,” to the first Monday in November next.

And, on the question to agree to this motion, it passed in the negative—yeas 9, nays 19, as follows:

YEAS.—Messrs. Adair, Adams, Hillhouse, Logan, Pickering, Plumer, Sumter, Tracy, and White.

NAYS.—Messrs. Anderson, Baldwin, Condit, Gaillard, Gilman, Howland, Kitchel, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Stone, Thruston, Worthington, and Wright.

And on the question, Shall this bill pass? it was determined in the affirmative—yeas 19, nays 9, as follows:

YEAS.—Messrs. Adams, Anderson, Baldwin, Condit, Gaillard, Gilman, Howland, Kitchel, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Tennessee, Smith of Vermont, Thruston, Worthington, and Wright.

NAYS.—Messrs. Adair, Hillhouse, Logan, Pickering, Plumer, Stone, Sumter, Tracy, and White.

So it was *Resolved*, That this bill pass.

FRIDAY, April 18.

Demand and Threat of Tunis.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with the request of the Senate, of yesterday's date, I now communicate the entire correspondence between the Ambassador of Tunis and the Secretary of State; from which the Senate will see, that the first application by the Ambassador for restitution of the vessels taken in violation of blockade, having been yielded to, the only remaining cause of difference brought forward by him, is the requisition of a present of naval stores, to secure a peace for three years; after which, the inference is

obvious, that a renewal of the presents is to be expected, to renew the prolongation of peace for another term. But this demand has been pressed in verbal conferences, much more explicitly and pertinaciously than appears in the written correspondence. To save the delay of copying, some originals are enclosed, with a request that they be returned.

TH. JEFFERSON.

APRIL 18, 1806.

SATURDAY, April 19.

The bill for the relief of Hamet Caramalli was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be, “An act for the temporary relief of Hamet Caramalli.”

MONDAY, April 21.

Adjournment.

On motion, it was

Resolved, That Messrs. WHITE and ADAMS be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Expunging the Journal.

On motion, that every thing in the Journal relative to the memorials of S. G. Ogden and William Smith be expunged therefrom, it passed in the affirmative—yeas 13, nays 8, as follows:

YEAS.—Messrs. Adair, Condit, Gilman, Kitchel, Logan, Mitchill, Smith of Maryland, Smith of New York, Stone, Thruston, Turner, Worthington, and Wright.

NAYS.—Messrs. Adams, Baldwin, Hillhouse, Pickering, Plumer, Smith of Ohio, Tracy, and White.^[31]

Ordered, That the Secretary inform the House of Representatives that the Senate, having finished the business before them, are about to adjourn.

Whereupon, the Senate adjourned without day.

NINTH CONGRESS.—FIRST SESSION.
PROCEEDINGS AND DEBATES
IN THE HOUSE OF REPRESENTATIVES.

LIST OF REPRESENTATIVES.

New Hampshire.—Silas Betton, Caleb Ellis, David Hough, Samuel Tenney, and Thomas W. Thompson.

Massachusetts.—Joseph Barker, Barnabas Bidwell, Phaniel Bishop, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, William Ely, Isaiah L. Green, Seth Hastings, Jeremiah Nelson, Josiah Quincy, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, and Peleg Wadsworth.

Rhode Island.—Nehemiah Knight, and Joseph Stanton.

Connecticut.—Samuel W. Dana, John Davenport, jr., Jonathan O. Mosely, Timothy Pitkin, jr., John Cotton Smith, Lewis B. Sturges, and Benjamin Tallmadge.

Vermont.—Martin Chittenden, James Elliot, James Fisk, and Gideon Olin.

New York.—John Blake, jr., Philip Van Cortlandt, George Clinton, Silas Halsey, Josiah Masters, Henry W. Livingston, Gurdon S. Mumford, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, David Thomas, Uri Tracy, Killian K. Van Rensselaer, Nathan Williams, Eliphalet Wickes, and Daniel C. Verplanck.

New Jersey.—Ezra Darby, Ebenezer Elmer, John Lambert, James Sloan, Henry Southard, and William Helms.

Pennsylvania.—Isaac Anderson, David Bard, Robt. Brown, Joseph Clay, Frederick Conrad, Wm. Findlay, Andrew Gregg, James Kelly, Michael Leib, John Pugh, John Hamilton, John Rea, Jacob Richards, John Smilie, Samuel Smith, John Whitehill, and Robert Whitehill.

Delaware.—James M. Broom.

Maryland.—John Archer, John Campbell, Leonard Covington, Charles Goldsborough, Patrick Magruder, Roger Nelson, William McCreery, Nicholas R. Moore, and Joseph B. Nicholson.

Virginia.—Burwell Basset, Matthew Clay, John Claiborne, John Clopton, Christopher Clark, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, David Holmes, John G. Jackson, Walter Jones, Joseph Lewis, Jr., John Morrow, Thomas Newton, jr., John Randolph, Thomas Mann Randolph, John Smith, Philip R. Thompson, Abram Trigg, and Alexander Wilson.

Kentucky.—Geo. Michael Bedinger, John Fowler, Thos. Sanford, John Boyle, Matthew Lyon, and Matthew Walton.

North Carolina.—Nathaniel Alexander, Willis Alston, jr., William Blackledge, Thomas Blount, Evans Alexander, James Holland, Thomas Keenan, Nathaniel Macon, Duncan MacFarland, Richard Stanford, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

Tennessee.—Wm. Dickson, John Rhea, G. W. Campbell.

South Carolina.—Levi Casey, William Butler, Elias Earle, Thomas Moore, Robert Marion, David R. Williams, O'Brien Smith, and Richard Wynn.

Georgia.—Peter Early, Joseph Bryan, Cowles Mead, and David Meriwether.

Ohio.—Jeremiah Morrow.

Mississippi Territory.—Delegate: William Lattimore.

Indiana Territory.—Delegate: Benjamin Parke.

MONDAY, December 2, 1805.

This being the day appointed by the constitution for the annual meeting of Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats, to wit:

From New Hampshire—Silas Betton, Caleb Ellis, David Hough, Samuel Tenney, and Thomas W. Thompson.

From Massachusetts—Joseph Barker, Barnabas Bidwell, Phanuel Bishop, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, William Ely, Isaiah L. Green, Jeremiah Nelson, Josiah Quincy, Ebenezer Seaver, Samuel Taggart, Joseph B. Varnum, and Peleg Wadsworth.

From Rhode Island—Nehemiah Knight and Joseph Stanton.

From Connecticut—Samuel W. Dana, John Davenport, jr., Jonathan O. Mosley, John Cotton Smith, Lewis B. Sturges, and Benjamin Tallmadge.

From Vermont—Martin Chittenden, James Elliot, James Fisk, and Gideon Olin.

From New York—John Blake, jr., Silas Halsey, Josiah Masters, Gurdon S. Mumford, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, David Thomas, Uri Tracy, Killian K. Van Rensselaer, and Nathan Williams.

From New Jersey—Ezra Darby, Ebenezer Elmer, John Lambert, James Sloan, and Henry Southard.

From Pennsylvania—Isaac Anderson, David Bard, Robert Brown, Joseph Clay, Frederick Conrad, William Findlay, Andrew Gregg, Michael Leib, John Pugh, John Rea, Jacob Richards, John Smilie, Samuel Smith, John Whitehill, and Robert Whitehill.

From Maryland—John Campbell, Leonard Covington, Charles Goldsborough, Patrick Magruder, William McCreery, Nicholas R. Moore, and Joseph H. Nicholson.

From Virginia—Burwell Bassett, John Claiborne, John Clopton, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, David Holmes, John G. Jackson, Joseph Lewis, jun., John Morrow, Thomas Newton, jr., John Randolph, Thomas M. Randolph, John Smith, Philip R. Thompson, and Alexander Wilson.

From Kentucky—George Michael Bedinger, and Thomas Sanford.

From North Carolina—Willis Alston, jun., Thomas Blunt, James Holland, Thomas Keenan, Nathaniel Macon, Richard Stanford, Marmaduke

Williams, Joseph Winston, and Thomas Wynns.

From Tennessee—William Dickson, and John Rhea.

From South Carolina—Levi Casey, Elias Earle, Thomas Moore, and David R. Williams.

From Georgia—Peter Early, Cowles Mead, and David Meriwether.

From Ohio—Jeremiah Morrow.

Delegate from the Mississippi Territory—William Lattimore.

And a quorum, consisting of a majority of the whole number, being present, the House proceeded, by ballot, to the choice of a Speaker; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of NATHANIEL MACON, one of the Representatives for the State of North Carolina: whereupon Mr. MACON was conducted to the Chair, from whence he made his acknowledgments to the House as follows:

“*Gentlemen*: Accept my sincere thanks for the honor you have conferred on me. Permit me to assure you, that my utmost endeavors will be exerted to discharge the duties of the Chair with fidelity, impartiality, and industry; and that I shall rely with confidence on the liberal and candid support of the House.”

The House proceeded in the same manner to the appointment of a Clerk; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of JOHN BECKLEY.

The oath to support the Constitution of the United States, as prescribed by the act, entitled “An act to regulate the time and manner of administering certain oaths,” was administered by Mr. NICHOLSON, one of the Representatives for the State of Maryland, to the Speaker; and then the same oath of affirmation was administered by Mr. SPEAKER to all the members present.

The same oath, together with the oath of office prescribed by the said recited act, were also administered by Mr. SPEAKER to the Clerk.

Ordered, That a message be sent to the Senate to inform them that a quorum of this House is assembled, and have elected NATHANIEL MACON, one of the Representatives for North Carolina, their Speaker; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that a quorum of the Senate is assembled and ready to proceed to business; and that, in the absence of the VICE PRESIDENT of the United States, the Senate have elected the Honorable SAMUEL SMITH their President *pro tempore*: the Senate have resolved that two Chaplains, of different denominations, be appointed to Congress, for the present session, one by each House, who shall interchange weekly. The Senate having appointed a committee on their part, jointly with such committee as may be appointed on the part of this House, to wait on the PRESIDENT OF THE UNITED STATES, and inform him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

Resolved, That Mr. JOHN RANDOLPH, Mr. CAMPBELL of Maryland, and Mr. CROWNINSHIELD, be appointed a committee on the part of this House, jointly, with the committee on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

The House then proceeded, by ballot, to the appointment of a Sergeant-at-Arms to this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of JOSEPH WHEATON.

Resolved, That THOMAS CLAXTON be appointed Doorkeeper, and THOMAS DUNN Assistant Doorkeeper of this House.

Resolved, That the Rules and Orders established by the late House of Representatives, shall be deemed and taken to be the Rules and Orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

Mr. JOHN RANDOLPH, from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, reported that the committee had performed that service; and that the President signified to them that he would make a

communication to this House to-morrow, at twelve o'clock, by way of message.

TUESDAY, December 3.

Several other members, to wit: ABRAM TRIGG, from Virginia; GEORGE W. CAMPBELL, from Tennessee; and ROBERT MARION, from South Carolina, appeared, produced their credentials, and took their seats in the House.

President's Message.

A Message was received from the PRESIDENT OF THE UNITED STATES, which was read, and referred to the consideration of a Committee of the Whole on the state of the Union. [For this Message see Senate proceedings of this day's date, *ante*, [page 346](#).]

WEDNESDAY, December 4.

Two other members, to wit: JOHN ARCHER, from Maryland, and WILLIAM BUTLER, from South Carolina, appeared, produced their credentials, and took their seats in the House.

THURSDAY, December 5.

Another member, to wit: JAMES KELLY, from Pennsylvania, appeared, produced his credentials, and took his seat in the House.

FRIDAY, December 6.

Army Rules, &c.

Mr. VARNUM said it would be recollected that the rules and regulations for the government of the Army had never been revised since the era of the present Government; and that consequently the rules and regulations established during the Revolutionary war still continued in force, though our circumstances had materially changed. From the present aspect of

affairs, he thought it became necessary that a revision should take place, that they might be adapted to the provisions under the present Government. An attempt to this effect had been made during the two last sessions; and in this House a bill had passed, which had been rejected in the Senate. He was of the opinion that it became the House, by again attending to the subject, to do their duty; and if neglect should attach any where, it should be at the proper door. He, therefore, moved the following resolution:

Resolved, That a committee be appointed to prepare rules and regulations for the government of the Army of the United States, and that they have leave to report by bill or otherwise.

Agreed to, and a committee of seven members appointed.

Yazoo Claims.

Mr. GREGG said he wished to submit to the House a resolution on a subject of considerable importance, which had engaged the House at several of its previous sessions, and which was generally known by the name of the Yazoo claims. The discussions on this subject had occupied much time, and had excited greater irritation than any other subject within these walls. He supposed there was no probability that the subject would be permitted, by the claimants, to sleep, while the act appropriating five millions was permitted to remain in force. His object was, to repeal that act. By this step the claimants would not be placed in a worse situation, as the courts of justice would be open to them. Mr. G. said he did not expect the House immediately to act on this resolution, though he was prepared, at once, to go into it. But as it was important, and related to a subject on which the papers were voluminous, he would be satisfied that it should lie for some time on the table, the more especially that new members might become acquainted with it. He then offered the following resolution:

Resolved, That so much of an act, entitled “An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,” as appropriates any portion of the said lands for the purpose of satisfying, quieting, or compensating any claims to

the said lands, derived from any act, or pretended act of the State of Georgia, and neither recognized by the articles of agreement and cession between the United States and the State of Georgia, nor embraced by the two first sections of the above-mentioned act, be repealed.

Ordered to lie on the table.

Executive Documents.

A Message was delivered from the PRESIDENT OF THE UNITED STATES, by Mr. COLES, his Secretary, as follows:

“Mr. Speaker: I am directed by the President of the United States to deliver you a Message in writing.”

The SPEAKER having received and opened a packet of considerable size, observed that the Message was confidential, and thereupon ordered the galleries to be cleared.

In about one hour and a half, the doors were opened, when it appeared that part of the communications made by the President were confidential, and that the members of the House remained under an injunction of secrecy with regard to them; and that another part was not confidential. This part embraces, among others, the following documents:

1. A letter from Governor Claiborne to the Secretary of State, dated October 24, 1805, in which, after stating the preparations making by the Spaniards at Pensacola and other places, he says: “I flatter myself that hostilities between the United States and Spain may be avoided, and that an honorable adjustment of our differences may ensue. But I am inclined to think that the Spanish agents calculate on a speedy rupture, and are making all the preparations that their means permit to commence the war in this quarter.”

2. Statements respecting the detention of the American gunboats.

3. Correspondence between Governor Claiborne and the Marquis de Casa Calvo, on exempting the Spanish officers from municipal taxes.

4. Correspondence between Governor Williams, of the Mississippi Territory, and Governor Grandpre, with sundry communications to the Secretary of State on outrages committed in the Mississippi Territory.

5. Documents to show that the settlement of Bayou Pierre, on the Red River, at which a principal aggression took place, was originally made by France while possessing Louisiana, and came to the possession of Spain only by the general delivery of Louisiana to her, and as a part of it.

6. Extract of a letter from C. Pinckney, dated August 1805, as well as one dated September 22, 1805, respecting Spanish spoliations.

7. Communications from Gov. Claiborne, dated October 24, 1805, respecting obstructions on the Mobile.

8. Copy of a letter from the commandant of the ship Huntress to the Secretary of the Navy.

MONDAY, December 9.

Several other members, to wit, from Virginia, EDWIN GRAY, and WALTER JONES; from New York, HENRY W. LIVINGSTON and ELIPHALET WICKES; and from Georgia, JOSEPH BRYAN; appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. LEIB presented a petition of the late crew of the frigate Philadelphia, representing that they have been advised that under the maritime regulations of the United States, persons taken by the Barbary Powers are allowed on their release a pecuniary compensation for clothing received during their captivity, and some small sum for tobacco and other articles, usually called jail-money, for which they have received no compensation; but that these extraordinary expenses have been deducted from their pay, and praying relief.—Referred to the Committee of Claims.

TUESDAY, December 10.

Several other members, to wit, from Kentucky, JOHN BOYLE; from New Jersey, WILLIAM HELMS; from Connecticut, TIMOTHY PITKIN, junior; and from New York, PHILIP VAN CORTLANDT, appeared, produced their credentials, were qualified, and took their seats in the House.

Exportation of Arms, &c.

The House took into consideration the amendments of the Committee of the Whole to the bill prohibiting, for a limited time, the exportation of arms and ammunition from the United States; in all of which they concurred.

Mr. COOK moved to substitute “five hundred dollars” in the room of “one hundred;” the sum for exporting prohibited articles beyond which is followed by the forfeiture of the vessel—under the impression that the provision was too rigorous.

This amendment was supported by Mr. CROWNINSHIELD, and opposed by Mr. DAWSON, and lost—77 members concurring in the report of the Committee of the Whole.

On motion of Mr. OLIN, “cannon balls and mortars” were added to the list of prohibited articles.

On motion of Mr. DAWSON, an amendment was introduced, applying the penalties of the bill to the exportation of the prohibited articles by land.

On motion of Mr. NICHOLSON the provisions of the bill were extended to the Territories of the United States.

Mr. GREGG said he understood the bill under consideration was only a report in part. He had no disposition to oppose its passage. He only rose to express his hope that when the committee made a further report, they would lay before the House the information necessary to enable them to act intelligently. It had, from the commencement of the Government, been the practice of the House to call on the Secretary of War to state the amount of military stores on hand, accompanied by his opinion of the further supplies deemed necessary. No such thing had yet been done this session. The House neither knew the quantity of military stores on hand, nor could calculate the effects of the bill. They did not know what was the quantity of sulphur and

saltpetre on hand, or whether there was a sufficiency of those important raw materials, in case we should be embroiled in a war—

The SPEAKER here interrupted Mr. GREGG by observing that there was no motion before the House.

After a few remarks from Mr. NICHOLSON and Mr. GREGG, on the details of the bill, it was ordered, on the motion of the former, to be recommitted to the committee who introduced it, for amendment.

WEDNESDAY, December 11.

Another member, to wit, DANIEL C. VERPLANCK, from New York, appeared, produced his credentials, and took his seat in the House.

Sword to General Eaton.

Mr. BIDWELL said that, in the late war between the United States and Tripoli, distinguished services had been rendered by Mr. Eaton, which had contributed to the peace lately made with that power. Intimation of this fact was not only derived from its public notoriety, but likewise from the President of the United States. He thought these services worthy the notice of Congress. He therefore submitted the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present a sword, in the name of Congress, to William Eaton, Esq., as a testimony of the high sense entertained of his gallantry and good conduct in leading a small band of our countrymen, and others, through the desert of Libya, on an expedition against Tripoli, in conjunction with the ex-Bashaw of that Regency; defeating the Tripolitan army at Derne, with the assistance of a small part of the naval force of the United States, and contributing thereby to a successful termination of the war, and the restoration of our captive fellow-citizens to liberty and their country.

Referred, on the motion of Mr. VARNUM, to a Committee of the Whole tomorrow.

French Spoliations.

Mr. J. RANDOLPH observed that, at the first session of the eighth Congress, there had been an appropriation of \$3,750,000 for the purpose of paying American claims for spoliations committed by the people of France, which had been assumed in the convention that transferred to the United States the sovereignty of Louisiana; that bills, in satisfaction of these claims, were daily presented for payment at the Treasury; but, that, on the 31st of this month, the appropriation would cease, when the sum remaining unexpended would be carried to the credit of the surplus fund. The Committee of Ways and Means had received a letter, representing the circumstances, from the Secretary of the Treasury, which had induced them to come to a resolution to ask leave to present a bill on the subject.

Leave having been granted—

Mr. J. RANDOLPH made a report, consisting of a letter from the Secretary of the Treasury, representing the facts stated by him, and a bill, supplementary to the act making provision for the payment of claims of citizens of the United States, on the Government of France, the payment of which has been assumed by the United States, by virtue of the convention of the 30th of April, 1803, between the United States and the French Republic.

The bill provides that the balance of the \$3,750,000 remaining unexpended on the 31st of December next, shall not be carried to the surplus fund, but shall continue applicable to the satisfaction of the claims until they shall be satisfied.—Referred to the Committee of the Whole on Monday next.

THURSDAY, December 12.

Another member, to wit, JOHN HAMILTON, from Pennsylvania, appeared, produced his credentials, was qualified, and took his seat in the House.

BENJAMIN PARKE having also appeared as a Delegate from the Indiana Territory of the United States, the said oath was administered to him by the SPEAKER, and he took his seat in the House accordingly.

General Eaton.

On the motion of Mr. BIDWELL, the House resolved itself into a Committee of the Whole on the resolution offered yesterday, relative to William Eaton.

The Chairman read the resolution as follows:

“Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be requested to present a sword, in the name of Congress, to William Eaton, Esq., as a testimony of the high sense entertained of his gallantry and good conduct in leading a small band of our countrymen and others through the desert of Libya, on an expedition against Tripoli, in conjunction with the ex-Bashaw of that Regency; defeating the Tripolitan army at Derne, with the assistance of a small part of the naval force of the United States, and contributing thereby to a successful termination of the war, and the restoration of our captive fellow-citizens to liberty and their country.”

Mr. BIDWELL moved to amend the resolution by striking out the word “sword,” and by inserting in lieu thereof the words, “a medal of gold, with proper devices.”

Mr. J. CLAY wished the gentleman from Massachusetts would let the word “sword” stand in the resolution. It was only on extraordinary occasions, he believed, that a medal was awarded. He was very willing to vote for presenting a sword on this occasion; but, if a medal was insisted upon, he should be compelled to vote against the resolution.

Mr. ELLIOT requested that the resolution passed at the last session, relative to Commodore Preble, and the officers and marines under his command, might be read.

The resolution was accordingly read, which ordered a medal to be struck, and a sword to be given to each of the officers.

Mr. E. said, that the objection of the gentleman from Pennsylvania (Mr. J. CLAY) to the amendment offered by the gentleman from Massachusetts, (Mr. BIDWELL,) substituting a gold medal in the room of a sword, appeared to be founded on the idea that a medal would be a meed disproportionate to the importance of the services, or the official rank of the gentleman who was the object of the resolution; in other words, that it would be too great a reward. I did not, said Mr. E., anticipate the objection from any quarter of the House, and regret extremely that it has arisen. From the peculiar character with which the gentleman who is intended to be honored by the resolution, was invested by the Government, it becomes a point of no small

delicacy, and even of some difficulty, to debate the question at all. We are, indeed, told in the President's Message, that the important services of our gallant countryman undoubtedly contributed to the impression which produced peace with Tripoli. It was proper for the President to say this, and to say no more; but, in order to enable us to pay a proper tribute on our part to merit so conspicuous, it becomes necessary to avail ourselves of information derived from unofficial sources. In every thing which we can do upon this subject, we are anticipated by the loud voice of fame, and this consideration has induced me sometimes to doubt the propriety of doing any thing whatever. It has, however, always been deemed policy, and even duty, in free governments, to distinguish by national honors those citizens who have performed important national services. It is perfectly understood that our brave countryman commanded, in conjunction with the ex-Bashaw of Tripoli, a force sufficiently respectable to be considered as an army, and of course that the popular appellation of General Eaton had been conferred upon good grounds. In that strong point of view in which the subject will be seen by liberal minds, inadequacy of force and means, compared with the greatness of the object and the event, will give greater honor to the achieving of the enterprise. If we act at all, we ought to bestow a mark of distinction suitable for a general officer, or an officer of distinguished rank, to accept. Shall we refuse a medal, the appropriate reward of the brave Preble, and offer a sword, which was given to the subordinate naval officers, when the services of Preble, however meritorious, and greatly meritorious they were, failed of effecting the object which the world believes that Eaton has accomplished? By the modern notions of martial etiquette and honor, a sword is the appropriate token of distinction and reward for officers of subordinate rank. It is believed that a simple and concise vote of thanks, by the Representatives of a free people, is the noblest meed of exalted merit and patriotism.

An army, composed in part of Americans, but chiefly of the descendants of the ancient Grecians, Egyptians and Arabians; in other words, an army collected from the four quarters of the globe, and led by an American commander to conquest and glory, is a phenomenon in military history calculated to attract the attention of the world, not only by its novelty, but by its real influence and consequence. It ought to be considered, too, that this army, notwithstanding the singularity of its organization and character, and the smallness of its numbers and its means, acted in a cause which

might be thought to affect, at least in some remote degree, the general interest of mankind. Since the destruction of Cato, and his little senate at Utica, the banner of freedom had never waved in that desert and barbarous quarter of the globe; and he who carried it so nobly, in the language of the resolution, through the desert of Libya, and placed it so triumphantly upon the African shore of the Mediterranean, deserves to be honorably distinguished by that country and that Government, to which the enterprise has added lustre. I repeat it, Mr. Chairman, we can do nothing in which we are not anticipated by fame. Fame has already devoted to the name which we are laboring to celebrate, the *monumentum ære perennius*, the imperishable column of glory, which is the just reward of patriots only, and which impartial history denies to the mere conquerors and robbers of mankind.

Mr. SMILIE remarked, that it added to the value of an honor conferred, to have it bestowed by a unanimous vote. It was not, however, his purpose to trouble the House with a speech. He should confine himself to making one or two remarks. He considered it correct that honors conferred should be apportioned to merit. It was not so important whether the man on whom they were bestowed, was the commander of an army, or whether he filled an inferior station. Whatever his station might be, he who conducted himself well in the service of his country, was entitled to her thanks. Mr. S. said he would next examine the advantages which the services of Mr. Eaton had gained to his country, and see whether they were equal to those which we had derived from the services of other great men. From his impression, he thought they had been highly advantageous, and equally so with those rendered by Commodore Preble and his brave associates, whose conduct he highly approved. He believed that the expedition of Mr. Eaton had greatly contributed to a peace; and if this were so, he did not know a more essential service he could have rendered. For these reasons he was in favor of awarding a medal in preference to a sword.

Mr. QUINCY hoped the House would bestow a medal instead of a sword. He would say that, on such an occasion, a medal was more proper than a sword. When the resolution was offered, he had a solid objection to it, which had, in some measure, been removed by the proposed amendment. A sword was not an appropriate reward for the service rendered on this occasion. It was a reward for valor, and mere valor. In this case he

considered the valor displayed as a very small part of the distinction of Mr. Eaton. He wished that the motion had been submitted to a select committee, that not only the nature of the compliment, but likewise the form of the expression, might have been better adapted to what he conceived to be the character of the service rendered. He did not think the circumstances stated in the resolution were those which were the most appropriate. He did not consider the leading a small band through the desert of Libya, the defeating the Tripolitan army at Derne, the contributing to a peace, and the liberation of our countrymen, as characteristic of the services rendered. The peculiar character of those services was this: that Mr. Eaton, being a private citizen, and called upon by no official station or duty, had the greatness of mind to plan a scheme by which the dethronement of a usurper, the restoration of the lawful heir, and the release of our captive countrymen were to have been effected. A conception of this kind belonged only to great and superior minds; and what was sufficient to fill the minds of most men, the machinery for effecting this plan, was to him but of a secondary nature. He believed it would be for the reputation of the United States to give some select and appropriate reward, such as a man like Eaton ought to receive, and such as it would be to the honor of our country to give.

The question was then taken on Mr. BIDWELL's amendment, which was carried by a considerable majority.

Mr. JACKSON said, he entertained a high sense of the extraordinary merit of the officer who was the object of the resolution under consideration, and was of opinion that the House should express their highest sentiment of approbation. To do this, he thought the phraseology of the resolution ought to be changed in conformity to the ideas of the gentleman from Massachusetts. He would, therefore, with this view, move that the committee should rise, with the intention of moving in the House the reference of the resolution to a select committee for such alteration.

The question was taken on the rising of the committee—yeas 52, nays 54.

Mr. QUINCY suggested the propriety of substituting Barca in the room of Libya, as the latter was an antiquated word, not to be found in modern maps.

Mr. BIDWELL observed, that he was not tenacious of the particular form of the expression. If that suggested by his colleague was deemed most correct, he had no objection to it. He would, however, remark, that the word Libya was taken from an expression used by Mr. Eaton in one of his letters. It was certainly a word used in modern times, although it might not be in general use.

As to the general question, Mr. B. hoped that, as some gentlemen thought the resolution went too far, while others thought it did not go far enough, and, as the general sentiment was, that something ought to be done by the House, it would be considered that a middle course between the two Extremes was the fittest, and that there would be a sufficient magnanimity to give a unanimous vote in favor of the resolution. For himself, he was willing to have it varied so as to make it conform to the general sense of the committee, for the purpose of insuring unanimity.

Mr. QUINCY said he was not particularly tenacious of the form of expression used. He had only risen to state his knowledge as far as it went. Libya was a word in use among classical men, among poets, but not among men of business.

The question was put on substituting Barca in the room of Libya, and passed in the negative by a considerable majority. The resolution, as amended, was then agreed to without a division.

The committee rose and reported it to the House, who immediately took it into consideration.

The amendment for substituting “a gold medal with proper devices,” in the room of “a sword,” being under consideration,

Mr. J. CLAY said, as the Committee of the Whole had reported their agreement to the amendment, and as a desire had been expressed that there might be a unanimous vote on the occasion, he wished more information on the subject than he possessed before he could act upon it. After having obtained this, he might very probably vote for the amendment. He, therefore, moved a reference of the resolution to a select committee, who might obtain the information required from the Secretary of the Navy.

Mr. JACKSON observed, that the names of other gentlemen, who were before the walls of Derne, had been announced in the newspapers, as

having assisted in the achievements that were the object of the resolution under consideration. It was not improper to inquire whether they ought to be associated in the honors awarded by Congress. To ensure, therefore, unanimity, and bestow proper praise, he hoped the course pointed out by the gentleman from Pennsylvania would be pursued.

The motion to refer the resolution to a select committee was carried—yeas 69; and Messrs. BIDWELL, J. CLAY, THOMPSON, of New Hampshire, MASTERS, GRAY, ARCHER, and CASEY, were appointed a committee.

FRIDAY, December 13.

Two other members, to wit: from Delaware, JAMES M. BROOM, and from Kentucky, JOHN FOWLER, appeared, produced their credentials, were qualified, and took their seats in the House.

MONDAY, December 16.

Two other members, to wit: from South Carolina, O'BRIEN SMITH, and from New York, GEORGE CLINTON, junior, appeared, produced their credentials, were qualified, and took their seats in the House.

TUESDAY, December 17.

Two other members, to wit: from Virginia, MATTHEW CLAY, and from Kentucky, MATTHEW WALTON, appeared, produced their credentials, and took their seats in the House.

WEDNESDAY, December 18.

Indiana Territory—Slaves—Salt Springs—State Government.

Ordered, that the report of a select committee, made the 17th of February, 1804, on a letter of William H. Harrison, President of a Convention held at Vincennes, in the Indiana Territory, declaring the consent of the people of the said Territory to a suspension of the sixth article of compact between the United States and the said people; also, on a memorial and petition of the

inhabitants of the said Territory; be referred to Mr. GARNETT, Mr. MORROW of Ohio, Mr. PARKE, Mr. HAMILTON, Mr. SMITH of South Carolina, Mr. WALTON, and Mr. VAN CORTLANDT.

A petition of the Legislative Council and House of Representatives of the Indiana Territory was presented to the House and read, praying that the introduction of slaves into the said Territory may be permitted by Congress; that the right of suffrage therein may be enlarged; that the salt licks and springs in the said Territory may be ceded to them on certain conditions; that a certain description of claimants to land, in the said Territory, may be permitted to make entry thereof in the mode therein stated; that no division of the said Territory may take place; and that the citizens thereof may be permitted to form a State government as soon as their population will permit the measure.

Also, a petition of sundry purchasers of land settled, and intending to settle, on that part of the Indiana Territory west of Ohio, and east of the boundary line running from the mouth of Kentucky River, praying that the said tract of country may be added to and made part of the State of Ohio.

Ordered, that the said petitions be severally referred to the committee last appointed; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. VARNUM, from the committee appointed on the sixth instant, presented a bill establishing rules and articles for the government of the armies of the United States; which was read twice and committed to a Committee of the Whole on Friday next.

General Moses Hazen.

On motion of MR. THOMAS the House resolved itself into a Committee of the Whole on the bill “supplementary to the act entitled an act regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia.”

This bill directs the following locations of land and patents to be granted:

“To Charlotte Hazen, widow of Moses Hazen, sixteen hundred acres; Elijah Ayre, senior, one thousand acres; Elijah Ayre, jun., three hundred and twenty acres; and Anthony Burk, two hundred and fifty acres.”

Mr. Thomas explained the grounds on which this bill is predicated, in virtue of inexecuted resolutions of the old Congress; when the committee rose and reported it without amendment: in which report the House immediately concurred, and ordered the bill to a third reading to-morrow.

TUESDAY, December 24.

Another member, to wit: ROGER NELSON, from Maryland, appeared, produced his credentials, was qualified, and took his seat in the House.

FRIDAY, December 27.

Two other members, to wit: SETH HASTINGS and WILLIAM STEDMAN, from Massachusetts, appeared, produced their credentials, were qualified, and took their seats in the House.

MONDAY, December 30.

Another member, to wit: CHRISTOPHER CLARK, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

Road to the Ohio River.

The bill from the Senate to regulate the laying out and making a road from Cumberland, on the Potomac, to the river Ohio, in the State of Ohio, was read and referred to a Committee of the Whole on Thursday.

[This bill authorizes the President of the United States to appoint three Commissioners to lay out a road from Cumberland on the Potomac to the river Ohio, in the State of Ohio, to be four rods in width. The Commissioners are directed to make a report to the President of their proceedings, as well as the expense of making the road passable. The President is authorized to accept or reject the report in whole or part. If he

shall accept it, he is then authorized to obtain the consent of the States through which the road may pass; and, having obtained such consent, to make a turnpike. Fifty thousand dollars are appropriated, payable first out of the proceeds of the reservation from the sale of lands in Ohio, and, secondly, out of the Treasury of the United States, the last sum to be chargeable to the preceding fund.]

TUESDAY, December 31.

Another member, to wit: MATTHEW LYON, from Kentucky, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, January 6, 1806.

Impressment of a Revolutionary Soldier's Son.

The SPEAKER laid before the House a letter received by him from David Rumsey, representing that his son, though possessed of a protection, had been impressed by the British; and that, notwithstanding his most strenuous exertions, he is unable to obtain his release. The letter is couched in unlettered, but pathetic terms, and concludes in the following manner: "I lost an estate by lending money to carry on the Revolutionary war, and I suffered every thing but death by being a prisoner among them (the British) in Canada. I lay fifteen months in close confinement, when I bore the rank of full captain; and if this is all the liberty I have gained, to be bereaved of my children in that form, and they made slaves, I had rather be without it. I hope that Congress will take some speedy methods to relieve our poor distressed children from under their wretched hands, whose tenderest mercy is cruelty."—Referred to the Secretary of State.

Impressed Seamen.

Mr. CROWNINSHIELD observed that, at the last session, there had been a return made to the House of the American Seamen impressed by British vessels, which had not been acted upon. Since that period these impressments had increased in a most astonishing degree. It was a fact that

from 2,500 to 3,000 of our best seamen were detained by the British. We want the services of this useful class of men. That the attention of the House may be drawn to the subject, in order that proper measures may be taken by the Government, I have drawn up the following resolution:—

Resolved, That the Secretary of State be directed to lay before this House a return of the number of American seamen who have been impressed or detained by the ships of war, or privateers of Great Britain, whose names have been reported to the Department of State since the statement was made to the House at the last session of Congress, mentioning the names of the persons impressed, with the names of the ships and vessels by which they were impressed, and the time of the impressment, together with any facts and circumstances in relation to the same which may have been reported to him; stating, also, the whole number of American seamen impressed, from the commencement of the present war in Europe, and including, in a separate column, the number of passengers, if any, who may have been taken out of American vessels coming to the United States from Europe.

Mr. ELLIOT said that, in seconding the motion of the gentleman from Massachusetts, he felt it a duty to express a hope that the resolution would not only be adopted with perfect unanimity, but that we should no longer stop at the precise point of the adoption of a simple resolution, calling for information on this interesting subject. The information which was laid before the House at the last session, with that which has since been derived from the public papers, has produced a loud expression of public indignation, which it is our duty to echo with energy. To prefer every consequence to insult and habitual wrong, is a sentiment of the Executive, which has been admitted even by its opponents to be correct and honorable. Has the time arrived when it has become indispensably necessary to reduce this principle to practice? Do we suffer insult and habitual wrong? Our merchants call loudly for the redress of injuries. I hope we shall redress them. Let us extend to them the arm of national protection, but let us extend it also to another class of injured citizens; while we give it to the rich, let us not withhold it from the poor. The groans of our impressed fellow-citizens mingle with the murmurs of every gale from the ocean! The queen of that element ought no longer to be suffered to bespangle her diadem with the

tears of American seamen, or to substitute her will and her interest for the laws of nature and of nations. It is to be hoped that, upon this subject, we shall take an attitude worthy of the nation—an attitude not to be abandoned but by obtaining complete justice.

The resolution was then agreed to unanimously.

THURSDAY, January 9.

Naval Peace Establishment.

Mr. GREGG, from the committee appointed on so much of the President's Message as relates to a Naval Peace Establishment, having obtained leave, submitted a bill in addition to an act, entitled an act supplementary to the act providing for a Naval Peace Establishment, and for other purposes; which was referred to a Committee of the whole House on Tuesday.

[This bill repeals the second and fourth sections of the act recited in the title, authorizes the President to keep in actual service in time of peace so many of the frigates and other public armed vessels, as in his judgment the nature of the service may require, and to cause the residue to be laid up in ordinary, in convenient ports—directs the public armed vessels in actual service in time of peace to be officered and manned as the President shall direct, provided that the officers shall not exceed thirteen captains, nine masters commandant, seventy-two lieutenants, and one hundred and fifty midshipmen, who are to receive no more than half their monthly pay while not under orders for actual service, and provided that the whole number of able seamen, ordinary seamen, and boys, shall not exceed nine hundred and twenty-five; the President being at liberty to appoint for the vessels in actual service, as many surgeons, surgeons' mates, sailingmasters, chaplains, pursers, boatswains, gunners, sailmakers, and carpenters, as may in his opinion be necessary.]

TUESDAY, January 14.

The House commenced their proceedings this morning, at eleven o'clock, in secret sitting, having yesterday adjourned while the doors continued closed, and while confidential business was depending.

The House continued sitting until three o'clock, when the doors were opened, and an adjournment ensued.

FRIDAY, January 17.

Indiana Territory—Slavery.

A memorial and petitions of sundry inhabitants of the counties of Randolph and St. Clair, in the Indiana Territory, were presented to the House and read, suggesting the expediency of a division of the Indiana Territory, and the erection into a separate Territorial government of a part thereof; of the formation of a Western State; of the admission of slavery into the said Territory, either unconditional or under such restrictions as Congress may impose; and, also, praying redress against certain oppressive acts of the Executive authority of the said Territory.—Referred to the committee appointed, on the nineteenth ultimo, on a letter from William Henry Harrison, Governor of the Indiana Territory.

MONDAY, January 20.

Importation of Slaves.

The House resolved itself into a Committee of the Whole on a motion of the tenth ultimo, “for imposing a tax or duty of ten dollars per head upon all slaves hereafter imported into any of the United States.”

Mr. SLOAN said, he would not take up much of the time of the House in discussing a resolution, the object of which was so plain as rendered it scarcely possible to elucidate it. He would read that section of the constitution which gave Congress the power of legislating on this subject, which was so clear as to require nothing to be said in addition to it.

The ninth section of the first article is in these words:

“The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress,

prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.”

I conceive, said Mr. SLOAN, that, by this article, slaves are made an article of importation, in common with other articles imported. Congress have the same power to lay a tax of ten dollars a head on them, as they have to lay an unlimited tax on every other imported article. I presume every member of this committee has duly considered the subject, and has made up his mind on the expediency of the resolution. For my own part I can see no reason why this article of importation should remain without duty, while all others pay one. For these reasons I hope the committee will agree to the resolution.

The article of the constitution, together with the resolution, having been read at the request of Mr. DANA, he called upon the mover of the resolution to assign his reasons for using the word *slaves* instead of the word *persons*, the term used in the constitution.

Mr. CLARK hoped the committee would not agree to the resolution. He was no advocate for a system of slavery; but he supposed the adoption of this resolution could only be considered as expressing the opinion of Congress, of the impropriety of importing slaves. As to the revenue to be raised, it was too inconsiderable to be worthy of any attention. He was opposed to the resolution, because it appeared to him that it would be partial in its operation, inasmuch as there were only two States, South Carolina and Georgia, which did not prohibit the importation of slaves, at which it must consequently be considered as levelled. The more he reflected on the subject, the more he doubted the propriety of that species of legislation which bore exclusively on a particular section of the United States, nor did it become the Government of the United States to interfere with the internal police of the States, which were, in this respect, sovereign and independent. For these reasons, he trusted the resolution would not prevail.

Mr. EARLY rose barely to correct the gentleman from Virginia, (Mr. CLARK,) in the remark he had made relative to the State of Georgia. There existed no law in that State permitting the importation of slaves; on the contrary, there was an article in their constitution prohibiting it.

Mr. MARION said, this was to be considered as a question of revenue. With regard to the policy of importing slaves, that was left, until the year 1808, exclusively to the States. If this resolution was intended to express the disapprobation of the General Government of the legitimate act of a particular State, he should deem it proper. As well might Congress undertake to express its disapprobation of the election of a Governor chosen in a particular State; his objection arose from the partiality and injustice of the resolution. If in operation it was as extensive as it appeared to be in words, or if he thought it would prevent a single slave from being imported into the United States, it should receive his hearty support; but the very limitation of the tax by the constitution to ten dollars, was intended to prevent Congress from laying a duty which should prevent the importation; it could not, therefore, prevent the importation of a single slave. It followed that revenue could be the only object. Whether, for this alone, we should lay a tax that would fall exclusively on one State, was worthy of consideration. That State already bore her full proportion of the public burdens, and even more than her proportion. In point of numbers, she contained about one-sixteenth part of the Union, and therefore, on the basis of numbers, ought not to be called on to pay a quota of more than six per centum on the whole amount of taxes. Her quota, on the principle on which direct taxes were imposed, ought not to be more than four per centum and four hundredths. On examination, it will be found that the duties paid in South Carolina on imported articles, amount to between one-thirteenth and one-fourteenth part of the whole duties paid into the Treasury, which is between seven and eight per cent. of the whole. When it is considered that no goods are imported into South Carolina for the consumption of the other States, for it was known, Mr. M. said, from the operation of causes which he would not undertake to explain, that goods were considerably higher in Charleston than in the other States, and that, consequently, a cheaper supply of goods could be obtained from other States than from South Carolina; and when, to this circumstance, it was added that South Carolina paid her portion of duties on East India goods, which she derived from the importation of other States, it would be found that she paid a still higher proportion of duties. Under these considerations are Congress prepared to lay a duty on her alone, for such it certainly was? Coming from the State he did, Mr. M. said it might be supposed he was personally interested in this question; but the fact was, he was as free to act on it as any other member of the House. He

had uniformly opposed the importation of slaves, and were he to collect the sentiments of his constituents from the vote of their immediate Representatives on a recent occasion, it would be found that a majority of them were likewise opposed to it. As to himself, he was, in truth, individually interested in preventing the importation of slaves. He never had purchased, nor should he ever purchase a slave. The greater, therefore, the restriction imposed on the importation, the more would it raise the value of those he possessed.

Mr. SOUTHARD declared himself in favor of the resolution. His only regret was, that it was not in the power of Congress to lay a more effectual tax. He thought Congress had a right to declare their opinion of a practice so injurious to the country. The idea was held up in the constitution that slaves were a proper object of taxation. He believed the tax would prevent few persons from being imported. About two years ago a similar resolution had been agitated in this House. It was then said the Legislature of South Carolina were in session, and that there was a great probability of their repealing the obnoxious law. On this ground the consideration of the resolution was postponed. Last session, a similar resolution was brought forward, and was, owing to a pressure of business, again postponed. Mr. SOUTHARD said there was no doubt, if the resolution had been acted upon two years ago, and Congress had exercised their constitutional power, it would have prevented a vast number of slaves from being imported. It is said, however, that this resolution will operate partially on South Carolina, but it has not South Carolina particularly in view, but principle; and if that principle be correct, let it operate where it may, let the people of South Carolina feel the weight of it; it is right they should. As the proposed tax may prevent a few, perhaps a single one of these miserable creatures from being torn from the bosom of their family and country, in violation of the ties of nature and the principles of justice, the time of Congress will be well taken up in imposing it, nor has any State a right to complain of such treatment; for, if the traffic is profitable, they can well afford to pay for it. Mr S. concluded, by declaring that, not revenue, but an expression of the national sentiment was his principal object.

Mr. DANA said, that black men were not the only men imported into the United States. If the object of this tax was only to obtain revenue, (and it really appeared to him that we wanted all the revenue we could get,) it

might, perhaps, be right to get as much revenue as possible from the importation of men. To have this point elucidated, and to learn the precise grounds of the mover in offering this resolution, he moved to substitute the word *persons*, in lieu of the word *slaves*.

Mr. ALSTON said, in seconding this amendment, his object was to preserve the words of the constitution, instead of deviating from them into the language of the resolution. He defied gentlemen to show him the word slave in the constitution; no such word was found in the constitution. Here Mr. A. read that part of the constitution already recited, and then proceeded: The word here used, is *person*, not *slave*. Where the gentleman found the latter word, I am altogether at a loss to know. In laying this tax on slaves, we shall defeat a very important part of the constitution, which says all taxes and duties shall be uniform.

Mr. SMILIE.—There is no doubt but, by the constitution, we have a right to prohibit, so far as the imposition of a tax of ten dollars can have the effect, the importation of slaves or freemen, provided we think good policy and humanity justify the measure. And if the House do entertain the opinion, that the policy of the United States requires a prohibition of the emigration of all such persons, they will agree to the amendment: they have a right to do it. But I do not believe this is the disposition of the present House, or of any that has sat under the constitution. The gentleman rests his amendment on the word *person*, and concludes it to be necessary, because the word slave is not to be found in the constitution. I rejoice that that word is not in the constitution; its not being there does honor to the worthies who would not suffer it to become a part of it. What are the facts connected with this business? They are these: When Congress were sitting and legislating for a free people, they determined not to stain the constitution with that word. The thing was perfectly understood in the convention. The power, as it stands modified, was the result of that spirit of concession and compromise which, in this as in many other instances, characterizes the constitution. With regard to the allegation, that this tax would operate partially and severely, I see, on reflection, nothing in it. The right to impose duties on all other articles except this, is unlimited, and the State of South Carolina, in this instance, has the power completely to get rid of this tax. She has only to repeal her law, and she will have no tax to pay. But if that or any other State pursue a trade which justice or good policy forbid, they

must submit to the constitutional powers of Congress. We are placed now in a delicate and trying situation: the resolution is actually before us; and the only question is, whether we will or will not declare our approbation of this iniquitous traffic. As to revenue, it is no object to me. Revenue, no doubt, will grow out of the measure, but that alone would not induce me to patronize it. I have another and a higher object—to express our disapprobation of this traffic, to manifest to the world that, as the representatives of a free people, we will, as far as we can, express our opinion of it.

The CHAIRMAN here interrupted Mr. SMILIE, by stating that the question was on the amendment, to which the remarks of gentlemen must be confined.

Mr. FISK hoped that the amendment would not prevail. Gentlemen tell us the resolution must be in the words of the constitution, and that it is partial. He would consider how far this argument would carry them. It is observed that it is improper to call in question the rights of the States; but, according to the argument of the gentleman from North Carolina, if the State of Massachusetts should prohibit her citizens from consuming tea or coffee, Congress would be under the necessity of repealing the duties on those articles, and in this way many other acts of the States would prevent Congress from exercising their constitutional powers. These things are in the power of the States; they are free to exercise them or not to exercise them. When they conduce to their benefit, they will exercise them; and when they cease to be beneficial, they will abandon them. Congress have the same right to lay a tax in one case as in the other, according as the public good will be advanced by the imposition, as well of the limited tax on slaves, as of the unlimited tax on other objects. In this resolution there is no partiality: it applies to all the States, as well those who have prohibitory laws or constitutions as those who have not. For it is incorrect to say, because some States have constitutional provisions on the subject, the tax is therefore inapplicable to them, because they have the power of altering their constitutions, and what is in force to-day may be abandoned to-morrow. To agree to the amendment would be, to hold out the idea to foreigners, about to escape from the tyranny and injustice of Europe, that we meant to refuse them an asylum in our country. It is, indeed, to be presumed that the mover

of the amendment is against the whole resolution, and brought forward the one to defeat the other.

Mr. BEDINGER moved that the committee should rise. He said the subject was important; it was late in the day, and he thought they ought to take more time to reflect on it before they came to a decision.

This motion having been agreed to—ayes 64—the committee rose, reported progress, and asked leave to sit again.

Mr. DAWSON hoped that they would not have leave, but that the resolution would be postponed till some time in May.

Mr. NICHOLSON said, he hoped the committee would have leave to sit again, and called for the yeas and nays on the question, which being taken, were, yeas 98, nays 15.

TUESDAY, January 21.

Contingent Expenses.

Mr. EARLY said he held in his hand a resolution instructing the Committee of Ways and Means to inquire into the expediency of requiring the Secretaries of State, Treasury, War, and Navy, to lay before Congress at the opening of every session a detailed statement of the expenditure of the moneys appropriated to the contingent expenses of their departments. He would briefly state his reasons for offering this motion. The moneys for the contingent purposes of the Government were the only description of expenditures which were not controlled by the House. Over every other branch of expenditure the House exercised a control by specifying with definite clearness the respective objects of expenditure when an appropriation was made. But the moneys appropriated for contingent purposes, were left exclusively to the discretion of the different officers presiding over the several departments, in which they were alone governed by their own will and judgment. The only check which could be exercised over this description of expenditures, was to require a detailed statement of disbursements. It would be recollected that a committee had been appointed some time since to investigate the accounts of several officers of the Government, and that they made a detailed report to the House. About that

time it had been contemplated to take the step which he now suggested, but for some reasons it had never been taken. Mr. EARLY said he by no means wished to be understood as entertaining the idea that the discretion with which the heads of department were clothed had been abused. He knew of no facts to justify such an opinion. It was on the ground of principle only that he offered this resolution. Through the four great departments which he had mentioned, passed nine-tenths of the whole money appropriated by Congress; and on looking at the statement contained in the estimates of the Secretary of the Treasury, he found that more than one-fourth of the whole amount of money estimated as necessary for the several departments, was for contingent purposes. By that statement it appeared that the whole expenses of the Department of State were \$27,000, of which \$14,400 were for contingent purposes. Under the head of foreign intercourse, \$182,500 were estimated as necessary; of which \$76,000 were for contingent purposes. The estimates for the Treasury Department were \$72,100, of which \$12,100 were for contingent purposes. The estimates for the War Department were \$29,400, of which \$2,000 were for contingent purposes. The estimates for the Military Establishment were \$900,500, of which \$18,000 were for contingent purposes. The estimates for the Navy Department were \$21,100, of which \$2,700 were for contingent purposes. The estimates for the Naval Establishment were \$867,800, of which \$411,900 were for contingent purposes. Mr. EARLY said he presumed this view of the subject would justify him in the eyes of the members of the House in offering the resolution. The resolution was agreed to, as follows:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of making provision by law, for requiring the Secretary of State, the Secretary of the Treasury, the Secretary of War, and the Secretary of the Navy, to lay before Congress annually a detailed account of the expenditure of the fund appropriated for the contingent expenses of their several Departments, respectively.

Importation of Slaves.

The House again went into a Committee of the Whole on Mr. SLOAN's resolution for imposing a tax of ten dollars upon every slave imported into

the United States.

Mr. CLARK said it was essentially necessary to the passage of a law on this subject that the amendment should prevail. The original resolution contemplated a certain description of persons as slaves; the object of the amendment was to extend it to all persons imported into the United States. Suppose a cargo of slaves should arrive. Will they be entered at the custom-house as slaves? No. They will be recognized as a different description of persons, and by that means the payment of the tax will be evaded, and the law have no possible effect.

Mr. DANA.—Notwithstanding my great desire to gratify the gentleman from New Jersey, to gratify whom would afford me great pleasure, yet in the present case, with the best disposition in the world, I cannot do it. The amendment appears to me to be very consistent with the principles on which the resolution was offered. I understood it as a proposition of revenue relative to the importation of a species of men that is profitable to our merchants. I thought the revenue would be extended by taking in the consumption of a larger class of men, who might, therefore, be very fairly taxed. I could scarcely have expected that the gentleman should have travelled over the mountains, and have there counted the countless millions of acres spread out as a beneficent asylum for poor emigrants from Europe, much less that he should have so eloquently portrayed the oppression of England and France, and blended the number of persons about to occupy those western acres with the simple question of revenue now before the House. Gentlemen have brought this forward as a question of revenue. May we not be permitted to take them on their own ground? If, instead of revenue, their object be a condemnation of the trade, let them come out. The gentleman from New Jersey, with his knowledge, cannot be so ignorant as not to know that there are other persons besides slaves brought into the country, who are deemed beneficial to the community; are hardy and industrious, and that the price paid for their passage affords a profit to our merchants. Whether this description of imported persons is so beneficial as, in policy, not to be taxed, is one thing. By omitting to tax them, we virtually give a bounty. They may not be so valuable to the State as to justify an exemption from all taxation.

Mr. MACON (Speaker) said the State of which he was in part a representative, some time after the law now under consideration passed in a

neighboring State, came to a resolution for amending the constitution, to give Congress the power of prohibiting the importation of slaves altogether, which was sent to the Legislature of the several States, many of whom had concurred in it, or in one similar to it. This showed the sense of the States as to this worst of all traffics. No person could more regret the conduct of South Carolina than he did. Perhaps coming from an adjoining State, his feelings might give him different impressions from that which they ought to do, although he was not sensible that this was the case. But it always seemed to him that this measure was nothing more nor less than arraigning the conduct of a State Legislature, a Legislature that was nearly equally divided, as pointing at them the finger of reprobation of the whole nation.

Mr. SOUTHARD said, the object of the resolution was to lay a tax of ten dollars on slaves imported into the United States. The amendment did not correspond with the spirit of the constitution; for it would not be contended that the convention ever meant to place free white persons wishing to emigrate to the United States under the same embarrassment as slaves. The importation of the latter had been considered as a great injury; but he would ask if the emigration of oppressed Europeans was an injury? We have only to look over the United States to see the large number, as well as the respectability of those who have been obliged to pay their passage by binding themselves out for a term of years. It was only necessary for gentlemen to view this subject dispassionately for a moment, to reject the amendment. He would ask, if the amendment carried, whether one member would vote for the resolution? He believed not, as it would be a greater evil to prevent the emigration of whites, than the importation of slaves; as the importation of the latter would be limited to the year 1808, when he had no doubt it would be prohibited by the unanimous vote of Congress.

Mr. DANA.—If I understand the gentleman from New Jersey right, he imagines the amendment is not in compliance with the spirit of the constitution, inasmuch as he is of opinion that the ninth section of the first article ought to be restricted in fair meaning to slaves. It is in the following words. [Mr. DANA here read the section.] It is, said he, indeed difficult for me to understand, how an amendment in the very words of the constitution, without the change of a single term, can violate its spirit. Because the same words are used, is it to be inferred it is contrary to the spirit of the constitution? I am sensible the amendment changes the complexion of the

resolution; but while it embraces others, it includes likewise those persons in the resolution. Perhaps it may include some persons who ought to be excluded; but it should be observed that this is only a resolution for settling the principle, and that the subordinate details may be settled in a bill. Gentlemen will not contend that the importation of all descriptions of white persons is beneficial. I recollect one State into which a cargo of convicts was imported, which a law was passed to prohibit. The amendment then merely involves the question, whether the resolution shall be confined to slaves, or be extended to others.

The question was then taken on Mr. DANA's amendment, to substitute persons in the room of slaves, and passed in the negative, only 32 members rising in favor of it.

Mr. EARLY.—I wish for the attention of the committee while I submit a very few observations on the resolution under consideration, which are intended to go to a single point which has been but slightly noticed by the honorable speaker, but which may be placed in some points of view that are important. I mean to consider the subject as a matter of feeling, in relation to the State on which it is about to bear. To her it is not unimportant. The object of the resolution certainly is either to point the disapprobation of this nation at the practice in question, or to raise a revenue from that practice. It is either one, or a union of both these ends. If the object be to point the disapprobation of the nation against South Carolina, I pray gentlemen to pause and reflect on the consequences of such a policy; and I beg all to recollect that they are interested as well as South Carolina with regard to such policy. Those who regard either the feelings of one State, or the peace and harmony of the whole nation, will do well to reflect before they adopt a policy bottomed on such a principle.

As it may be, that the measure is entertained as a source of revenue, if this is the object, I will ask one question. Is the price they are to get worth the evil they create? Is the petty sum of \$40,000 or \$50,000 of so much moment? Is it a sufficient object to this Government to induce them to adopt a measure, which will irritate and wound the feelings of a respectable member of the confederacy? Forty or fifty thousand dollars is a petty sum to this Government; but it is not so to a State; it is not so to South Carolina. Let gentlemen, if they please, attempt to get round the question, by saying that this resolution is not exclusively confined to South Carolina—the

evasion is unworthy of them. The whole nation knows, South Carolina knows, and we know, what is intended by it; and it is the same as if South Carolina was on the face of it. The sum, though trifling to the United States, is not so to South Carolina. The revenue intended by this resolution to be drawn from South Carolina, will equal, if it does not exceed, the whole expense of her government. What, then, will be the situation of the people of that State, in case this resolution is adopted? It will be the situation of a people who pay a double tax. They will pay a tax for the support of their own government; revenue will be drawn from them for national purposes, as from the other parts of the Union; and they will be burdened with an additional tax, equal to the whole expense of their State Government. I will ask now, whether the evils attending such an imposition, and the reflections arising from it, will not necessarily irritate, wound, and offend the feelings of the people of that State? Whether, then, we consider it as a measure to evince the disapprobation of the nation, or as a source of revenue, it flows from a policy equally questionable. The people, sir, of South Carolina cannot avoid the reflection, that the finger of scorn is pointed at them; that a double tax is imposed on them. What will be the consequence? That which every gentleman must foresee. It is not difficult to foresee it, because it is a natural consequence, such as must follow whenever the common feelings of human nature are entertained. The consequence will be, an alienation of attachment to, and respect for this Government. I ask gentlemen to put the question home to themselves, whether the revenue they expect is worth the sacrifice? This is a question which ought never to be stirred in our national councils. Though older men than myself might better tell the committee than I can do, the effect which introducing this subject in any shape invariably has had on the feelings of the Government, or on the representatives of the nation, I will undertake to give my opinion of it. Sir, I have always understood that this subject was found most difficult to be adjusted in the Federal Convention. I have always understood that, when brought before the councils of the nation, in any period or in any shape, a fervor of feeling and warmth of sentiment never failed to disturb the public harmony. Every man knows the effect of the first application to Congress on this subject, by a man at the head of a noted body of men in Pennsylvania or Delaware, of the name, I believe, of Warner Mifflin. All know the effects of an application of a more recent date, in the other branch of the Legislature, from some friendly people northwardly. All know the

effects of the celebrated resolution laid on our table the last session, by the same gentleman who has favored us with the resolution under consideration, to make free all persons born of a mother in the Territory of Columbia, after a certain period. All will recollect the height to which the feelings of men were wrought on those occasions. It is because the agitation of this subject always had and always will have the same effect, that I think it ought never to be introduced into this House.

Mr. BROOM.—I agree with the gentleman from Georgia in expressing the wish that this resolution had never been brought forward, inasmuch as I wish that the State of South Carolina, in imitation of her sister States, had never given occasion for it. It is said that this is a question which has always produced agitation in this House whenever it came before it. If this be any argument at all, it is in favor of bringing the discussion to a close, by extinguishing the cause which produces it; for, until this shall be the case, there will always be found men in this House to offer a similar resolution, the result of which may be a like agitation. The question is not now whether this resolution shall be introduced, but, as it is introduced, whether it shall not be put to sleep for ever, by exercising at once our constitutional powers.

I need not dwell on the great number of slaves concentrated in the Southern States. At the time of taking the census they amounted to 832,000. In the State of South Carolina there were 146,000 slaves, and 199,000 whites. I need not expatiate on the greatness of this evil. Not only South Carolina may suffer, but all the other neighboring States may share the evil. Those States who are ashamed to avow a participation in the trade, may be indebted to her for an augmentation of their slaves; and the evil may extend to those States who now believe themselves secure. If these people were to rise on their masters, I ask if the whole Union would not be bound to assist in putting them down? It is not, therefore, South Carolina alone, but all the members of this confederacy, that may be disturbed by the accumulation of this evil. It is from these considerations—because I wish this traffic to be checked, and because, as an object of revenue, I am for making the most of the evil, and because we may be enabled thereby to exempt articles of the first necessity from at least a part of the duties imposed upon them—that I am of opinion that we ought not, in justice, to exempt this article any longer from duty.

Mr. EARLY said that he was far from intending to charge the mover of the resolution with a disposition to wound the feelings of any member of the House. He had said nothing to that effect. He would, on the contrary, observe that he considered the manner of the gentleman mild, and such as had not rendered him in the least obnoxious to such a charge. He had said that the feelings of South Carolina would be probably wounded by the measure. He had no disposition, however, to charge the gentleman from New Jersey (Mr. SLOAN) with, such an intention. The task of wounding the feelings of South Carolina (if the observations of a gentleman on this floor could wound her feelings) had been reserved for the gentleman's friend from Delaware, (Mr. BROOM,) who had taken occasion to heap on her head, so far as related to the importation of slaves, every term of reproach which his imagination could bring to his aid. If he expected he would be imitated in such a procedure, he would be mistaken. One word in reply to an observation which he had applied to the State of Georgia. He had said that the evil was not confined to South Carolina, but that it extended to the neighboring States—that it extended to the State of Georgia, who, though ashamed to avow her approbation of it, participated, notwithstanding, with South Carolina in it. Give me leave to say, said Mr. E., so far as relates to the State of Georgia, that she has not been—that she never will be—ashamed to avow what she does; and that, so far from approving this trade, she took a step six or eight years back, that had not then been taken by any other State: she prohibited the traffic by an express injunction of her constitution. Let the gentleman from Delaware show any thing in his own constitution like this. On this occasion the opponents of the resolution were disposed to treat the subject with temper. Heretofore, the temper which had been displayed had originated with them, but now it has proceeded from a different quarter.

The debate here closed for this day. The committee rose about four o'clock, and obtained leave to sit again.

WEDNESDAY, January 22.

Importation of Slaves.

The House again went into a Committee of the Whole on Mr. SLOAN's resolution for imposing a tax of ten dollars upon every slave imported into the United States.

Mr. DAWSON.—Every gentleman who has spoken on this unfinished business has expressed his regret at its introduction—none feel it more than I do; of the sincerity of which declaration I mean to give a proof by the motion which I shall make to you.

If this regret was felt at the introduction, it must be increased by the course which the argument has taken, and by the warmth which has attended it. At a time like this, when depredations are committed on our commerce, coasts, and harbors; when our property is plundered, our citizens and our country maltreated and insulted, it would seem to me to be more wise and more patriotic to cherish a spirit of accommodation, and to unite all our efforts and wisdom in adopting those measures best calculated to meet this state of things, to support our just claims, to vindicate our violated rights; and not to introduce subjects which will inevitably create division, which will excite one section of the continent, one portion of our fellow-citizens, against another, thereby disturbing that harmony and union of councils so necessary for the good of the whole.

Mr. J. C. SMITH supported the resolution, and vindicated the State he represented from any imputation from not having a similar feature in her constitution to that of the constitution of Georgia. He observed that the constitution of Connecticut, having had its origin about two hundred years ago, had not foreseen the present state of things; but he begged permission to say, that Connecticut had never received into her bosom any of the species of property alluded to.

Some recriminations ensued between several members, on the participation of the traders of some of the New England States in carrying on the slave trade.

When the question being put, the resolution was agreed to—yeas 79.

The committee having risen, and the House being resumed, took the report of the committee into consideration.

Mr. CLARK, having made a few remarks against agreeing to the resolution, asked for the taking of the yeas and nays.

The main question was then taken by yeas and nays on agreeing to the resolution—yeas 90, nays 25, as follows:

YEAS.—Isaac Anderson, John Archer, David Bard, Burwell Basset, Silas Betton, Barnabas Bidwell, Thomas Blount, James M. Broom, Robert Brown, John Boyle, John Chandler, Martin Chittenden, John Claiborne, George Clinton, jun., John Clopton, Frederick Conrad, Orchard Cook, Leonard Covington, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jun., William Dickson, Caleb Ellis, Ebenezer Elmer, William Eli, William Findlay, Jas. Fisk, John Fowler, Charles Goldsborough, Edwin Gray, Andrew Gregg, Silas Halsey, John Hamilton, Seth Hastings, William Helms, David Holmes, David Hough, John G. Jackson, Walter Jones, James Kelley, Thomas Kenan, Nehemiah Knight, John Lambert, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, Nicholas R. Moore, Jeremiah Morrow, Jonathan O. Mosely, Jeremiah Nelson, Roger Nelson, Thomas Newton, jun., Gideon Olin, Timothy Pitkin, jun., John Pugh, Josiah Quincy, John Rea of Pennsylvania, John Russell, Peter Saily, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, John Cotton Smith, John Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, Lewis B. Sturges, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Uri Tracy, Abram Trigg, Philip Van Cortlandt, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, John Whitehill, Robert Whitehill, Eliphalet Wickes, Marmaduke Williams, Nathan Williams, Alexander Wilson, and Joseph Winston.

NAYS.—Willis Alston, jun., George M. Bedinger, William Butler, John Campbell, Levi Casey, Christopher Clark, Jacob Crowninshield, John Dawson, Elias Earle, Peter Early, James Elliot, James M. Garnett, Robert Marion, Josiah Masters, William McCreery, David Meriwether, Thomas Moore, Thomas M. Randolph, John Rhea of Tennessee, Thomas Sanford, O'Brien Smith, Thomas Spalding, Thomas W. Thompson, David R. Williams, and Thomas Wynns.

Ordered, That a bill, or bills, be brought in pursuant to the said resolution; and that Mr. SLOAN, Mr. FISK, and Mr. DANA, do prepare and bring in the same.

MONDAY, January 27.

Detachment of Militia.

An engrossed bill authorizing a detachment from the Militia of the United States was read the third time.

Mr. TALLMADGE, of Connecticut, said he had never recollected an instance, since he had been honored with a seat in that House, when a question of equal magnitude with the present, had passed on, from the report which was first made, to the third reading of the bill, and there had scarcely been a remark submitted to the House to elucidate or justify the measure. We have before us a bill of no trifling import; it provides for organizing, arming, and equipping, a military force of one hundred thousand men, and it appropriates two millions of dollars to enable the Government to bring this force into the field. Now this bill contemplates some serious intentions on the part of the Government, or else it is a solemn mockery, a mere political farce. At any rate, we shall hereby, if the bill passes into a law, lock up two millions of dollars in the Treasury, which must remain appropriated and sequestered from any other use, however urgent and pressing the calls of our country may be from any other quarter. Under the present aspect of this bill, as it has been presented to my mind, I shall be constrained to give it my unequivocal negative, unless some gentleman shall be able to remove my objection against its final passage. I, therefore, take the liberty to call on the honorable chairman of the committee, who reported the bill, (Mr. VARNUM, of Massachusetts,) to state to the House the reasons which induced him to submit the bill now under consideration, and to request of him, for my particular information, to answer the two following queries, viz:

1st. What special objects are to be answered by the passage of this bill?

2d. What effect will such a law have upon the militia systems of the different States in the Union?

I make these inquiries of the honorable gentleman from Massachusetts, who reported this bill, from a knowledge of the high station which he holds in the militia of that State; and from a hope that he has fully weighed all the relative bearings of this bill, with the advantages and inconveniences thence

resulting, that he may be able to confirm the wavering, and to satisfy those who doubt respecting the provisions of this bill.

In the public Message of the President of the United States, communicated to Congress on the third of December last, we are informed that spoliations are committed on our commerce, and our seamen are impressed on the high seas; while aggressions and insults are offered to the citizens of the Territories of Orleans and the Mississippi, by the regular officers and soldiers of the King of Spain. Some of these injuries may admit of peaceable remedy, but some of them are of a nature to be met by force only, and all of them may lead to it.

From the fullest examination I have been able to make of this public document, (and I lay no claim to private communications,) I can discover but one point on which this great military force can be brought to bear. Is it possible, then, Mr. Speaker, (and I do hope that the honorable chairman will give us an answer to the inquiry,) is it possible, I say, that an apportionment must be made on all the militia of the United States, from Georgia to the District of Maine, that the President of the United States may be enabled to repel an invasion, or chastise an insult offered to our citizens within the district of Orleans? If this be not the object, the inquiry returns with redoubled force—what is it? Or, are we to conclude that all this parade and expense is to form an army on paper, and to hold out to the world the high sense we entertain of our national honor and dignity, and the promptitude and vigor with which we are ready to defend it? Can it be possible, sir, that gentlemen can be serious in offering this preposterous parade of military defence, when the recommendation of the President, and the voice of our country, call so imperiously for something more efficient? Will the European powers believe that you are in sober earnest, when they shall read the provisions of this bill? Will the people of our own country be satisfied with this kind of military farce? The former, I am persuaded, will not be deceived by it; the latter cannot fail to be disgusted with this pitiful parade. Whatever may be my opinion of the military defence which our present circumstances call for, it is hardly proper for me now to discuss that question. If the difficulties and objections which so forcibly press upon my mind can be obviated, notwithstanding my general doubts of the efficacy of this measure, I shall vote for the bill on your table.

Mr. VARNUM, of Massachusetts, then rose. He said it was difficult for him to enter into all the details which the questions of the gentleman implied; it depended upon the situation of the different parts of the country, whether the objections of the gentleman from Connecticut (Mr. TALLMADGE) were applicable. It was not necessary, from the provisions of the act, to cull this out of the great body of the militia of the United States. That in Massachusetts it did not exempt from militia duty in the year 1797. They were only selected and officered, and ordered to be equipped and in readiness to march at a moment's warning. They afterward returned to their ranks and were held to do duty there, in the same manner as if they had not been detached. If the argument of the gentleman was correct relative to a detachment, all the militia of the United States might be undisciplined, as the President had a right to call out the whole. As to the objection made by the other gentleman from Connecticut, (Mr. DANA,) there was some difference in the pay proposed to be allowed by this bill, to the militia, which should compose the detachment, but it was not much less. The difference was small, from that allowed by the existing law. Mr. Chairman, the President has told us of dreadful depredations upon our commerce, and of insults and inroads upon our territories; that our seamen and fellow-citizens are impressed, and ill-treated in a most cruel manner. It becomes us, sir, to take some measure suitable to the occasion, unless we mean to show the world that we possess a servile and degraded spirit. And, in my opinion, this is that measure.

Mr. QUINCY, of Massachusetts, said, that the reason given by his colleague, (Mr. VARNUM,) for passing this bill, "that we ought to show in the present state of our country, that we do not possess a servile, degraded spirit," was a principal reason with him against the bill. He believed that if, after all the evidence this House had received of the temper of the people, and of their expectations of efficient, real measures of defence, such a bill as this was to be the first fruit of a seven weeks' deliberation, it would, indeed, indicate that our spirit was servile and degraded—at least, that such was the spirit of this House. And, indeed, in fact, its spirit was, in his opinion, far below the temper and spirit which prevailed in the community. It was, indeed, very extraordinary that, after all the urgent demands made upon us by the people and by the President, for various augmentations of our force, the first step we publicly take should be, not to increase the power of the Executive arm, but to diminish that which it already possesses.

If this was the real character of this bill, he thought the conclusion inevitable, that a House which, in such a state of public affairs as ours, should be guilty of such an act, was actuated by “a servile and degraded spirit.” And whatever we may think of it ourselves, I have great fears that both the people and foreign nations will draw that conclusion concerning us. That this was no increase of Executive power, but a real diminution of it, was very evident.

The gentleman, my colleague, (Mr. VARNUM,) had stated three reasons for passing the present and repealing the old law. 1st. The want of an appropriation for the expense of the detachment. This is a very good reason for an appropriating act, but it is none at all for an act repealing the provisions of the old law, and reenacting the same nearly in the same form. 2d. His second reason was, that the former act was permanent—this temporary. The former law had been passed in 1803, by the gentlemen who now constituted the majority in this House. It had been suffered to sleep for three years, and now, at the very moment the act is about to be useful, this great constitutional discovery is made. It is very unlucky that, when the people expect to see us alive to their protection, we are alive to nothing but theoretic questions and constitutional difficulties. The third reason for this law was the new apportionment of the detachment of militia it contemplates. In this consists the mischief and imbecility of the measure. By the law of 1803, which this bill proposes to repeal, the President is authorized to call out a detachment of eighty thousand militia. He may take the whole from any part of the Union. Wherever the exigency requires, he may there call for all, or any part, of the eighty thousand. By the present law, the detachment made is to consist, indeed, of a hundred thousand men; but this number is to be apportioned upon the States, and whatever is wanted for actual service is to be collected from seventeen independent divisions, in a country fifteen hundred miles in length.

The bill was then passed, 79 rising in the affirmative.

WEDNESDAY, January 29.

Neutral Rights.

Mr. JACKSON called for consideration of the unfinished business of yesterday, viz: the motion of Mr. SMILIE to discharge the Committee of Ways and Means from the further consideration of so much of the President's Message as relates to the invasion of neutral rights by some of the belligerent powers. On taking up this business the House divided—yeas 37; carried.

The motion having been submitted from the Chair, Mr. DAWSON opposed it. He said the wish of the gentleman from Pennsylvania to bring this subject under the view of the Committee of the Whole on the state of the Union might at any time be gratified by going into that committee and moving any resolution he might see fit, as the Message generally was referred to the Committee of the Whole on the state of the Union. He believed, however, that the floor of the House was not the proper place to make declarations of what is the law of nations. He believed that a volume of such declarations would be of no avail; it was their duty to act and not to declare on such subjects; and whenever the gentleman from Pennsylvania or any other gentleman, would bring forward measures calculated to prevent an infraction of our neutral rights, they should receive his support. At present he must be against adopting the resolution.

Mr. SMILIE said he did not expect any opposition to the motion he had made. If the Committee of Ways and Means should be discharged from the business, it would consequently come before the Committee of the Whole on the state of the Union without any motion, as the Message was generally before that committee.

In reply to the remark that this motion would be treating the Committee of Ways and Means with disrespect, Mr. SMILIE said, he thought the ground on which he had placed the business would have removed every idea of the kind. He did not say the Committee of Ways and Means were not as competent to the business as any other select or standing committee; but he had declared from the beginning that in his opinion, in point of principle, the reference ought to have been made to the Committee of the Whole. This is the ninth week of the session, and gentlemen charge us with having done nothing. Do not gentlemen see, from the state of the Committee of Ways and Means, that this course has become absolutely necessary? Shall a business of the first importance that can occur during the session, be neglected on this account? Not only the eyes of all America, but likewise of

all Europe, are looking with anxiety on the steps which we shall take in this business; for all the maritime powers of Europe are interested in this great question relative to neutral rights. Are we, then, in consequence of the deranged situation of a select committee, to remain with our hands tied up? For myself I do think, that the interests of our country call upon us to take immediate steps. I repeat it, that on a similar occasion with this, a similar course was pursued. Gentlemen will remember, that in the third Congress, when we before suffered from the misconduct of Great Britain, certain resolutions which became the subject of discussion originated in a Committee of the whole House. What, indeed, are we to expect from the Committee of Ways and Means? Are they in possession of the general sense of the House on this subject, as a guide in making their report? This is not the case, as we have had no discussion of the subject; and until it shall be brought under a view of a Committee of the whole House, it is impossible to tell in what the opinions of members will centre.

Mr. JACKSON.—I have but a single observation to make in addition to those which have fallen from the gentleman from Pennsylvania. So far as relates to myself, it is not my object to discuss in Committee of the Whole, the abstract questions of the law of nations, but to adopt measures for the effectual resistance and punishment of the infraction of those laws, as far as we can. If, according to the course pointed out by my colleague, any resolution should be submitted on this subject in Committee of the Whole, it will be objected that the subject is before a standing committee, and it will be said to be disrespectful to act on it until they shall have reported. If my colleague, therefore, be of opinion, that we should adopt any efficient and prompt measures, the better and speedier way will be for him to join in the motion. I hope the motion will prevail. In the name of heaven, if we are not disposed to do any thing, let us tell the people so.

Mr. CROWNSHIELD.—From the beginning I was opposed to referring this subject to the Committee of Ways and Means. I saw no reason for its going to a standing committee. Without meaning to cast any censure on the Committee of Ways and Means, I am in favor of the motion. We have been in session seven or eight weeks—the reference was made as early as the 6th of December, and we have yet no report. The question is perhaps as interesting a one as has been presented since the establishment of a National Government. What is our situation? Our ships are plundered in every sea,

our seamen are impressed, three thousand of them are in the service of one nation. We are a neutral nation, and it is not proper that any belligerent nation should employ them in this manner. Like the gentleman from Virginia, I am ready to act, I want no report to guide my decision. I am prepared—not for war measures, but for a non-intercourse act with Great Britain. I am willing to suspend all intercourse with Great Britain until she shall give back the ships she has stolen from us, and the seamen she forcibly detains. I shall not be more ready to take this step after a report from the Committee of Ways and Means than I am now. The simple question is, whether we shall abandon trade altogether, or resist the unjust aggressions made upon it? But it was not my object in rising, to go any length into the subject; I only rose to express my opinion in favor of the course pointed out by the motion. The Committee of Ways and Means is deranged, disorganized; two members are absent, and the Chairman unfortunately is sick. We have no expectation of a report; it may not come till the end of the session.

Mr. GREGG.—I rise to express a similar opinion with the gentleman who has just sat down.

I am in favor of the motion for the reasons which he has assigned and for another reason; for the sake of consistency. Though the subject be referred to the Committee of Ways and Means, it is likewise referred to the Committee of the Whole on the state of the Union. The memorials from the merchants of New York and Philadelphia have taken this latter course. This brings the subject before a Committee of the Whole. We are under the same obligation to take up the business of our constituents as the Message; and as the business is of the greatest importance, I hope the whole subject will be referred to a Committee of the Whole.

Mr. BIDWELL.—The gentleman from Pennsylvania has anticipated me in an idea which I meant to have expressed. As the principal document on this subject is the Message of the President, I think it proper that that should be placed with the same committee charged with the memorials of merchants from different towns. Another reason may be mentioned in favor of this course of procedure. At the commencement of the session there was a strong reason for referring the subject to a special committee. It was a principal object at that time to inquire into the extent and degree of the injuries received from belligerent nations; as since that time we have

received full information on those points from the Executive Department, that reason is done away, and there is no necessity for any investigation by a select committee.

The motion to discharge the Committee of Ways and Means was then agreed to—yeas 68.

Non-Intercourse.

Mr. GREGG said, that he considered the insults offered to our Government, and the injuries done to our citizens by some of the belligerent nations, to be of such a nature, as to demand the interposition of Government to obtain redress. It appeared from the memorials and remonstrances of the merchants of New York, Philadelphia, and other of our seaport towns, now on our table, as well as from Executive communications, that vessels the *bona fide* property of citizens of the United States, have been seized by their cruisers, and they and their cargoes condemned, contrary to our rights as a neutral nation, and to what has long been considered as the law of nations on this subject. Great numbers of our fellow-citizens have been impressed, and notwithstanding our repeated remonstrances, they are cruelly retained in bondage, and compelled to act in a service, perhaps very abhorrent to their feelings, far from their country and their friends. To these insults and injuries, said Mr. G., we can no longer submit, unless we are willing to surrender that independence which has been, and I trust always will be, our pride and our boast. So great are these injuries and aggressions, and so unremittingly are they persevered in, that I do not know but that they might be considered as a sufficient cause on which to ground a declaration of war. That, however, is not my object. I deprecate war, and will not agree to resort to it, until other means, which we have in our power, are tried in vain. We do, I think, possess means, which, if properly used, cannot fail of accomplishing the object. To these I hope we will now resort, and for the purpose of bringing them into view, I will submit a resolution to the consideration of the House, reserving any further observations on the subject, until the resolution shall be taken up in Committee of the Whole on the state of the Union, to which I intend moving its reference.

Mr. GREGG then offered the following resolution:

Whereas Great Britain impresses citizens of the United States, and compels them to serve on board her ships of war, and also seizes and condemns vessels belonging to citizens of the United States, and their cargoes, being the *bona fide* property of American citizens, not contraband of war, and not proceeding to places besieged or blockaded, under the pretext of their being engaged in time of war in a trade with her enemies which was not allowed in time of peace:

And whereas the Government of the United States has repeatedly remonstrated to the British Government against these injuries, and demanded satisfaction therefor, but without effect:

Therefore, *Resolved*, That until equitable and satisfactory arrangements on these points shall be made between the two Governments, it is expedient that from and after the —— day of —— no goods, wares, or merchandise, of the growth, product, or manufacture of Great Britain, or of any of the colonies or dependencies thereof, ought to be imported into the United States. *Provided*, however, that whenever arrangements deemed satisfactory by the President of the United States shall take place, it shall be lawful for him by proclamation to fix a day on which the prohibition aforesaid shall cease.

The House having agreed to consider this resolution,

Mr. THOMAS said he had seconded the motion of the gentleman from Pennsylvania, and should give it his decided support. It would however have suited him better, had it gone still further, and interdicted all commercial intercourse with that nation, until she should cease to commit depredations on our commerce, impress our citizens on the high seas into her service, and abandon the new principles which she had lately interpolated in the maritime code, and which he considered as unjust as they were unauthorized by the acknowledged law of nations.

But as unanimity in the Legislature of the nation was desirable at all times, and particularly so on great national questions, he was disposed, in order to produce that result on the present occasion, to yield a part of his own opinion to meet the views of other gentlemen.

The present was an important question, and he hoped the honorable mover would consent that it should lie a day or two for consideration, and

moved that it be printed.

Mr. GREGG said his wish was to refer the resolution to a Committee of the Whole on the state of the Union; and made a motion to that effect which was agreed to without a division, and the resolution ordered to be printed.

THURSDAY, January 30.

The bill sent from the Senate, entitled “An act to empower George Rapp and his associates, of the Society of Harmony, to purchase certain lands,” was read twice and committed to a Committee of the Whole on Monday next.

Mr. STANFORD, from the committee appointed on the twenty-third instant, presented a bill for altering the time for holding the circuit court in the district of North Carolina; which was read twice and committed to a Committee of the Whole to-morrow.

A memorial of the inhabitants of the town of Salem, in the State of Massachusetts, signed by a committee, in behalf of the said inhabitants, was presented to the House and read, setting forth that they have beheld, with the deepest regret and anxiety, the aggressions committed on the commerce of the United States, and the consequent violation of neutral rights, under the new assumed principles and adjudications of the maritime courts of Great Britain; that they view with equal abhorrence the impressment of our seamen, the violation of our jurisdiction by captures at the mouths of our harbors, and the insulting treatment of our ships on the ocean, by the same nation, not less hostile than the conduct of other nations, by piratical depredations, and the lawless plunderings of privateers on our coasts; that, while they ask for no measure but what justice approves and reason enforces—claiming merely to pursue a fair commerce, with its ordinary privileges—wishing for peace, for honorable peace, and to support the independence of their country by the acquisitions of lawful industry, they pledge their lives and properties in support of the measures which may be adopted to vindicate the public rights and redress the public wrongs. Referred to the consideration of a Committee of the Whole on the state of the Union.

The SPEAKER laid before the House the following letter from the Secretary of the Navy addressed to the House:

SIR: In obedience to the resolution of the House of Representatives of the 27th instant, directing the Secretary of the Navy “to lay before the House a report on the condition of the frigates, and other public armed vessels, belonging to the United States, distinguishing the frigates fit for actual service; distinguishing such as require repair, and the sum necessary for repairing each; and distinguishing also such as it may be the interest of the United States to dispose of rather than repair,” I have the honor to state—

That the frigate Constitution is now in a state of thorough repair, and in all respects prepared for service.

That the frigate Chesapeake has lately been repaired and is fit for service.

That the frigates Adams, Essex, and John Adams, are also fit for service.

That the brigs Syren, Hornet, Argus, and Vixen, the schooners Nautilus and Enterprise, the bombs Spitfire and Vengeance, and all the gunboats are fit for service.

That the frigates President, United States, Congress, Constellation, New York, and Boston, required to be repaired; but it is utterly impossible to form an accurate estimate of the “sum necessary for repairing each.”

I know of no vessel belonging to the navy, which I consider it would be “the interest of the United States to dispose of, rather than repair.”

On the motion of Mr. J. Randolph, the first and third sections of the bill to repeal so much of an act as authorizes the evidences of the public debt to be received in payment for public lands, and for other purposes, was referred to a Committee of the whole House.

The discussion which ensued on the details of this bill occupied nearly the whole of the residue of the day.

The committee having reported the bill, with sundry amendments, it was ordered to a third reading to-morrow.

Neutral Rights.

Mr. J. RANDOLPH said it would be recollected that, very early in the session, so much of the Message of the President of the United States as relates to the invasion of neutral rights by belligerent powers, had been referred to the Committee of Ways and Means. It would also be recollected that another Message on the same subject, or on one connected with it, had been referred to the same Committee of Ways and Means. I understand, said Mr. R. (for my indisposition has not permitted me for some days past to attend to the duties of my seat) that a motion has prevailed to discharge the Committee of Ways and Means from the consideration of that subject. Inasmuch as this discharge may have been effected under an impression that the committee, have been delinquent in executing the duty devolved upon them, I feel it my duty before I surrender the papers connected with this subject, to give some account of the proceedings of the committee. On the eleventh of December the committee instructed their Chairman to write a letter to the Secretary of State, which I will read. Mr. R. here read the letter as follows:

COMMITTEE ROOM, *Dec. 11, 1806.*

SIR: The Committee of Ways and Means have instructed me to request you will cause to be laid before them such information, on the subject of the enclosed resolution, as the Department of State can furnish.

The peculiar objects of our research are—

1. What new principles, or constructions, of the law of nations have been adopted by the belligerent powers of Europe, to the prejudice of neutral rights?
2. The Government asserting those principles and constructions?
3. The extent to which the commerce of the United States has been thereby injured?

I am, with very great respect, sir, yours,

JOHN RANDOLPH.

The SECRETARY OF STATE.

On Saturday night the 25th instant, the Committee of Ways and Means received an answer to this letter, which I will deliver to the Clerk, in order that it may go to the new committee, to which this business has been referred. It is unnecessary for me to add any thing more. The House must be sensible that while the Committee of Ways and Means were in the dark they could not proceed in the discharge of the duties assigned them, and that after receiving information from the Secretary of State so late in the day, it was impossible for them to have made a report by this day; and if I am not mistaken, the motion to discharge the Committee of Ways and Means was made before the answer of the Secretary of State was received.

The Clerk accordingly read the letter of the Secretary of State, as follows:

DEPARTMENT OF STATE, *Jan. 25, 1806.*

The Secretary of State presents his respects to Mr. Randolph, and has the honor to transmit him a copy of a report this day made to the President of the United States, respecting interpolations by foreign powers, of new and injurious principles in the law of nations. This report, which the communications made by the President to Congress, particularly that of the 17th instant, will, it is hoped, afford the information requested, for the Committee of Ways and Means, by Mr. Randolph's letter of the 11th ultimo.

When, on motion of Mr. J. RANDOLPH, the papers laid by him on the table were referred to a Committee of the Whole on the state of the Union.

FRIDAY, January 31.

Another member, to wit, WILLIAM BLACKLEDGE, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Bridge across the Potomac.

The House then again resolved itself into a Committee of the Whole on the resolution in favor of authorizing the erection of a bridge across the Potomac.

Mr. LEWIS.—Mr. Chairman: There is but one point to which, in my opinion, the attention of this committee ought to be directed: Will the erection of the contemplated bridge injure the navigation of the river Potomac? This is the only question applicable to the subject, and the only pivot upon which it ought to turn. Let us, Mr. Chairman, examine the objections and reasoning of the anti-memorialists upon this point. They say in their memorial that “they consider their natural and political rights will be infringed by the adoption of this measure, as the navigation of the river will be injured and obstructed thereby; that from the meeting of the stream and tide-water, at the place where the bridge is contemplated, a tendency will be produced in the impeded stream-water to deposit the earthy particles with which it is charged in time of freshes, and by which they apprehend the present, entire, main and deep channel may be divided into many small and narrow passages, to the great injury of the navigation.” This, sir, is the bare assertion of the counter-memorialists; they have not deigned to state one single fact, or adduce the smallest proof in support of a result which they have taken for granted will be inevitable. Although the proof rests upon the opponents to this measure, and not upon its friends, yet I am willing and prepared to prove, by the best evidence the nature of the case will admit, that the navigation of the Potomac, instead of being injured, will be greatly benefited by the erection of this bridge. Sir, the evidence I shall offer is drawn from experience. It is known that in Europe, as well as in this country, piers have been sunk for the express purpose of deepening the channel, and improving the navigation of rivers, and if this experiment has succeeded in all other countries and rivers, surely it will not fail in the Potomac. It is not to be believed that the Potomac is unlike every other river in the world. But, sir, if we had not the aid of experience before us, common sense and common reason would revolt at the idea of injuring the navigation in the manner stated by the counter-memorialists. If you oblige vessels of all descriptions to pass through your draw and of course pursue the same channel, will it not have a tendency to deepen and clean the channel, by agitating the sediment which may have settled there, and which will by that means be swept away by the current? and instead of a number of small channels, will it not have the opposite effect of improving and deepening the only main channel? Surely this must be the effect. But, Mr. Chairman, whilst I am unwilling to believe that the erection of this bridge can in any manner whatever injure the navigation of the Potomac; yet I will

candidly admit that the vessels passing to and from Georgetown will experience some little inconvenience at the draw; but that inconvenience will be so very trifling that it will be entirely lost in a comparison with the great general good which will result to the community. Having proved, as I trust, satisfactorily, that the navigation of the Potomac cannot possibly be injured by the adoption of this measure, let us now examine the inconvenience to which vessels passing the draw will be subjected, for this appears now to be the only remaining ground of investigation. We have been told by gentlemen on this floor well acquainted with the building of bridges and of their effects, that little or no detention is experienced in passing the draws. That it frequently happens that vessels pass through without lowering a sail or being detained a single instant when they have a fair wind, and that at no time is it necessary to detain them longer than from five to fifteen minutes. If this information is correct, (and we cannot possibly doubt it,) where, let me ask, is the very great injury to the very few vessels that will have to pass this draw? When I say very few, Mr. Chairman, I have reference to the statement made the other day by my honorable colleague, the chairman of the committee, whose report is now the subject of discussion. He then told us that his statement was taken from absolute entries made at the collector's office at Georgetown for the last seven years, and in that time only twenty-one ships, six brigs, one hundred and thirty-two schooners, and fifty-two sloops had been entered there, making in the whole two hundred and eleven vessels of all descriptions. My colleague at that time omitted to mention, or was not apprised of the fact, that of the vessels entered at Georgetown, a very considerable proportion never went there, but were destined for, and actually loaded at the Eastern Branch. It is very well known that within the last seven years a number of large vessels were loaded at the Eastern Branch by Mr. Barry alone, who was at that time engaged in making large shipments of flour and biscuit to the West Indies; yet all these vessels, as well as a great number employed in removing from Philadelphia the furniture of Congress, of the President, and of the public officers, together with those employed in bringing stores, &c., for the navy yard on the Eastern Branch, were all entered at Georgetown, that being the only port of entry for Georgetown and the city of Washington, thereby giving to Georgetown an appearance of commerce which she is not really entitled to. I have ascertained that some years ago several foreign vessels resorted to the port of Georgetown to carry away the

tobacco of that town and Bladensburg, and that the ships used to lie in the Eastern Branch to obtain their cargo from both places. That this trade has declined cannot be denied, for it is an incontrovertible fact that the only ship destined for Georgetown last year, called the William Murdock, Captain Tom, was loaded at Barry's wharf, on the Eastern Branch, because there was not sufficient water over the bar below Georgetown to admit her passage to and from that place. Now, sir, from the whole number of vessels of all descriptions entered at Georgetown for the last seven years, we may fairly deduct one-fourth for those which never went there; there will then remain 158 as having actually passed up the river to that place during that time; which, divided by seven, will be something less than twenty-three vessels in each year, and not quite one for each fortnight. Thus, then, sir, this mighty obstacle—these great delays by a drawbridge—after investigation become very inconsiderable. Indeed, the first is proven to be nothing, and the last too trifling to deserve serious consideration. But, Mr. Chairman, in order to remove every objection, or even doubt, which can possibly exist with any part of the committee, I am willing to insert a clause in the bill obliging the Bridge Company to compensate for any loss by detention at the draw.

We have been told by the counter-memorialists, and it has been reiterated here, "that natural advantages ought not to be injured by artificial means." Upon this subject, Mr. Chairman, the people of Georgetown ought to have been silent; they are not aware of a retort which this objection will force upon them. Will they recollect, sir, that to artificial means alone they are indebted for the greatest part of their commerce? Will they recollect that from artificial means alone the towns of Baltimore and Alexandria have been deprived of their natural advantages to the exclusive benefit of Georgetown? Do they not know that the improvement of the Potomac above them has diverted from its natural course a commerce which belonged to others and which now enriches them? And will they permit me to remind them that even to the erection of a bridge they owe no inconsiderable share of their commerce? Yes, sir, I will remind the people of Georgetown of advantages from artificial means which they ought not to have forgotten, because to them, in a great measure, they owe their present commercial standing. The bridge below the Little Falls, at the head of the navigation of the Potomac, has given to Georgetown a considerable quantity of produce from Virginia which must otherwise have gone to

Alexandria. I am very far from objecting to the means by which the importance of Georgetown has been acquired. I was pleased with the erection of a bridge at the Little Falls, because it was a convenience generally, and particularly so to that part of the country from which I come, and from the same principle I should be glad to see a number of other bridges erected, both above and below the Falls. I have always thought, and still think, there ought to be a bridge at Georgetown, and if the people of that place are of the same opinion, and will propose it, I will promise to vote for it. Is it necessary already to remind the people of Georgetown that for their exclusive benefit one arm of the river Potomac has been entirely closed, by authorizing a dam from Mason's Island to the Virginia shore, which gives to them, in some measure, a monopoly of the flour which comes down the Potomac? and are we now to be told by the same people that we possess no constitutional right to authorize a bridge across the Potomac for the public good, even with a free passage to vessels of all descriptions, and that even if we possess the right, it would be a wanton and cruel exercise of it? The erection of the dam will certainly prevent flour boats from going to Alexandria at particular seasons of the year, when high winds are frequent, as they will be obliged to go a considerable distance round Mason's Island, exposed to a wide and unprotected sheet of water, which will subject them to considerable danger, even when the wind is moderate; but before the erection of this dam, the boats could go down to Alexandria at almost any season, and with almost any wind, as they could, and did, always keep close to the Virginia shore, and covered by its banks were perfectly secure. This measure, as well as the erection of the bridge at the Falls, was evidently injurious to the interests of Alexandria. Yet, sir, had we any complaints from that quarter? Were our rights questioned by them, and our motives censured? Were we told by them that "no place should calculate on artificial advantages, which cannot be afforded without depriving other places of their natural advantages?" No, sir, they were silent; not even a murmur escaped them; they had no wish to deprive their neighbors of any advantages they could derive from "artificial means," although their interests should in some measure be affected by it; they felt none of those jealousies which appear now to influence their neighbors. It is well known that at the last session of Congress I was in favor of the causeway from Mason's Island to the Virginia shore. I did not believe at that time it could do any injury to the public, and as the people of

Georgetown supposed it would benefit them by reclaiming a channel considerably injured by natural causes, I could have no reasonable objection to the experiment, and of course gave to it my support.

Mr. QUINCY supported; and Messrs. DAWSON, G. W. CAMPBELL, MAGRUDER, VARNUM, and MASTERS, opposed the resolution; when the question was taken, and the resolution carried—yeas 60, nays 51. The committee immediately rose and reported their agreement to the resolution. The House took the report into consideration. On concurring in the resolution the yeas and nays were called; and were—yeas 61, nays 49, as follows:

YEAS.—Joseph Barker, Burwell Bassett, George M. Bedinger, Silas Betton, William Butler, Levi Casey, Martin Chittenden, John Claiborne, Christopher Clark, Frederick Conrad, Orchard Cook, Leonard Covington, Jacob Crowninshield, Ezra Darby, Elias Earle, Ebenezer Elmer, William Ely, James Fisk, James M. Garnett, Peterson Goodwyn, Silas Halsey, Seth Hastings, Wm. Helmes, David Hough, Walter Jones, James Kelly, Thomas Kenan, John Lambert, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, David Meriwether, Nicholas R. Moore, Thomas Moore, Jonathan O. Mosely, Thos. Newton, jr., John Pugh, Josiah Quincy, Thomas M. Randolph, Jacob Richards, John Russell, Peter Saily, Martin G. Schuneman, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, David Thomas, Philip R. Thompson, Uri Tracy, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Eliphalet Wickes, Nathan Williams, Alexander Wilson, Joseph Winston, and Thomas Wynns.

NAYS.—Willis Alston, junior, Isaac Anderson, John Archer, David Bard, Barnabas Bidwell, John Blake, jr., Thomas Blount, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, John Chandler, Samuel W. Dana, John Davenport, jun., John Dawson, Peter Early, James Elliot, John Fowler, Charles Goldsborough, Edwin Gray, Andrew Gregg, Isaiah L. Green, John Hamilton, James Holland, David Holmes, Patrick Magruder, Robert Marion, Josiah Masters, Jeremiah Morrow, John Morrow, Jeremiah Nelson, Roger Nelson, Gideon Olin, Timothy Pitkin, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sanford, James Sloan, John Cotton Smith, John Smith, O'Brien Smith, Samuel Smith, Samuel Tenny,

Joseph B. Varnum, Matthew Walton, John Whitehill, Robert Whitehill, David R. Williams, and Marmaduke Williams.

Ordered, That a bill, or bills, be brought in, pursuant to the foregoing resolution; and that Mr. THOMPSON of Virginia, Mr. CAMPBELL of Maryland, Mr. LEWIS, Mr. MAGRUDER, and Mr. BUTLER, do prepare and bring in the same.

MONDAY, February 3.

A memorial of the merchants of the town of Boston, in the State of Massachusetts, was presented to the House and read, stating that they have witnessed, with mingled feelings of indignation towards the perpetrators, and of commiseration for their unfortunate countrymen, the insults and barbarities which the commerce of these States has sustained from the cruisers of France and Spain; but that it is their object, in the present memorial, to confine their animadversions to the more alarming, because more numerous and extensive detentions and condemnations of American vessels, by Great Britain, and to advert to the principles recently avowed and adopted by her courts, relative to neutral trade in articles of colonial produce: principles which, if admitted, or practised upon in all the latitude which may fairly be inferred to be intended, would be destructive of the navigation, and radically impair the most lucrative commerce of our country; and praying that such measures may be adopted, by negotiation, or otherwise, in the wisdom of the Government, as will tend to disembarass our commerce, assert our rights, and support the dignity of the United States.—Referred to the Committee of the Whole on the state of the Union.

Intercourse with Great Britain.

Mr. J. RANDOLPH said the House would recollect better than he did, for he was not present at the time, the very important resolution referred on the motion of the gentleman from Pennsylvania, (Mr. GREGG,) whom he saw in his place, to the Committee of the Whole on the state of the Union. It was no part of his purpose at this time to discuss the merits of that resolution, and it was still further from his purpose to throw any impediment, or create

any delay in bringing forward that discussion; the more so, as he considered the whole country south of the seat of Government, and more particularly that part of the country in which he resided, decidedly interested in a speedy and prompt reception or rejection of the proposition. Indeed, such was his opinion of the necessity of its being speedily acted upon, that as soon as he saw the resolution which had been offered, which was not until Friday, when it was laid on their table, the first suggestion of his mind was to move the going immediately into a Committee of the Whole on it; as those gentlemen with whom he had the honor of holding personal and political intercourse would testify. But a more mature reflection had convinced him that before the resolution could receive that ultimate decision which he trusted it would receive, the House stood in need of material information, which, however it might be in the possession of this or that individual, was not possessed by the body of the House. His object in addressing the House was to obtain this information from the proper authority, from the Head of a Department, which was the only way in which information of a satisfactory nature, such as ought to influence the decision of the House, ought to be obtained. Mr. R. then submitted the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House a statement of the exports and imports of the United States, to and from Great Britain and Ireland, and the American colonies of the same, for the two last years, distinguishing the colonial trade from that of the mother country, and specifying the various articles of export and import, with the amount of duties payable on the latter.

Mr. SMILIE expressed himself in favor of the resolution, and observed that the species of information called for, had not been received by the House later than 1803.

Mr. CROWNINSHIELD was of opinion that it would be best to extend the resolution so as to embrace the British Provinces of Nova Scotia and New Brunswick, and the provinces beyond the Cape of Good Hope.

A conversation of some length ensued between Messrs. CROWNINSHIELD, BIDWELL, and ALSTON, on the one side; and Messrs. J. RANDOLPH and J. CLAY, on the other, on amending the resolution. The former gentlemen were for amending the resolution so as to embrace a period of peace as well as

war, and to obtain information from “all the dependencies of Great Britain,” which the latter gentlemen opposed on various grounds, one of which was, that if this additional information were desirable, it could be obtained by a distinct resolution.

On Mr. CROWNINSHIELD’S motion to amend the resolution, so as to extend it to “British dependencies,” generally, the House divided—ayes 43, noes 67.

Mr. NICHOLSON suggested the propriety of adding the following words to the resolution, in which the mover acquiescing, they were incorporated into it:

“And also a statement showing in detail the quantity and value of the like articles of import brought into the United States, from other nations respectively, with the rate and amount of duty thereon.”

The resolution, thus modified, was agreed to without a division.

Mr. CROWNINSHIELD then moved the following resolution. He said, in substance it was the same with the amendment which he had proposed to the resolution of the gentleman from Virginia:

Resolved, That the Secretary of the Treasury be directed to lay before this House a statement of the amount of the exports and imports to and from the British dependencies, other than those of America, for the last two years.

This resolution was likewise agreed to without a division.

WEDNESDAY, February 5.

Non-Intercourse with Great Britain.

Mr. CLAY.—The gentleman from Massachusetts having laid on the table a resolution arising out of the present state of our foreign relations, and as that subject is one on which I think there cannot be too much deliberation before we act, or of which too many views cannot be taken, I will take the

liberty of submitting some resolutions which I have drawn up, and to which I ask the attention of the House. In the present state of our relations with foreign powers, it appears to me that a system of commercial regulations, mild and yet firm, one which can be carried into permanent effect without much inconvenience to ourselves, will be more effectual than any temporary expedients. If we are disposed to adopt such a system, it will be looked upon by foreign nations as one in which we are likely to persevere. They will consider its probable effects in time of peace upon their colonial possessions, and they may be induced to enter into permanent regulations opening to us a trade with their colonies. The distinction attempted to be made between a war trade and an accustomed trade will be destroyed, and with it the only pretext upon which are founded the vexations and depredations committed on American commerce. The present is a favorable moment for the adoption of such a plan. At this time the ports of the belligerent powers are open, and the effect of the measures, which I am about to propose, will not have an immediate distressing effect upon the West Indies. If these measures are taken, the powers of Europe will find that, unless they admit our ships into their colonial ports in time of peace, the trade between their colonies and us will be cut off by a system which will be but slightly injurious to ourselves. I think, I repeat it, that a permanent system, mild but firm, will be more likely to induce Great Britain, in particular, to recede from the unjust pretensions she has set up, than more violent and extreme measures, which, from their very nature and their injurious consequences to ourselves, must be necessarily temporary.

Mr. C. concluded, with offering the following resolutions:

Resolved, That, after the —— day of —— next, no trade or intercourse in any ship or vessel owned in whole or in part by any citizen or subject of any foreign Government, shall be permitted between the United States or their Territories, and any port or place in the colonies or dominions of any European power, which trade or intercourse is not permanently permitted by the laws or regulations of such European power, to be carried on in ships or vessels of the United States.

Resolved, That, after the —— day of —— aforesaid, no goods, wares, or merchandise, shall be exported from the United States or their Territories, in any ship or vessel owned in whole or in part by any citizen or subject of any

foreign Government, to any port or place in the colonies or dominions of any European power, the importation of which into such port or place, in ships or vessels of the United States, is not permanently permitted by the laws or regulations of such European power.

Resolved, That, after the —— day of —— aforesaid, no goods, wares, or merchandise, shall be imported into the United States or their Territories, in any ship or vessel owned in whole or in part by any citizen or subject of any foreign Government, from any port or place in the colonies or dominions of any European power, the exportation of which from such port or place, in ships or vessels of the United States, is not permanently permitted by the laws or regulations of such European power.

Resolved, That, after the —— day of —— aforesaid, no goods, wares, or merchandise, shall be imported into the United States, in any ship or vessel owned in whole or in part by any citizen or subject of any foreign Government, excepting articles of the growth, produce, or manufacture of the colonies or dominions of such foreign Government, unless such importation be expressly permitted by treaty between the United States and such foreign Government, or unless during a war in which the United States may be a party.

The House immediately considered these resolutions, and referred them to a Committee of the Whole on the state of the Union.

Importation of Slaves.

The House again resolved itself into a Committee of the Whole, on the bill imposing a duty of ten dollars on every slave imported into the United States.

Mr. JACKSON offered a new section, the object of which was to prohibit the importation into the United States of all slaves, brought either from abroad or from any State, except, in the latter case, by citizens of the United States removing to a Territory, to settle therein.

Mr. JACKSON viewed this provision as necessary, in consequence of a legal construction given to an act of the last session, which allowed the importation of slaves from abroad into Louisiana.

This motion was opposed by Messrs. ALSTON, ELY, MORROW, SPALDING, and SLOAN, who either viewed it as inexpedient in itself, or as proper to be introduced into a distinct bill.

Mr. JACKSON said, as it was the wish of his friends, he would withdraw the motion, and offer it on another occasion.

No farther amendments having been offered the committee rose, and reported their agreement to the bill.

The House immediately considered the report.

The amendment limiting the imposition of the tax to the first day of January, 1808, was disagreed to; and the other amendments agreed to.

Mr. JACKSON inquired what the effects would be of the forfeiture of the cargo, in case slaves were smuggled into the United States? Would they be kept in the service of the United States? He did not wish to have any thing to do with them.

Mr. JOHN C. SMITH said, he had voted for the resolution; but the defects in the details of the bill were so glaring, that he hoped it would be referred to a select committee, that it might be so modified as to cure these defects; or, that in case it were found insusceptible of modification, it might be rejected. Mr. S. accordingly moved the recommitment of the bill to a select committee.

Mr. JACKSON advocated this motion, and remarked that the proviso of the bill that declared the duty should not be construed as giving a sanction to the importation of slaves, offered an additional reason for either rejecting or recommitting it. How could this language be used with propriety in a law, when the constitution, the highest authority, authorized the trade?

Mr. QUINCY spoke to the like effect, and further inquired, whether it was the intention of gentlemen to apply the provisions of the bill to slaves navigating the ships of the United States.

Messrs. HASTINGS and SLOAN defended the provisions of the bill as perfectly correct. They observed that slaves were considered as property, as merchandise, and could only, therefore, in the bill be treated as such.

The motion to recommit was lost—ayes 39, noes 61.

Mr. CROWNINSHIELD spoke against the bill, and moved its postponement to an indefinite day.

Messrs. JOHN C. SMITH, TAGGART, and RHEA of Tennessee, supported; and Messrs. SLOAN, ELMER, and SMILIE, opposed the motion; when the yeas and nays were called on it, and were—yeas 42, nays 69, as follows:

YEAS.—Willis Alston, jr., George M. Bedinger, Silas Betton, Phaniel Bishop, William Blackledge, Joseph Bryan, William Butler, Levi Casey, Martin Chittenden, Christopher Clark, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Samuel W. Dana, John Davenport, junior, John Dawson, Elias Earle, Peter Early, James Elliot, James M. Garnett, Edwin Gray, James Holland, John G. Jackson, Walter Jones, Thomas Kenan, Robert Marion, Josiah Masters, William McCreery, David Meriwether, Thomas Moore, Timothy Pitkin, jr., Thomas M. Randolph, John Rhea of Tennessee, Thomas Sanford, O'Brien Smith, Thomas Spalding, Samuel Taggart, Samuel Tenney, David Thomas, Thomas W. Thompson, David R. Williams, and Thomas Wynns.

NAYS.—Isaac Anderson, John Archer, Joseph Barker, John Blake, jr., Thomas Blount, Robert Brown, John Chandler, John Claiborne, Joseph Clay, Leonard Covington, Richard Cutts, Ezra Darby, Ebenezer Elmer, William Ely, John W. Eppes, William Findlay, James Fisk, John Fowler, Peterson Goodwyn, Andrew Gregg, Isaiah L. Green, Silas Halsey, John Hamilton, Seth Hastings, David Holmes, David Hough, Nehemiah Knight, John Lambert, Michael Leib, Joseph Lewis, junior, Matthew Lyon, Patrick Magruder, Nicholas R. Moore, Jeremiah Morrow, Jonathan O. Mosely, Jeremiah Nelson, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, John Pugh, John Rea of Pennsylvania, Jacob Richards, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, Ebenezer Seaver, James Sloan, John Smilie, John Cotton Smith, John Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, Lewis B. Sturges, Philip R. Thompson, Uri Tracy, Abram Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, John Whitehill, Robert Whitehill, Eliphalet Wickes, Marmaduke Williams, Alexander Wilson, and John Winston.

Mr. JACKSON moved to strike out the proviso of the bill, which motion was disagreed to; when the bill was ordered to be engrossed for a third

reading to-morrow—ayes 69.

THURSDAY, February 6.

Another member, to wit, from South Carolina, RICHARD WYNN, appeared, produced his credentials, was qualified, and took his seat in the House.

FRIDAY, February 7.

Non-Importation of Slaves, into Territories. ^[32]

On motion of Mr. D. R. WILLIAMS the House came to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and if any, what additional provisions are necessary to prevent the importation of slaves into the Territories of the United States.

A committee of five members were appointed.

Removal of Federal Judges on the Address of Congress.

AMENDMENT TO THE CONSTITUTION.

Mr. J. RANDOLPH, agreeably to notice given by him yesterday, made the following motion:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding as a part of the Constitution of the United States:

The Judges of the Supreme, and all other courts of the United States, shall be removed from office by the President, on the joint address of both Houses of Congress requesting the same.

The House having agreed to consider the motion, it was, at the instance of Mr. J. RANDOLPH, referred to a Committee of the Whole on the state of the Union.

Mr. J. RANDOLPH gave notice that he should call up this motion on Thursday.

Naval Peace Establishment.

The House went into a Committee of the Whole on the bill relative to a Naval Peace Establishment.

Mr. GREGG explained at some length the provisions of the bill. The bill, he said, corresponded with the intimations of the President relative to giving an opening to the promotion of several officers who had greatly distinguished themselves in the Mediterranean service. He stated that the bill contemplated giving the President power to keep in service nine hundred and twenty-five able and ordinary seamen and boys, making two-thirds of the full complement of six frigates, two of forty-four guns, two of thirty-six, and two of thirty-two; that it contemplated the increasing the number of captains from ten to thirteen; the creation of nine masters-commandant, and the increase of lieutenants from thirty-six to seventy-two. This arrangement was proposed, in order to give to the young officers in the navy that rank and reward merited by them, and to enable the doing this, without interfering with the rules of promotion usual in the naval service.

Mr. LEIB spoke against the feature of the bill that augmented the number of officers. It appeared to him, indeed, a pension bill, and to make large allowances without services rendered. It also contemplated the keeping six frigates in service, and provides for them thirteen captains, nine masters-commandant, and seventy-two lieutenants. He did not consider the Treasury in such a state of overflow as to justify this liberality.

Mr. GREGG said the gentleman had misunderstood his remarks as well as the nature of the bill, which, so far from directing six frigates to be kept in

actual service, repealed that part of a former law which contained this provision.

No motion having been made to amend the bill, the Chairman proceeded in the reading of the remaining sections; when

Mr. GOLDSBOROUGH expressed his opinion that the bill required considerable amendment, and that he had understood from the Secretary of the Navy that its provisions were not consonant to that system which he considered the most conducive to the public service. With a view to obtain fuller information relative to the subject, he moved that the committee should rise and ask leave to sit again.

This motion obtained, without opposition, when the committee rose and received leave to sit again.

MONDAY, February 10.

Another member, to wit, DUNCAN MCFARLAND, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Importations from Great Britain.

Mr. NICHOLSON said he wished to lay on the table a resolution relative to the subsisting differences between the United States and Great Britain, on which several resolutions had already been offered.

Mr. N. said he had seen two propositions, neither of which he liked. One was a resolution offered by a gentleman from Pennsylvania, (Mr. GREGG.) When he considered that our importations from Great Britain amounted annually to about twenty-five millions of dollars, and that the whole of this trade was, according to the proposition of the gentleman, to be prohibited; and it was also considered that the average amount of duties on articles imported from Great Britain was twenty per cent., it would at once be seen that the measure would affect the revenue to the amount of five millions annually.

Nor did it, in offering these resolutions, appear to have been taken into view, that while the measure had a very material effect on the revenue, it had likewise an immediate effect on the habits of our citizens who consumed goods imported from Britain. With regard to the single article of cotton, its prohibition would operate in three different ways. In the first place, the wants of our people will be increased in proportion to the prohibition of cotton goods; in the second place, the revenue would be affected by it; and in the last place, it was extremely probable that the foreign demand for the raw material we furnish would be considerably diminished. A single fact would evince this with some force. In the year 1791, there were exported to Liverpool 64 bales of cotton; and in the first nine months of 1805 there had been exported to the same place 93,000 bales. This would show what the effect might be of the prohibition of the importation of articles manufactured from cotton in Great Britain on the demand for the raw material we furnish.

Mr. N. then submitted the following resolution:

Resolved, That, from and after the —— day of —— next, the following articles, being of the growth, or manufactures of Great Britain or Ireland, or of any of the colonies or dependencies of Great Britain, ought to be prohibited by law from being imported into the United States, or into the territories thereof, viz:

All articles of which leather is the material of chief value; all articles of which tin or brass is the material of chief value, tin in sheets excepted; all articles of which hemp or flax is the material of chief value; all articles of which silk is the material of chief value; woollen cloths, whose invoice prices shall exceed ——; woollen hosiery of all kinds; window glass, and all other manufactures of glass; silver and plated wares; paper of every description; nails and spikes; hats; clothing ready made; millinery of all kinds; playing cards; beer, ale, and porter; and pictures and prints.

This resolution was immediately considered by the House, and referred to a Committee of the Whole on the state of the Union, and ordered to be printed.

West India Trade.

Mr. CROWNINSHIELD said, the gentleman from Maryland (Mr. NICHOLSON) had offered several resolutions prohibiting the importation of sundry articles of British manufactures into the United States. Mr. C. observed that he had another project which he wished to submit, relative to our trade with the British West Indies. He did not mean at this time to discuss the subject, either so far as it was connected with the propositions of the gentleman from Maryland, or with that of the gentleman from Pennsylvania, which went to a much greater extent. But with regard to one idea expressed by the gentleman from Maryland, he thought it proper to say a few words. That gentleman had observed that the proposition offered by the gentleman from Pennsylvania would affect the revenue to the amount of five millions of dollars; and therefore impressed upon the House the duty of being extremely cautious in taking such a step. Mr. C. said he did not believe the adoption of that proposition would affect the revenue to any such extent. He did not believe it would affect the revenue to the amount of a million of dollars. Because, although we should prohibit the importation of British goods, we could get most of the same articles from other countries. We get salt from Cadiz, and Lisbon, and from several other places. Rum could be got from every island in the West Indies; and if we should not be able to get a sufficient quantity to supply our wants, we could import from France brandies, which will be a good substitute. We may also get woollens from the continent of Europe, and every article on the list, perhaps at higher prices. It was not, however, Mr. C. said, his object at this time to discuss the merits of either proposition. His chief object was to offer his own project, which related to the West Indies. Every one knows that those islands are dependent on the United States for the necessaries of life; that they cannot get many important articles they absolutely want from other countries. Every one knows that for fish, beef, pork, and lumber, they are dependent on us, inasmuch as they cannot get them elsewhere. How is the trade carried on? Great Britain has adopted a curious commercial principle, bottomed on the principle of her navigation act; which in time of peace almost amounts to a prohibition to introduce into her islands any articles of ours; and which in time of war opens the ports of a few of her islands for the introduction of particular articles for three or six months. Mr. C. said he wished to see this trade permanently open to the citizens of the

United States. He thought it probable this might be done by the adoption of his plan. The gentleman from Pennsylvania had offered a proposition which was calculated to meet in part the practices of Great Britain. The first resolution related to trading to the West Indies in foreign vessels, and not in vessels of the United States. Every one knew that in the trade between the United States and the West Indies there were either none, or very few foreign vessels.

Mr. C. then offered the following resolution:

Resolved, That, from and after the —— day of —— next, no goods, wares, or merchandise, shall be exported from, or imported into, the United States or the territories thereof, in any ship or vessel whatever, to or from any European colonies or settlements, situated on the eastern side of the continent of America, or its adjacent seas, northward of the Equator, unless the importation of all articles of the growth, product, or manufacture of the United States and their territories, in American bottoms, is at all times admitted into the said colonies, or settlements, and unless the exportation of the productions of the said colonies, or settlements, is permanently allowed in American bottoms from the same to the United States, and the territories thereof.

WEDNESDAY, February 12.

Limits of Georgia.

Mr. SPALDING, from the committee to whom was referred, on the thirteenth ultimo, the memorial of the Legislature of the State of Georgia, made a report thereon, which was read, as follows:

The committee to whom was referred the memorial of the Legislature of the State of Georgia, respecting disputed limits between that State and the State of North Carolina, having taken into consideration the matter of the said memorial, as well as such information as the documents attached to the memorial and former reports made to this House afford, beg leave to submit the following report:

Between the latitude of 35 degrees north, which is the southern boundary claimed by North Carolina, and the northern boundary of Georgia, as settled by a convention between that State and South Carolina, intervenes a tract of country supposed to be about twelve miles wide, from north to south, and extending in length from the western boundary of Georgia, at Nicajack on the Tennessee, to her north-eastern limits, on the Tugalo. This tract was consequently within the limits of South Carolina, and in the year 1787 it was ceded to the United States, who accepted the cession. This territory remained in possession of the United States until 1802, when it was ceded to the State of Georgia. From the most correct information relative to the said territory, it appears that it is inhabited by about 800 souls, and (to adopt the words of a former report) it is not shown at what period they made the settlement, nor had they any title to the land on which they settled and made improvements. No such title indeed could have been created, as those lands remained within the boundary of the Cherokees until the year 1798, when a part of this territory was purchased by a treaty held at Tellico. It does not appear that the lines that bound the tract of land in question, and divide it from Carolina, have ever been established by public authority.

After the transfer of this territory by the United States to Georgia, the Legislature of that State, in compliance with the earnest request of those self-governed people, praying that they might be allowed to participate in the civil rights enjoyed in common by the people of the United States, passed an act in the year 1803 to organize the inhabited part of the territory, and to form it into a county, authorizing, at the same time, the Governor to appoint commissioners, to meet such commissioners as should be appointed by the Government of North Carolina to ascertain and plainly mark the line dividing this territory from North Carolina. The Governor of North Carolina expressed a readiness to accede to the proposition, under the provisions of a former act of the Legislature of that State, but clogged with a condition which the Legislature of North Carolina refused to depart from, and which the Legislature of Georgia refused to accede to. Her reason may be found in a letter from General Pickens, of the State of South Carolina, attached to a report made to the House respecting that territory while the property of the United States. The letter states, that before the people inhabiting that territory settled on the lands, it was surveyed, and grants obtained for most part of it from the State of North Carolina, and probably by men who cared little whether the land was within the Indian claim or the limits of South

Carolina. Your committee conceive that they have no right to enter into the feelings of either of the parties, or to pronounce upon the justice of the condition made by North Carolina on the one part, or its rejection by Georgia on the other, and have therefore confined their attention to that part of the memorial which calls upon Congress to define and mark out the thirty-fifth degree of latitude—the line which North Carolina admits to bound her State—upon the south and north of which Georgia can have no claim of territory. Your committee, after giving to this point the most deliberate consideration, are of opinion that the United States are bound, in good faith, to use their friendly offices with the State of North Carolina for obtaining an amicable adjustment of the limits of the territory, which they have transferred to Georgia, in all parts where such limits may be disputed.

Your committee, therefore, beg leave to offer the following resolution:

Resolved, That the President of the United States be authorized to appoint a commissioner, to meet such commissioners as may be appointed by the States of North Carolina and Georgia, for the purpose of ascertaining and running the line which divides the territory transferred by the United States to Georgia, from North Carolina.

The report was read, and referred to a Committee of the whole House on Friday next.

THURSDAY, February 13.

Society of Harmony.

The House went into a Committee of the Whole on the bill received from the Senate, the object of which is to authorize the location of a quantity of land in the Indiana Territory by George Rapp and his associates, they paying two dollars therefor, and giving them a credit, without the payment of interest, for six years, when they are to pay one-fourth of the purchase money, and the residue in six annual payments, on condition that, agreeably to prescribed terms, the vine shall be cultivated.

Mr. MCCREERY stated that George Rapp and his associates, amounting to about 3,000 persons, were natives of the Electorate of Wirtemberg; that they

were Lutherans, who had fled from oppression in that country; that they were mostly cultivators of the vine, and wished an extension of the usual time for paying for public lands, they not having the means of the common payment; they wished to live together, and to cultivate the vine for their principal support, for their prosperity, and for the good of the community, in introducing its culture into this country.

Mr. ELY observed that the bill appeared to give a preference in the sale of the public lands; that the bill was presented from the Senate without the documents or testimony which might justify this preference; he therefore moved that it should be committed to the Committee on Public Lands.

Mr. GREGG.—They obtain a whole township of the best land at only two dollars per acre, and it is proposed to extend to them an unusual indulgence in the time of payment. He would not agree to it.

Mr. FINDLAY spoke in favor of the bill.

Mr. CONRAD.—The indulgence of time for payment is not unprecedented. He showed an act granting twelve years for payment where land was purchased for the same purpose, and that act does not bind the purchasers to plant the vine, whereas this does. It were better to make a present of the land than not have the settlement among us of such persons. If not thus sold, it is more than probable that the land will lie waste and unsold more than the six years.

Mr. OLIN.—If we can be justified in a sale of this kind, why oblige foreigners instead of our own countrymen? We have citizens enough of our own who would be glad to purchase on such terms.

Mr. SLOAN.—Though I drink no wine myself, I have no wish to prevent others, for I think it may often be serviceable. I consider the indulgence as to the time of payment in the light of an encouragement or bounty, that may prove useful to us as well as the applicants.

Mr. SMILIE.—I cannot say with the gentleman from New Jersey that I drink no wine, for I certainly do when I can get it. I do not consider it as a valid objection that the petitioners are foreigners. I am myself a European, who have fled from oppression in the country where I was born. How great a part of Pennsylvania is settled by such characters!

Mr. MCCREERY.—The applicants are men of piety and industry. Let us give them a good chance, for our own sakes as well as theirs, to introduce the culture of the grape here.

Mr. FINDLAY.—If this indulgence be not given, the land will lie waste. We wish to populate the territory. Their settlement will enhance the value of the public lands around them.

Mr. ELY.—I am sorry my motion has occasioned so much debate. I was ignorant of the circumstances relating to this society, and to the character of it; my object was information, not an intention to defeat the bill. We deviate from the usual mode, which is to have the report of a committee in cases of this sort.

Mr. GREGG.—This bill very improperly authorizes a deviation from the established practice of selling public lands—it is a change of principle. I do not wish to see so great a body of foreigners settled together; we shall have a little Wirtemberg; we must legislate for them; they cannot speak our language; they cannot serve as jurymen, and from the information I have received, I am confident they will not succeed in cultivating the vine in that country.

Mr. BEDINGER.—I am a shareholder in a vineyard in Kentucky, and our success has exceeded our most sanguine expectations.

Mr. MACON.—In order to try the sense of the committee, I move to strike out the words “George Rapp and his associates.” Why should we not grant bounties for raising wheat or corn as well as the vine? If wine can be made here to advantage, there is no need of the encouragement of this House. A few years since we raised no cotton, but the profit of this culture once known, it has become an article of vast exportation. What claim have these aliens over our own citizens? They have been oppressed; put your finger on any spot of Europe that is not under oppression. If you commence this new system, all the best sections of land will be taken up in this manner. Who will not purchase on such terms?

Mr. LYON.—Lands not belonging to the public may be had for less than one dollar an acre in many places.

Mr. OLIN.—We have men that can cultivate the vine as well as those foreigners. It is a plain, simple thing.

Mr. JACKSON.—If disposed to grant favors, let us grant to those who have the greatest claim. There are many old soldiers of the Revolution, who would rejoice to purchase land on these terms. Why encourage the making of wines? They are luxuries, not necessities. Lands on the Ohio are from six to eight dollars in many places; this bill gives the petitioners their choice of the best, and they pay no interest for their purchase, at two dollars.

Mr. SLOAN.—This bill will enhance the value of lands adjoining. It will be a humane act.

Mr. JACKSON.—I rise merely to state a fact I have just now learned. There are at this very time men waiting for the passage of this bill, who are ready to give six dollars per acre for much of the very land the bill contemplates.

Mr. HOLLAND.—Some small tracts only may sell for six dollars. We bind the purchasers to plant the first year 9,000 plants, and 3,000 annually after.

Mr. MORROW, of Ohio.—I rise only to reply to the gentleman from Virginia, (Mr. JACKSON.) I never seek for information in the lobby, nor the gallery, nor Pennsylvania avenue. The gentleman is misinformed.

Mr. JACKSON.—My authority is an honorable member near me—an authority at least as respectable as any the gentleman from Ohio can have.

The question was taken—50 for striking out, 51 against it. The committee rose, and the House considered the bill.

Mr. CROWNINSHIELD.—There is no interest to be received. I have made a calculation that, considering the want of interest to the time of the last payment, we now get only ninety-seven cents per acre. I move to strike out two, and insert three dollars per acre.

The motion was lost—44 only for it.

Mr. CROWNINSHIELD.—There are in a section about 23,000 acres, making about 46,000 dollars. I move to insert six per cent. interest till paid.

Mr. NICHOLSON.—Public lands are sold without interest for a certain time. If the money be not punctually paid, I am willing the debt should be on interest after.

Mr. JACKSON.—I move to postpone the consideration of the bill indefinitely.

The ayes and nays were called for, and taken on this motion—ayes 53, nays 59.

Mr. CROWNINSHIELD's motion for the insertion of interest was lost—52 to 49.

Mr. D. R. WILLIAMS moved the insertion of two instead of six years for payment of the land. Motion lost—54 to 45. The bill passed to a third reading for to-morrow.

FRIDAY, February 14.

Indiana Territory.

Mr. GARNETT, from the committee appointed on the eighteenth of December last, to whom were referred the report of a select committee on the letter of William H. Harrison, made the seventeenth of February, eighteen hundred and four; a memorial of the Legislative Council and House of Representatives of the Indiana Territory, and several petitions of sundry inhabitants of the said Territory; made the following report:

That, having attentively considered the facts stated in the said petitions and memorials, they are of opinion that a qualified suspension, for a limited time, of the sixth article of compact between the original States and the people and States west of the river Ohio, would be beneficial to the people of the Indiana Territory. The suspension of this article is an object almost universally desired in that Territory. It appears to your committee to be a question entirely different from that between slavery and freedom, inasmuch as it would merely occasion the removal of persons, already slaves, from one part of the country to another. The good effects of this suspension, in the present instance, would be to accelerate the population of that Territory, hitherto retarded by the operation of that article of compact, as slaveholders emigrating into the Western country might then indulge any preference which they might feel for a settlement in the Indiana Territory, instead of seeking, as they are now compelled to do, settlements in other States or countries permitting the introduction of slaves. The condition of the slaves themselves would be much ameliorated by it, as it is evident, from experience, that the more they are separated and diffused, the more care and attention are bestowed on them by their masters, each proprietor having it in his power to increase their comforts and conveniences in proportion to the smallness of their numbers. The dangers, too, (if any are to be apprehended,) from too large a black population existing in any one section of country, would certainly be very much diminished, if not entirely removed. But whether dangers are to be feared from this source or not, it is certainly an obvious dictate of sound policy to guard against them, as far as possible. If this danger does exist, or there is any cause to apprehend it, and our Western brethren are not only willing but desirous to aid us in taking precautions against it, would it not be wise to accept their assistance? We should benefit ourselves, without injuring them, as their population must always so far exceed any black population which can ever exist in that country, as to render the idea of danger from that source chimerical.

Your committee consider the regulation contained in the ordinance for the government of the Territory of the United States, which requires a freehold of fifty acres of land as a qualification for an elector of the General Assembly, as limiting too much the elective franchise. Some restrictions, however, being necessary, your committee conceive that a residence

continued long enough to evince a determination to become a permanent inhabitant, should entitle a person to the rights of suffrage. This probationary period need not extend beyond twelve months.

The petition of certain settlers in the Indiana Territory, praying to be annexed to the State of Ohio, ought not, in the opinion of your committee, to be granted.

After attentively considering the various objects desired in the memorials and petitions, the committee respectfully submit to the House the following resolutions:

1. *Resolved*, That the sixth article of the ordinance of 1787, which prohibits slavery within the Indiana Territory, be suspended for ten years, so as to permit the introduction of slaves, born within the United States, from any of the individual States.

2. *Resolved*, That every white freeman of the age of twenty-one years, who has resided within the Territory twelve months, and within the county in which he claims a vote, six months immediately preceding the election, shall enjoy the rights of an Elector of the General Assembly.

3. *Resolved*, That the petition of certain settlers in the Indiana Territory, praying to be annexed to the State of Ohio, ought not to be granted.

4. *Resolved*, That it is inexpedient, at this time, to grant that part of the petition of the people of Randolph and St. Clair which prays for a division of the Indiana Territory.

Referred to a Committee of the Whole on Thursday next.

Society of Harmony.

The bill allowing George Rapp and his associates to locate a township of land in the Indiana Territory on certain conditions, was read a third time.

Mr. CLARK moved to recommit the bill to the Committee on Public Lands. The bill wants several amendments. There is no penalty, should the petitioners neglect to plant the vines.

Mr. JACKSON.—I second the motion of my colleague. These public lands formerly belonged to the State of Virginia; when ceded by that State, the Government of the United States were made trustees “for the common benefit of the Union; faithfully and *bona fide* for that use, and for no other,” to use the words of the act granting the cession. This is a contract between Virginia and the United States; we are in the place of trustees; we cannot violate the trust, yet this mode of selling the land for the benefit of individual foreigners is a violation of the trust. This precedent will be quoted hereafter, and will operate most injuriously. Notwithstanding what the gentleman from Ohio (Mr. MORROW) has said, I cannot help saying, that there are men ready at this time to give six dollars per acre for this very land, or land of this description. This bill will give them a whole township, 23,000 acres of land of the first quality. I cannot conceive the cultivation of the vine as a national benefit, as being “for the common benefit of the Union.” It will diminish the revenue, should vines be raised in abundance here. Wine is heavily taxed, and the tax is paid by the rich. I am altogether opposed to the bill.

Mr. SMILIE.—A new argument indeed is brought forward by the gentleman from Virginia. We can hardly turn round without somehow invading the rights of Virginia. If we talk of building a bridge or erecting a dam, at once the rights of Virginia are invaded. If we wish to dispose of some of our public land in the West as we think proper, the rights of Virginia are invaded. Virginia claimed lands stretching to the north pole; she took what she wanted, and gave a quit claim to the United States for the rest. Some of the House think this sale, this indulgence in the payment for the purpose of introducing the cultivation of the vine, and of serving these worthy foreigners, will be “for the common benefit of the Union;” some think otherwise; it is merely a matter of opinion, and a majority of opinion must decide.

Mr. MORROW.—There are some small tracts of land, on which what are called *squatters* are settled, and where already improvements have been made, which would sell for four or six dollars per acre; but I doubt whether any township of land would sell for two dollars, even with the usual instalments.

Mr. PARKE, of the Indiana Territory.—Even in the settled parts of the Territory, lands are not above three dollars.

Mr. ELY.—Gentlemen have said that poor lands were proper for the vine. It may be so; but the petitioner and his associates mention also the raising of hemp, which requires the best bottom lands. I am far from wishing to discourage these settlers; but they are already among us, and will not leave this country. They are represented to be (and I fully believe the representation) men of piety and morality; the United States are not beyond improvement in piety and morality; instead of putting them in one, and that a far-distant place, let them be scattered over the Union, that all parts may be benefited. Such a body of men, of one sect, of one language, will wish to seclude itself from the rest of the Union; they will wish what this bill gives them, and what I think injurious, an exclusive territory. We are deviating from our common usage in the sale of land. Is the deviation necessary or proper? Gentlemen have said they were flying from oppression to this land of liberty; liberty was their object; a republican Government; yet it appears that when they left Wirtemberg, their expectation and intention was to settle in Louisiana, then under the Spanish Government. The bill obliges them to plant a certain number of vines; perhaps the expense of this will not be \$100, and there is no forfeiture even if they should refuse to comply. It may prove a fine speculation for them; they may get perhaps the finest land and the best salt lick in the territory.

Mr. NICHOLSON, (after recapitulating the arguments previously adduced.)—I have no objection to the settlement of the applicants in one body; nor can I see any probable evil resulting from it. The gentleman from Massachusetts has informed us that the people of the United States are bad enough, and that the distribution of this society over the whole States might prove advantageous to the Union; if not in one body, they must settle on lands for sale in different parts of Kentucky, Tennessee, Ohio, &c. This distribution would be unfair, as Massachusetts has not lands for sale, except perhaps in the district of Maine; hence that State would be deprived of the advantage it might obtain by an improvement of its piety and morality from a distribution of a part of this society among the citizens of that State. I know not why the sale of this land, according to the terms of the bill, should be considered as not conducing to the good of the nation. We have given lands for colleges and schools, and for the support of clergymen; we have also sold lands, the proceeds of which were to be expended for the improvement of roads—roads by which the public at large would be benefited, though the citizens of Maine or Georgia might never travel them.

The bill was recommitted to a Committee of the Whole—62 to 53, and made the order of the day for Monday next.

MONDAY, February 17.

Non-Importation of Slaves into Territories.

Mr. DAVID R. WILLIAMS, from the committee appointed, on the seventh instant, “to inquire whether any, and, if any, what, additional provisions are necessary to prevent the importation of slaves into the Territories of the United States,” made the following report:

That the act of Congress, passed the 7th April, 1798, authorizing the establishment of a Government in the Mississippi Territory, permits slavery within that Territory, by excluding the last article of the ordinance of 13th July, 1787. The seventh section of this act prohibits, after the establishment of a Government, the importation of slaves from any port or place without the limits of the United States; of course, the right to import slaves from any place within the limits of the United States is not restricted.

The act of 2d March, 1805, further providing for the Government of the Territory of Orleans, secures to its inhabitants “all the rights, privileges, and advantages, secured by the ordinance of 13th July, 1787, and now enjoyed by the people of the Mississippi Territory.” The importation of slaves, from any place within the limits of the United States, is one of those rights; consequently, the inhabitants of the Territory of Orleans may exercise it also.

The tenth section of the act of 26th March, 1804, “erecting Louisiana into two Territories, and providing for the temporary government thereof,” prohibits the introduction of slaves into that Territory, from any place, “except by a citizen of the United States, removing into said Territory, for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves.” This tenth section, being repugnant to the first section of the act of 2d March, 1805, was repealed by the last section of said act, which declares: “that so much of an act, entitled ‘An act erecting Louisiana into two Territories, and providing for the temporary government thereof,’

as is repugnant with this act, shall, from and after the first Monday of November next, be repealed.”

The committee are in the possession of the fact, that African slaves, lately imported into Charleston, have been thence conveyed into the Territory of Orleans; and, in their opinion, this practice will be continued to a very great extent while there is no law to prevent it.

Upon this view of the subject, the committee believe it is expedient to prohibit any slave or slaves, who may be hereafter imported into the United States, from being carried into any of the Territories thereof; they, therefore, respectfully recommend the following resolution:

Resolved, That it shall not be lawful for any person or persons to import or bring into any of the Territories of the United States any slave or slaves that may hereafter be imported into the United States.

The report was referred to the Committee of the Whole to-morrow.

TUESDAY, February 18.

Society of Harmony.

The House resumed the consideration of the bill sent from the Senate, entitled “An act to empower George Rapp and his associates, of the Society of Harmony, to purchase certain lands;” and a motion being made further to amend the said bill by inserting, at the end thereof, the words following:

“And interest, at the rate of six per cent, per annum, commencing from the end of the four years aforesaid, shall be charged on the whole of the six last payments, until the same shall be received into the public Treasury:”

The question was taken that the House do agree to the said amendment, and resolved in the affirmative—yeas 62, nays 44.

Ordered, That the said amendments, together with the bill, be read the third time to-day.

The said bill, together with the amendments thereto, was read the third time; and, on the question that the bill, as amended, do pass, it passed in the negative—yeas 46, nays 46.

Mr. SPEAKER declaring himself with the nays. And so the said bill was rejected.

Church in Georgetown.

Mr. FINDLAY called up the bill for incorporating the Presbyterian Society in Georgetown. The bill was long, and was read by sections. One section authorized a lottery for finishing the church.

Mr. CLARK moved to strike out the section; you would not convert your church into a gambling house. I never considered that religion of the best kind which was supported by lotteries.

Mr. SLOAN.—I am for striking out. I never will consent to an act authorizing public gambling.

Mr. CLARK.—Corporations of all kinds, but more particularly ecclesiastical corporations, are objects of my particular hatred. Religion I do not consider of this world. I am no enemy to it, however; I adore it. To try the principle of the bill, I move to strike out the first section.

Mr. SOUTHARD.—I can see no possible objection to an act of incorporation in this as well as other cases. There are many advantages a society of this nature cannot enjoy without incorporation. Donations from the wealthy, who often bequeath sums for the benefit of religion, cannot be held without such incorporation.

Mr. SLOAN.—We have no acts of incorporation in the society in which I was brought up, (the Quakers,) yet we find no difficulty in the management of our affairs—no difficulty in receiving gifts. I abhor all ecclesiastical corporations. Congress never has, and I hope never will, stain its pages with an act of this sort.

Mr. SMILIE.—I hope the gentleman from New Jersey will not frighten himself with the echo of his own words. No evil can result from this act. The opinion of the Quakers is, that no money ought to assist them in their passage to heaven; others believe that money is employed to the best

advantage in this way; hence the Quakers never pay those who preach for them, while almost all other classes of Christians do. The gentleman from New Jersey surely does not wish to forbid a clergyman's payment. I hope that citizens of different persuasions may all have a full enjoyment of their modes of religious worship.

Mr. ELMER.—There never was a nation without religious establishments. All sects, except the Quakers, pay their preachers; and if the preachers among the Quakers have not a direct salary, they find means to obtain something of that kind indirectly, though not from direct funds. Considered in a moral, political, and religious view, these acts of incorporation are highly necessary and proper for the well-being of society.

Mr. CLARK.—This is the first request that has been made to Congress for a religious incorporation; if we check it now, we may check what may hereafter prove an immense evil. It is from small beginnings that great disasters usually rise. Should this bill pass, I foresee what may perhaps in time come to pass. I can foresee the practice of pious frauds. The priests dressed in their canonicals, attending the rich man on his dying bed, and urging the repenting sinner to part with a portion of his wealth for the good of the church, and for the obtainment of a certain passport to heaven.

Mr. FINDLAY.—This is an accommodation Congress only can grant, and which is enjoyed in all the States.

Mr. NICHOLSON.—I never knew an application of this kind to be refused in the State, a part of which I have the honor to represent. In the Legislature of that State, half a dozen applications of this sort would have been granted in the time we have already spent in this unnecessary and shameful debate. Why should we refuse? If a society of Hindoos in the District should make such an application, I should not think of refusing them. If the dying rich man believes the bestowment of a part of his wealth for the benefit of religion will be a deed rendering him more acceptable to heaven, shall he be deprived of this right to give, because another thinks otherwise?

Mr. RHEA, of Tennessee, moved to postpone the consideration of the bill till the 1st of May.

Mr. SMILIE spoke against postponement.

Mr. QUINCY.—I had not intended to open my mouth on a subject that appeared to me so plain; where our duty was so apparent; but the debate has taken so strange a turn that I must make a few remarks. This is a mere civil affair—religion has nothing to do with it, so far as we are concerned in granting or refusing the application. I never knew an application of this kind to be refused—it is an application for the grant of certain powers to a certain number of persons; it is like an application for the incorporation of a bank, or any thing similar. Congress have only to inquire whether or not the ends are proper; whether the powers asked are or are not likely to be injurious. The gentleman from Virginia (Mr. CLARK) says, that incorporations of all kinds, particularly ecclesiastical, are objects of his great abhorrence. The objects of his abhorrence must then be very numerous, for they almost every where abound. In Massachusetts nothing can be more common. The incorporation of a religious society is not for the mere purpose of enabling such a society to receive the gifts that may be bequeathed them; the incorporation is for the purpose of enabling a society, or number of persons, to transact their business, to hold property, to sue and be sued, &c. Property they must hold, and, if not held as a corporate body, they must hold it as joint tenants—tenants in common—or they must have trustees to hold it for them, or a part must hold as trustees for the rest; and hence arise innumerable difficulties, litigations, and disagreements—difficulties that will not arise in corporate bodies. You have only to take care, when an act of incorporation is granted, that no powers be granted that may have an injurious effect.

Mr. SOUTHARD.—The incorporation of almost all societies is for the advantage of the public; the incorporation of religious bodies has ever been beneficial to morals and to society at large. It enables them to give and to receive justice; to sue and to be sued. The benefits of incorporation are innumerable; what were society without them? what are we but a corporate body?

The bill passed to a third reading by a large majority.

WEDNESDAY, February 19.

Church in Georgetown.

The bill to incorporate the Trustees of a Presbyterian Church in Georgetown was read a third time.

Mr. ELMER supported, and Messrs. JACKSON, SLOAN, HOLLAND, and RHEA, opposed the bill.

The question was taken by yeas and nays, and the bill passed—yeas 72, nays 40.

THURSDAY, February 20.

Charlestown, (Kanawha,) Virginia.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, made a report on the petition of sundry inhabitants of Charlestown, Virginia, praying that said place may be made a port of entry and delivery.

The report is detailed, and assigns a variety of reasons against the expediency of granting the prayer of the petitioners, and concludes with a resolution that they have leave to withdraw their petition.

The House having taken the report into consideration—

Mr. JACKSON observed that the facts detailed in the report were conceded. It was probable that there would never be a vessel entered at Charlestown from a foreign country. With regard to the success of the prayer of the petitioners, Mr. J. said he should not have been sanguine, but for a constitutional provision which he considered imperative. No port of entry existed in the western part of Virginia, in consequence of which, vessels sailing from Charlestown were obliged to pay duties at New Orleans. The constitutional provision, to which he alluded, was this: “No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.” Was it not obvious that a preference was given to the ports of one State over those of another by requiring the vessels of the one, to enter and clear in the ports of the other; and was it not also obvious that the latter part of the provision was equally violated? It would be a great convenience to the petitioners to give bonds

and take out clearances in the neighborhood of the place where their vessels are built, instead of being obliged to go to a distance of 2,000 miles, where they would find themselves among strangers.

Mr. CROWNINSHIELD observed that there were several ports of entry already in Virginia from which vessels might clear without paying duties at New Orleans. He further observed that New Orleans and Natchez were not within the limits of a State, and therefore were not embraced by the constitutional provision referred to; and added that duties were only paid on the entry of vessels from a foreign country.

Mr. J. C. SMITH thought there was sufficient plausibility in the remarks of the gentleman from Virginia, to give the subject a full discussion. He therefore moved a reference of the report to a Committee of the whole House on Monday, which was agreed to—yeas 59.

FRIDAY, February 21.

Payment of Witnesses.

The House resolved itself into a Committee of the Whole on the bill from the Senate, providing for the payment of the witnesses on the trial of Samuel Chase.

Mr. J. C. SMITH said, at the close of the last session, a bill providing for the payment of the witnesses on the part of the United States, had gone from the House to the Senate, and been disagreed to by them. The Senate on their part, had passed a bill providing for the payment of all the witnesses, to which the House had disagreed. A conference had taken place on the disagreeing votes of the Houses, and the bill had been lost from a want of concurrence. The consequence was, the witnesses still remained uncompensated; some of whom have sustained heavy expenses. Petitions received this session from several witnesses on the part of the prosecution, had been referred to the Committee of Claims, who had reported a bill which was the same in substance with that adopted by the House the last session; the committee not considering themselves at liberty to depart from the principle then established by the House.

It was for the House to decide how long this unprofitable contest (for unprofitable it surely was to the witnesses) should be kept up. Mr. S. said he was not disposed to go into a consideration of the question, whether the expenses of an impeachment should in all cases be incurred by the Government. He would barely observe that the Senate had been unanimous; and if the House should adhere to the ground they had taken, no compensation would be allowed to the witnesses. He submitted it, whether, under these circumstances, it were proper to keep up such a conflict? It had so happened that many of the witnesses, summoned by the accused, had been used by the managers, and the process of summoning them had been similar on both sides. In the bill there was an omission to provide for the expenses incurred by the managers. If no other gentleman proposed an amendment, he should think it his duty to offer one, providing for these expenses. He hoped the committee would agree to the bill. Some gentlemen might think, by agreeing to it, they evinced an opinion of the guilt or innocence of the accused. But such a vote could not be viewed in this light. The House had exercised their constitutional right by voting an impeachment, while the Senate had exercised the same right in acquitting the accused. The same body who had acquitted, had sent down this bill, involving their opinion that the proposed compensation to witnesses was right. Indeed he considered the bill from the Senate as a taxation of costs by the court who sat on this occasion.

Mr. MACON, with a view to try the question, whether the House would agree to pay all the witnesses, moved to insert after the word *witnesses* the words—"on behalf of the United States." He said the history of this business given by the gentleman from Connecticut was correct. The accused had been acquitted by a constitutional majority, consisting of a minority of the Senate. It was not, he believed, the practice in any criminal court, of any State in the Union, for witnesses summoned by the defendant, to be paid by the State. The States, in many instances, pay their own witnesses, where the person accused is not convicted, but with respect to the conflict between the two Houses, he was convinced the decision of this House was correct; and that it accorded with the general usage throughout the United States. If there was an exception, he did not recollect it. It was true that one or the other House must give way, or the bill would be lost. He would much rather that it should be rejected by the disagreeing votes of the two Houses, than that it should pass as it then stood. If the Senate had

offered this bill, it is equally true that the grand jury, who make a bill, have refused it. The two Houses stood on the same ground. One are the triers and the other the hearers. If Congress agree to pay all the expenses of an impeachment, the impeached may run the expenses to such an amount as to prevent a trial. Why pay the expenses in this case, if not in any other? Shall they be paid because this man is a judge, and not a man arraigned before a judge? When a judge is tried he deserves no more indulgence than a private individual, and though he is acquitted, the acquittal is not such as to convince the nation, or any other body of men, that he is innocent. It was not that kind of acquittal which an honest man would wish. It was constitutional, but not by a majority of the Senate. Are we, under these circumstances, obliged to pay the witnesses he has chosen to summon? Believing, as he did, the man guilty, and the charges in many instances supported, the payment of his witnesses appeared to him a very strange thing. In this, as in every other case, he was willing to yield to a constitutional decision, but he could never consent to pay the witnesses of the accused.

Mr. ALSTON said the amendment went to try the question, whether the House would agree to pay all the witnesses summoned on the trial of Judge Chase. Before it was made, the honorable Speaker ought to have told the House whether they could determine which witnesses were summoned on the part of the United States, and which on the part of Judge Chase. From every thing which he had seen, (and he had examined all the documents on the subject,) he had found no data upon which to determine what witnesses had been summoned on one side or the other, unless from the recollection of gentlemen, by which he supposed the House would not consent to be governed. When the question was before the House the last session, he had expressed his doubts whether they ought to pay the witnesses of an accused man, whether he was acquitted or convicted; but he was now convinced that, until Congress passed a law, prescribing how witnesses are to be paid, they were bound to pay them. No such law had been passed. He would ask gentlemen learned in the law, whether a witness on the part of Judge Chase could demand compensation from him? Have we passed any law, prescribing how much shall be paid, or how it shall be done? No such law has been passed. Mr. A. said he thought gentlemen were carrying their prejudices too far in this instance. He had voted for five out of eight of the articles, but the Senate had acquitted him of all of them. He was contented

with this decision, and so far as he was acquainted with the sentiments of those he represented, he believed they too were satisfied. It was not now a question how this principle should be settled. If a general law were brought before them, there was no doubt, but that, if a man so conducted himself as to bring himself to a trial, he should pay his own witnesses, provided such law declared how much they should be paid. The honorable Speaker had said there was not a State in the Union in which the witnesses of a person indicted and acquitted were paid by the State. Mr. A. said he believed, in Virginia, when a man was indicted and acquitted, he was not subject to the payment of costs. If this were true, one State at least, and that the largest in the Union, had set a different example; and if precedent was entitled to any influence, it was against the Speaker. Mr. A. said this, however, had no weight with him. The great objection with him was, that they could not discriminate the witnesses of the United States from those of the accused; and if they could ascertain them, there was no law prescribing how the latter should be paid by the accused.

Mr. JACKSON believed Congress bound to render compensation to the witnesses on the trial of Judge Chase, on the abstract principle of justice and right, as well as from precedent and practice. The argument of the honorable Speaker militated against the inference drawn by him. He says the accused may multiply witnesses to such an extent as to defeat a prosecution. If the proposition, however, be examined in all its bearings, it will be found to operate most severely, and almost exclusively, on the man impeached by the House of Representatives, no matter for what cause, or whether he is guilty or innocent. If the House are determined to destroy him, it is only necessary to vote an impeachment, which will impose upon him a ruinous burden. Mr. J. said he did not apply these remarks exclusively to the impeachment of Judge Chase. The Journal of the House would show that he was in favor of his impeachment. But as he had been acquitted by the constitutional tribunal, clothed with authority to pronounce him guilty or innocent—the dernier tribunal constituted for such cases—he did not consider himself justified to say, after their decision, that he was guilty. He held himself bound by the judicial decisions and laws of the country, though as an individual he might dissent from some of them. The United States might, in case a person acquitted on an impeachment is compelled to pay his witnesses, multiply charges embracing the whole life of the accused, and tracing him from the district of Maine to Georgia, so as to compel him,

in order to refute the charges, to adduce ten times as many witnesses as would otherwise be necessary. The true rule is, that the court shall decide what witnesses are proper to be taxed in the costs, and what are not. The Senate, who in this instance are the court, have decided that all shall be taxed. They were perfectly competent to decide whether any witnesses of the accused were brought forward without sufficient cause, or whether they were essential to the defence. It is manifest, by the bill under consideration, that they have made the latter decision. The gentleman from North Carolina is correct in his statement of precedent. The uniform course in Virginia, is to tax the attendance of witnesses, who are paid out of the public treasury; and those on the part of the defendant in the same way as those on the part of the prosecution. This practice has been extended so far as to embrace the payment of witnesses from another State. In a late case, although as far as the opinion of the court could go, a man was declared guilty of the crime with which he was charged, yet, the jury having pronounced him innocent, a witness on his part, brought from Kentucky, was paid out of the public treasury. This is not the case where the individual is convicted. If he possess sufficient property, that is answerable for the expenses.

The Senate, undoubtedly, possess the right to say whether the witnesses adduced are necessary; and if, in any future case, improper witnesses shall be brought forward, they may refuse to tax them. This bill does not provide for all cases of impeachment, but is confined to the case of Samuel Chase. Mr. J. said he would submit whether it was proper or just to compel men at a great expense to attend at the seat of Government in an inclement season of the year without giving them a compensation. If a law had been previously passed prescribing that the witnesses of the accused should be paid by him, they would have required some assurance from him. But as no discrimination had been made between the witnesses, they came forward in full faith that the Government would allow them a liberal compensation.

Mr. NICHOLSON said he had but a few observations to make on this subject: indeed, indisposition disabled him from making many. He considered this bill as calculated to establish a great principle—a principle whether, in all cases of impeachment, the United States are to bear the burden. It was not in reference to an individual that he was induced to advocate the amendment of his honorable friend, the Speaker, but because its effect would be to establish a principle that would hereafter govern in

similar cases. If the principle were established that in all cases of impeachment the Government is to bear the expense, it will put it in the power of the individual impeached to increase the burden to any extent he pleases. And whenever a man shall be impeached, base enough to hate the Government under which he lives and holds an office, in a case which requires but two witnesses, he may summon two hundred. This bill will establish such a principle, and we shall in all future cases be told that the witnesses of the accused were paid in the case of Chase. It was for this reason, Mr. N. said, he advocated the amendment, and to convince the individual that subjected himself to an impeachment that he must suffer some pains and penalties. For it was not to be presumed that the House of Representatives would impeach any man unless there was some color for it—some reason to induce the nation at large to believe him guilty. An impeachment speaks the language of the nation, expressed through their representatives; and whenever a man in office conducts himself so as to make the nation believe him guilty, it was not desirable to offer the protection held out in the bill, particularly when a majority in the other branch also believed him guilty.

But, gentlemen say, this is not the practice in the State courts; and we are told in Virginia, when a man is acquitted, the State pays the expense of his witnesses. Mr. N. said this might be so, though he did not know that it was; it was not so, however, in the courts of the United States. Any gentleman who doubted this, had only to refer to the treasurer's accounts since the Government had been in operation, and he called upon any such gentleman to show a single charge for witnesses in cases of acquittal. It is not the practice in England, nor could it be made to appear by any document, that the witnesses summoned by Warren Hastings, though he was acquitted, had been paid by the Government. But admitting, for argument's sake, the practice to be such in the United States as it is represented to be in the courts of Virginia, would that meet the present case? No. In Virginia there was a reciprocity. There, if a man was convicted, he paid all the costs, and if acquitted, the State pays them. But, in the United States, do we make the convicted pay the costs? Had the accused judge been convicted, would gentlemen advocate his paying all the costs? No. In that case he would have been scot free as to the payment of money, though he might have sunk in reputation. In Virginia there is a reciprocity; the convicted either pays the expenses of the prosecution or goes to jail; whereas, in this case, the United

States are called upon to bear the whole burden. When Judge Pickering was convicted, was he called on to pay the costs? Such a thing was not then dreamed of. It was then considered proper that the United States should pay their own witnesses. The argument, therefore, fails. The only objection of any weight is that raised by the gentleman from North Carolina. It is said to be impossible to discriminate the witnesses. The gentleman says that he has examined the Journals of the Senate, and cannot find any discrimination. But has he looked at the Journals of impeachment, where it appears that such witnesses were sworn on the part of the United States, and such on the part of the accused? Besides, if this evidence were not on the journal, it could be got from the parties themselves, who could swear they were summoned on the part of the United States or the defendant. This was a common thing in the courts of Maryland, and Mr. N. supposed it was likewise so in other courts. He concluded his remarks by expressing a hope that the amendment would be adopted.

Mr. EARLY said it was his misfortune the last session to differ with a majority of the House, and his present opinion was what it then was. His opinion was not founded either on general principles, or on the practice of the several States, or United States courts. It was founded on the peculiar circumstances of this case. Some of these circumstances had already been stated by gentlemen; but there were some important points of view in which they might be considered, which had not been noticed. It was true, as had been stated by the gentleman from North Carolina, that it could not be distinguished which witnesses were summoned on the part of the prosecution, and which on the part of the respondent, from an omission by the Senate, when they prescribed the form of the subpoena, to distinguish, as it is usual, for which party it was issued. This fact was abundantly proved by the form of the subpoena. How, then, were witnesses to know that they were summoned on the part of the United States, or the respondent? They could not know. There were no circumstances by which they could acquire such knowledge. The party did not serve his subpoenas in person, but they were all sent to the marshal of a given State. A number of them were taken out in blank, and sent to the marshals by post. The gentleman from Maryland has endeavored to obviate the force of this fact, by informing us that a discrimination may be made, by the circumstance of the fact on which side the witnesses were sworn. True; but no gentleman knows better than himself that the witnesses summoned on one side were, in some

instances, sworn on the other; and he would call his recollection to the testimony given by Messrs. Tilghman and Rawle.

[Mr. NICHOLSON here explained, and contested the fact. Mr. EARLY agreed that these two witnesses had been summoned both on the part of the prosecution and the respondent.]

Mr. EARLY said, whether he was correct or not as to the particular cases he had alluded to, he was not mistaken as to the general fact. The gentleman from Maryland had endeavored to obviate the force of this argument in another way, by representing that the witnesses might be called on to swear on which side they were sworn. But this could not be done, but by the passage of some law on the subject. There was no authority which would justify the Secretary of the Senate in demanding such an oath, and if the circumstance could be proved, there was no power, under any existing law, by which the witnesses could recover a compensation for their attendance. They were compelled to attend—by whom? By a branch of this Legislature, on pain of imprisonment in case of disobedience. Whence shall they be indemnified? Will any gentleman say they can recover from the respondent? If so, let them point to the law which authorizes such a recovery. Will they say it can be had under the common law? A majority of this House will not bear them out in the argument. For it is a standing principle with us, that the common law is not in force in the courts of the United States. But put this objection aside—how much shall they recover? Where is the law fixing their per diem allowance? There is a perfect chasm in the subject.

Mr. E. repeated that his opinion was governed by the peculiar circumstances of the case; by the omission of the Senate to insert in the subpœna, on whose side the witnesses were summoned, or to provide for making any recovery from the accused; or how much, and where the recovery should be made. He considered the witnesses summoned, owing to this omission, as being without a remedy, from which resulted the obligation on the part of the Government, as they made the omission, to provide a remedy. The gentleman from Maryland, in noticing the observations relative to the practice of Virginia, stated, that if a similar reciprocity existed on impeachments, his objection to this bill in whole or in part would be done away. Mr. E. said, that in his opinion, this observation fortified the ground he had taken. If there were no reciprocity in this case, it

was for want of a general provision. Let us then pass a law making this provision, and let it operate in all future cases. This would be equitable. But the want of reciprocity which arose with themselves, was no ground for omitting to make the only provision for the witnesses which the case allowed. When at the last session, in consequence of the disagreeing votes of the two Houses, a committee of conference had been appointed, he recollected that a distinguished member of the other branch, now absent in consequence of an unfortunate accident, took this ground—that the subpoena did not distinguish on which side the witnesses were summoned, and made a proposition that the bill should be so modified as to place the allowance made to the witnesses of the respondent on this peculiar ground. This proposition did not then obtain, but Mr. E. was still for taking such a course. He hoped the amendment of the honorable Speaker would not prevail; in which case he would move, by way of preamble to the bill, what would place the allowance on the peculiar ground he had stated, and thus remove the objections of the Speaker.

Mr. NICHOLSON made some explanation of what he had previously stated in regard to the practice of courts, and observed that a witness summoned on one side was not permitted to be sworn on the other, until he had been previously examined by the party summoning him. He also passed over the journal of impeachment, to show that the witnesses on the part of the prosecution had all been examined in the first instance, with a few exceptions, which were specially noted, before those on the part of the respondent were called.

Mr. SMILIE, being of opinion that the question was not ripe for decision, moved that the committee should rise and ask leave to sit again.

This motion having prevailed, the committee rose, and the House adjourned.

MONDAY, February 24.

A new member, to wit, EVAN ALEXANDER, returned to serve as a member of this House, for the State of North Carolina, in the place of Nathaniel Alexander, appointed governor of the said State, appeared, produced his credentials, was qualified, and took his seat in the House.

Amendment of the Constitution.

ADDRESSING OUT FEDERAL JUDGES.

Mr. J. RANDOLPH observed that some time had elapsed since he gave notice that he should call up his resolution for amending the Constitution of the United States. The state of his health had not admitted of his taking his seat before this day. He therefore availed himself of the first opportunity to move that the House should resolve itself into a Committee of the Whole on the state of the Union, with the view of taking that resolution into consideration.

Mr. MASTERS moved a postponement.

The SPEAKER said there could be no postponement of a subject referred to a Committee of the Whole on the state of the Union, as it was in order every day to take up business so referred.

Mr. J. RANDOLPH said, if gentlemen were unprepared, he had no objection to waive his call until to-morrow.

The SPEAKER remarked that there could be no debate on the priority of business.

Mr. CONRAD moved to discharge the Committee of the Whole from the further consideration of the resolution. He said he would briefly assign his reasons for this motion. The session had progressed and the season was fast approaching when every man of agricultural pursuits would be anxious to attend to them, unless detained by important business. He did not believe the proposed amendment to the constitution so important as to require immediate attention. He hoped, therefore, that it would be postponed until the next session, and that the way would thereby be paved for transacting the important national business that claimed their earliest attention.

The SPEAKER said the first question was on the House resolving itself into a Committee of the Whole.

The question was taken on this motion, and carried—yeas 61.

Mr. GREGG was called to the Chair, and the resolution having been read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding as a part of the Constitution of the United States:

The Judges of the Supreme and all other Courts of the United States shall be removed from office by the President, on the joint address of both Houses of Congress requesting the same.

The committee divided on agreeing to it, without debate—yeas 51, nays 55.

The committee then rose, and reported their disagreement to the resolution.

The House having agreed to consider the report,

Mr. J. RANDOLPH called for the taking the yeas and nays on the question of concurrence.

Mr. CLARK moved a postponement of the consideration of the report to the third Monday of March, merely with the view of making it give place to more important business, which he said must be attended to. He said he had voted against the resolution, not because he was inimical to the principle involved in it. With a small modification, he should be in favor of it; and he hoped the period was not distant when, with such a modification, it would become a part of the constitution.

Mr. J. RANDOLPH hoped a postponement to so distant a day would not prevail. He was himself desirous that it should be postponed for a few days, in order to give notice to the House, that there might be a full vote on what he considered a most important measure. He appeared in this instance, as in many others, to be in a state of profound error. The amendment, or deterioration of the constitution, he had always considered to be a point of the greatest importance. But now, judging by the opinions of gentlemen, it seemed to be of lesser importance than the laying a duty of one or two per cent., to continue but for two or three years. It has, said Mr. R., been a subject of extreme concern to me, though not myself able to attend to the

public business, to find, on inquiring daily of my colleagues, that the House has refused to do any business, because on a future day they expected some important business to come before them. I understand that a very important resolution of a gentleman from Pennsylvania, on a business so generally denominated the Yazoo as to require no other name, was postponed on the same ground that my colleague now wishes the resolution under consideration postponed. If there is such important business to transact, in God's name, why not progress in it? But notwithstanding this immensely important business, which serves as an excuse for doing nothing, we make no progress in it, if by it I am to understand the state of our foreign relations. I have no wish, nor do I intend to allude to any thing which passed while we were sitting in conclave. But I did hope, when one or two members, who were represented as the only hindrances to the despatch of business, were withdrawn from the House for one or two weeks, every thing would have been completed. I expected the adoption of very different measures towards Great Britain. Instead of this, I find nothing done. And now, when an amendment to the constitution is brought forward, which is allowed to be very important, and when the resolution of the gentleman from Pennsylvania is called up, we are told by gentlemen, we cannot attend to these subjects; there is important business which we expect to have at some future day before us, and therefore we are determined in the interim to do nothing.

One word as to the remark of the gentleman on my left, (Mr. CONRAD.) He belongs to a class of men which I highly respect, for the plain reason that I belong to it myself. He says, the time is approaching when every man engaged in agricultural pursuits must be anxious to go home, and therefore he does not wish at present to act on the resolution I have laid on your table. True; but when men, be they agricultural, mechanical, or of any other profession, undertake any business, it is their duty to go through with it at every hazard. I do not know a man in the House who has suffered more than the individual who now addresses you by his attendance here, and if I could have found an apology in my own mind, I should long since have been gone. If the situation of affairs warranted it, I should be willing to adjourn for two or three months. But I never can agree to adjourn in the present perilous state of affairs, and leave the country to a blind and fortuitous destiny. I must first see something like land, some foot-hold, something like certainty, instead of a political chaos, without form or body. Before I

consent to go home, I must see something like a safe and honorable issue to our differences with foreign powers; and I must see, I hope, another thing—something like an attempt to bring the constitution of this people back to the principles on which this Administration came into power.^[33] I take this proposition, and that of the gentleman from Maryland, (Mr. NICHOLSON,) to be two important means of bringing that Administration back to those principles. My friend from Virginia says, he expects, at a future period, to obtain this reform. I fear, if delay be permitted, that we shall get into the situation of another deliberative assembly, of which every member agrees that reform is necessary, but that the present is not the accepted time. I am afraid that we are in this situation already. I believe it, because I see it. It is a most fortunate circumstance that we made hay while the sun shone; that we got in the harvest at the first session of the seventh Congress; that we did away the midnight judiciary and the internal taxes. If those institutions were now standing, I believe they would be as impregnable as any part of the system around which gentlemen affect to rally. I believe it, because I believe appointments would have their effect. Yes, it is but too true, that patriots, in opposition, are as apt to become courtiers in power, as courtiers in power are fond of becoming patriots in opposition. So far, then, from wishing to postpone this measure, I believe that delay will only serve to enhance the difficulty of obtaining it. It is a maxim laid down by every man that has written on national policy, that those abuses which are left untouched in the period of a revolution, are sanctified by time, and remain as the nest-eggs of future corruption, until they compel a nation, either to sweep them away, or to sink beneath them. This, without any exception, is the history of all corruptions; and those corruptions and abuses not reformed at the first session of the seventh Congress, what has become of them? Have they been suffered to sleep? If they have, is it not to be apprehended that they will rise refreshed from their slumbers with gigantic strength? Fortunate it was that, at the first session of the seventh Congress the midnight judiciary and the internal taxes were done away; and it would likewise have been fortunate, if another measure had been attended to at the same time. It would have been, in my firm persuasion, very different in its issue from that which it has been. If the great culprit, whose judicial crimes or incapacity had called for legislative punishment under the constitution, and which have given rise to the motion now before us, had been accused at the first session of the seventh Congress, that accusation would have had a

very different issue. And why? Because it is perfectly immaterial what a man's crimes are—every day that elapses between their commission and the time he is called to answer, lessens the detestation and horror felt for them, and, of course, enhances the value of his chance of an escape from punishment. I am persuaded that, in the remarks I have offered, I have been hurried into some observations that do not strictly belong to it. Yet these remarks furnish a sound reason for not deferring the proposition until the time moved by my colleague. I hope, therefore, the House will reject the postponement until the third Monday of March, and that a postponement will take place to some time when the House shall be fuller, when a decision can be made after mature reflection. For, truly, as to the provision under the constitution, can any man be so mad or foolish as to think of again trying it? I consider the decision of the last session as having established this principle—that an officer of the United States may act in as corrupt a manner as he pleases, without there being any constitutional provision to call him to an account.

Mr. GREGG.—I feel but little concerned as to the fate of this motion. I am ready at any time to give my vote on the resolution. As it now stands, I shall vote against it; but modified, as I have seen it in the hands of a gentleman from Virginia, I shall vote for it. But my principal reason for rising, is to say that a great part of the censure cast on the House by the gentleman from Virginia for not meeting the national business, is proper and applicable; and I regret that it is so. But if the gentleman reflects on the subject, he will acknowledge that a great part of the delay which has occurred, attaches to himself. I, four weeks ago, submitted a resolution to the House on some points of dispute between one of the belligerent nations and the United States; I was anxious that it should be taken up and promptly decided, one way or another. The gentleman from Virginia then called for certain statements from the Treasury, which he considered as having a bearing on the subject. Under that impression the consideration of the resolution was deferred from day to day; and the statements have not yet been received. I stated, at the time, that these statements could have no influence on my vote; but other gentlemen said, they would influence theirs. I regret that we have not been able to go on with this business. I do not know how long we are to be kept in this paralytic state. If the gentleman who has called for the statements, and other gentlemen will agree, I am prepared at once to go into an examination of the subject. But, as the gentleman from Virginia was the

first to embark the House in this call, I hope he will take a part of the censure to himself.

Mr. SMILIE.—I am sorry the motion of postponement has been made. I do not know any other time better than the present for the discussion of this subject. It is a subject of the last importance to the peace and happiness of the United States. I am a friend to an amendment of the constitution relative to the Judiciary Department. Whether that offered is the best that can be made, or whether it is going too far, I cannot determine until the subject shall have been investigated in this House. For my part, I am so sensible that that part of the constitution which relates to the power of impeachment is a nullity, that I see the utmost necessity for an amendment. From what we have seen, I do religiously believe that we cannot convict any man on an impeachment. The resolution before you goes to place the Judges of the United States on the same independent footing with those of Great Britain. Whether our situation requires that they should stand upon higher ground, is a proper subject for discussion. I am rather inclined to think they ought not. [34] It is contended, it is true, that, as they have, according to the opinion of some gentlemen, the right of sitting in judgment on our laws, they ought to be placed beyond the reach of a majority of Congress. This subject must, at some time or other, be considered, and some amendment in the constitution must take place. When the delays and various vexations, attendant on an impeachment, are considered, it will be evident that they will generally discourage the House from taking this step; and when it is likewise considered that a conviction can only take place on the votes of two-thirds of the Senate, let gentlemen say whether there is any chance of making the constitutional provision effectual. I despair of it. With regard to the particular modification which may be given to this resolution, that is another thing. I sincerely wish the House would take it up and consider it without any great delay.

Mr. CLARK.—I hope my colleague will do me the justice to believe that I have not made this motion from hostility to his resolution. With a small modification, I am decidedly for it. I assure him it did not require the remarks he has made to-day, to show the insufficiency of the present system. Of that I had satisfactory proof the last year. But I doubt whether the resolution, in its present state, is correct. I do hope that my colleague will give it a little more consideration, and I assure him I shall be happy to

harmonize with him. In the decision by a mere majority, the scales of justice are so near an equilibrium, that it is doubtful often to which side justice inclines. I, therefore, think there ought to be some modification of the principle contained in the resolution. But I principally wish the postponement to prevail, that the House may act on resolutions which I conceive all-important to the whole country, and peculiarly so to that part of the community represented by my colleague and myself. Every day's delay increases the difficulty and urges on the ruin that menaces them. It is well known that there is not the best harmony between the merchants and planters. It is at all times the interest of the former to buy produce as cheap as they can, and never was there a better scheme for speculation to them than that furnished by the resolutions on our table. How easy it is for them to convince the planter that there will be a suppression of intercourse, and that his produce will be soon worth nothing. These are the effects that I wish to prevent. My colleague will do me the justice to believe that I have had no hand in the procrastination. I have offered no project. With regard to the proposed amendment to the constitution, I repeat it, I am in favor of it, with a small modification. Nor do I wish it postponed for any great length of time. I have no idea of leaving that to be done by our children which we ought to do ourselves.

Mr. FINDLAY said he was against the indefinite postponement of the subject, though in favor of its being postponed a short time. He thought it was a subject which ought to be fully investigated. He was decidedly in favor of the object of the resolution, but in a different form.

Mr. CONRAD was in favor of the indefinite postponement of the resolution. He did not think the subject ought to be acted upon at this session. He was not unfriendly to the principle, but he never could consent that a bare majority of Congress should have the power to remove a judge. If the amendment was so framed as to give the President a discretionary power to remove a judge on the address of a majority of the two Houses, and to make the removal imperative on the vote of two-thirds, he might be for it. At any rate he thought it best to postpone the subject until the next session.

Mr. J. RANDOLPH.—I am as anxious as any man for a decision of the question implicated in several of the resolutions laid on our table, and for a good reason. My tobacco is unsold. I feel the full force of the observations

of my colleague. I know that these resolutions have already given rise to much nefarious speculation. When I called for information, I had no idea of the time it would take to get it; and had I been apprised of it, I do not know whether I should not have preferred acting in the dark to waiting for it.

There is another reason why I wish this subject (amendment to the constitution) taken up at this session. When I offered this resolution at the last session, it was said to be too near the close of the session to act upon it—this was acknowledged. But, it was said, print it and let it go abroad. This has been done. But the reason for which I wish it acted upon this session is, that the elections intervene between this and the next session. Gentlemen may say what they please of the principle of *quamdiu bene se gesserit*, but I believe if the members of this House held their seats for seven years, their conduct would not be the same as it is under the present tenure. I wish to recur to that good old principle that sends the Representative back to render an account of his actions to his constituents. After the next election gentlemen will obtain credit for two years more of good behavior. I believe my friend from Virginia will allow this to be a good reason against a postponement.

As gentlemen have stated the substance of the resolution as a reason for its postponement, I will state its substance as a reason for not postponing it. One gentleman says he will not consent that the judges shall hold their offices subject to the will of a bare majority of the two Houses. But does not every thing of importance depend on that majority? Do they not appropriate millions? Do they not hold the purse and the sword? Or do gentlemen think the woolsack more important? This is most indubitably the case; and I wish to hear any reasoning against giving efficiency to the will of a majority that does not approximate the doctrine of the Polish veto. There can be no reason for this distinction. And, so far from there being danger of this power being abused, the experience of all Governments holds me out in saying that there is greater danger that the power will not be exercised than that it will be abused. For this plain reason: it would require some overt act of notorious misconduct, or an equally notorious imbecility of mind or body, to justify any man in giving such a vote. It is a point of extreme delicacy to give it; and though some men might, I trust a majority of both branches never would give such a vote for light and frivolous reasons. But it may be thought that, as in all free Governments there are parties, a triumphant party

would turn out the judges to get into their places. This would be a most humiliating effect. But on what is the probability of such an effect founded? How are the turners out to be turned in? Have they the power to appoint themselves to office? No. And from our experience heretofore, no such inference can be drawn. There is no probability of one triumphant faction putting down another to get their offices. Because a triumphant faction could not rise to power but at the will of a majority; and although they might take offices away from others, they could not bestow them upon themselves. But suppose they did? It would be for the first and last time. It would be a struggle between office-hunters and the people; and I believe all the experience we have heretofore had shows that this description of men are too prone to union for the public to sustain either profit or loss from their divisions. But if in this opinion I am in error, I would recur back to my first principle to support me. Is the power to remove a judge more important than the power of declaring war, of laying taxes, and of effecting various other national objects? This is a doctrine to me totally unintelligible.

Mr. SMILIE observed that he regretted that the motion for an indefinite postponement had been made, as it was equivalent to a rejection of the resolution.

The question was then taken, by yeas and nays, on an indefinite postponement, and passed in the negative—yeas 42, nays 81, as follows:

YEAS.—Willis Alston, jun., Barnabas Bidwell, Phanael Bishop, James M. Broom, Martin Chittenden, Frederick Conrad, Orchard Cook, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jun., Peter Early, Caleb Ellis, Ebenezer Elmer, William Ely, James Fisk, Seth Hastings, William Helms, David Hough, Joseph Levis, jun., Henry W. Livingston, Josiah Masters, Jonathan O. Mosely, Gurdon S. Mumford, Jeremiah Nelson, Timothy Pitkin, jun., John Pugh, Josiah Quincy, Martin G. Schuneman, John Cotton Smith, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Thomas W. Thompson, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Eliphalet Wickes, and Nathan Williams.

NAYS.—Evan Alexander, Isaac Anderson, David Bard, Joseph Barker, Burwell Bassett, George M. Bedinger, William Blackledge, John Blake,

jun., Thomas Blount, Robert Brown, John Boyle, William Butler, George W. Campbell, John Campbell, Levi Casey, John Chandler, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, George Clinton, jun., Jacob Crowninshield, John Dawson, William Dickson, Elias Earle, James Elliot, John W. Eppes, William Findlay, John Fowler, James M. Garnett, Peterson Goodwyn, Andrew Gregg, Isaiah L. Green, Silas Halsey, John Hamilton, David Holmes, John G. Jackson, Walter Jones, Thomas Kenan, Michael Leib, Matthew Lyon, Duncan McFarland, Patrick Magruder, Robert Marion, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Russell, Peter Saily, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Samuel Smith, Henry Southard, Thomas Spalding, Richard Stanford, Joseph Stanton, David Thomas, Uri Tracy, Matthew Walton, John Whitehill, Robert Whitehill, David R. Williams, Marmaduke Williams, Alexander Wilson, Richard Wynn, and Thomas Wynns.

Mr. CLARK then varied his motion so as to postpone the resolution to the second Monday in March—varied to next Monday, and carried.

Exclusion of Contractors from Seats in the House—Prohibition of Plurality of Offices—Disjunction of Military and Naval with Civil Appointments.

Mr. J. RANDOLPH.—I beg leave to submit a motion to the House—a very important motion—which at present I only mean to lay on the table. The Constitution of the United States has provided that no person holding an office under the Government of the United States shall be capable of holding a seat in either House of Congress. But as the best things are liable to corruption, and as we are told the corruption of the best things is always the worst, so the Constitution of the United States has received in practice a construction which in my judgment the text never did and does not warrant, but which, if warranted by the text, is totally repugnant to the spirit of that instrument, which, composed of the jarring interests of the different States,

and settled on the basis of compromise, gave birth to a Government of responsibility, without influence, without patronage, without abuse, without privileges, attached to any individual, class, or order of men. It could not have been the object of such an instrument, that while a man holding an office not exceeding the value of fifty dollars, should be excluded from a seat in this House, a contractor living on the fat of the land should be capable under the constitution of holding one. Look through the whole of the constitution, and say where such a privilege is to be found. You find there the single principle of republicanism, that he who has the influence derived from power and money shall not have a place in the council of the nation—that placemen and pensioners shall not come on this floor. While this principle scrupulously excludes men holding responsible offices—men known to the whole world—shall it be considered as permitting contractors to creep in through the crevices of the constitution, and devour the goods of the people? Such a departure from the spirit, if not from the letter of the constitution—such a gross evasion of principle—calls aloud for remedy. Can a man who holds a contract for fifty or a hundred thousand dollars give an independent vote on this floor? If so, why not admit the Chief Justice and other high officers under the Government to a seat here? Is it for any other reason, but that the constitution will not permit the influence derived from office to operate here?

The constitution may be tried by another test. It was made for the good of the people under it, and not for those who administer it. It was never intended to be made a job of, and I hope it never will be suffered by the people to be made a job of. I think it is contrary to the tenor of the constitution to hold a plurality of office. We some time since received a petition from a learned institution to exempt books imported by them from duty. What did we say on that occasion? We said, no; we cannot exempt your books from duty. All must conform to the laws. There is no man too high or too low for them. The same measure must be meted to all. To my extreme surprise, I see a practice even more repugnant to the spirit of the constitution than a contractor sitting in Congress; and that is, a union of civil and military authority in one person—a union more fatal to a free nation than the union of Executive, Legislative, and Judicial powers.

Having made these remarks, Mr. R. offered the following resolutions, which were referred to a Committee of the whole House on Tuesday next:

“Whereas it is provided by the sixth section of the first article of the Constitution of the United States, that ‘no person holding any office under the United States shall be a member of either House of Congress during his continuance in office;’ therefore,

“1. *Resolved*, That a contractor under the Government of the United States is an officer within the purview and meaning of the constitution, and, as such, is incapable of holding a seat in this House.

“2. *Resolved*, That the union of a plurality of offices in the person of a single individual, but more especially of the military with the civil authority, is repugnant to the spirit of the Constitution of the United States, and tends to the introducing of an arbitrary government.

“3. *Resolved*, That provision ought to be made by law to render any officer in the Army or Navy of the United States incapable of holding any civil office under the United States.”

THURSDAY, February 27.

Importation of Slaves.

An engrossed bill for imposing a tax of ten dollars on all slaves hereafter imported into the United States was read the third time.

A motion was made, and the question being put, that the farther consideration of the said bill be postponed indefinitely, it passed in the negative—yeas 42, nays 69.

On motion,

Ordered, That the said bill be recommitted to Mr. SLOAN, Mr. FISK, Mr. EPPES, Mr. QUINCY, Mr. J. C. SMITH, Mr. J. CLAY, and Mr. MARION.

Prize Money.

CAPTAIN LANDAIS.

A bill for the relief of Peter Landais was read a first, second, and third time, and passed. The petitioner claimed prize money due him in 1799; his claim was upward of \$12,000.

Mr. SMITH, who reported the bill, stated that he believed the petitioner at present wished but a part of the sum due him; and he would thank any gentleman to name a sum with which to fill the blank.

Mr. NICHOLSON gave a very affecting statement of the petitioner's situation, and moved to fill the blank with \$6,000. It was so filled without a dissentient voice.

WEDNESDAY, March 5.

Chesapeake and Delaware Canal.

Mr. GREGG, from the committee to whom was referred, on the twenty-eighth of January last, the petition of the President and Directors of the Chesapeake and Delaware Canal Company, made the following report:

That it appears a company has been incorporated by the respective States of Pennsylvania, Maryland, and Delaware, for the purpose of forming a navigable canal over the isthmus, which separates the bays of Chesapeake and Delaware: that in pursuance of the several acts of incorporation, passed by the said States, respectively, a large number of subscriptions were made by divers citizens of the United States, and a board of president and directors were duly elected for carrying the project into effect.

That the said president and directors, in pursuance of their appointment, have procured skilful engineers, to explore and survey the ground across the aforesaid isthmus, and have fixed on a route or position for the canal, calculated, as they conceive, in every respect to secure the great and important purpose of an uninterrupted navigation, and have made considerable progress in the work. They find, however, that to accomplish it, a greater portion of fortitude and perseverance, and more ample resources will be necessary, than the individuals who are embarked in it can be supposed to possess. The importance of the undertaking and the immense national advantages which may ultimately result from it, they

hope will be sufficient inducements to prevail on Congress to grant them such assistance as will enable them to complete the business agreeably to their original plan.

The committee cannot hesitate a moment in deciding on the importance and extensive utility of connecting the waters of the Chesapeake and Delaware by a navigable canal. To adopt a phrase familiarized by use, they consider the project as an opening wedge for an extensive inland navigation, which would at all times be of an immense advantage to the commercial, as well as to the agricultural and manufacturing part of the community. But in the event of a war, its advantages would be incalculable. The reasoning of the petitioners is conclusive on this point. If arguments are necessary, their petition furnishes an ample supply to prove, that no system of internal improvement which has yet been proposed in this country, holds out the prospect of such important national advantages, as naturally result from a successful termination of their undertaking.

Did the finances of the country admit of it, the committee would feel a perfect freedom in recommending to the House the propriety, in their opinion, of extending to the petitioners such aid as the difficulty and importance of their enterprise would be thought to justify. But it is a question, whether, at this moment, the state of the treasury would admit of any pecuniary assistance being granted. The amount of the public debt, yet to be extinguished, the embarrassed state of our commerce, and the critical situation of the country in relation to foreign Governments, might perhaps be considered as insurmountable objections against applying any public money to internal improvements, at this particular time. Under an impression arising from these circumstances, the committee recommend the following resolution:

Resolved, That it would not be expedient, at this time, to grant any pecuniary assistance to the President and Directors of the Chesapeake and Delaware Canal Company.

The report was referred to a Committee of the Whole on Monday.

Importations from Great Britain.

The House then, on the motion of Mr. GREGG, resolved itself into a Committee of the Whole on the state of the Union—ayes 72.

Mr. GREGG moved that the committee should take into consideration a resolution, offered by him, on the 29th of January, for a non-importation of British goods.

The committee having agreed to take up the resolution, and it having been read from the Chair, in the following words:

“Whereas Great Britain impresses citizens of the United States, and compels them to serve on board her ships of war, and also seizes and condemns vessels belonging to citizens of the United States, and their cargoes, being the *bona fide* property of American citizens, not contraband of war, and not proceeding to places besieged or blockaded, under the pretext of their being engaged in time of war in a trade with her enemies, which was not allowed in time of peace;

“And whereas the Government of the United States has repeatedly remonstrated to the British Government against these injuries, and demanded satisfaction therefor, but without effect: Therefore,

“*Resolved*, That, until equitable and satisfactory arrangements on these points shall be made between the two Governments, it is expedient that, from and after the —— day of —— next, no goods, wares, or merchandise, of the growth, product or manufacture of Great Britain, or of any of the colonies or dependencies thereof, ought to be imported into the United States; provided, however, that whenever arrangements deemed satisfactory by the President of the United States shall take place, it shall be lawful for him by proclamation to fix a day on which the prohibition aforesaid shall cease.”

Mr. J. CLAY inquired whether it would not be in order to call up a resolution offered by him on the same subject.

The CHAIRMAN said it was not in order, after the committee had determined to consider the resolution just read.

Mr. GREGG then rose, and said: Mr. Chairman, I cannot but congratulate the committee on our having at length taken up the business to which I

believe the people of this country universally expected we would have turned our attention on the first moment of assembling in our legislative capacity. Before we left our homes, we had learned, through the channel of newspapers, that outrages of a most atrocious kind had been committed on the persons and property of American citizens, by some of the belligerent nations of Europe. This intelligence has been officially confirmed by sundry communications which we have received from the President of the United States. From these sources we have derived the information that irruptions have been made into our territory, on its southern frontier, by subjects of Spain, and that depredations to a very considerable extent have been committed on our commerce by the cruisers of that nation. The manly spirit with which these irruptions were resisted by the officers of our Government appears, for the present, to have checked the further progress of that evil; and it seems that the system of depredation has been discontinued, in pursuance of instructions issued by the Minister of State and of Marine to the Director General of the Fleet. These orders were issued on the 3d day of September, 1805, and are understood to have been produced by the remonstrances of our Minister at that Court. From these favorable symptoms, a presumption naturally and necessarily arises that an amicable adjustment of the points in dispute between that Government and ours is not to be despaired of. Should we, however, be deceived in this calculation—should similar aggressions be repeated—we are not destitute of means to obtain redress; and on such an event taking place, I presume we would not hesitate in resorting to the complete exercise of these means.

I wish the prospect of an accommodation of our differences with Great Britain were equally bright and flattering. But the systematic hostility of that Government towards our commerce, and its obstinate perseverance in the impressment of our seamen, notwithstanding the repeated remonstrances of our ministers, leave no room to expect an accommodation until we resort to such measures as will make her feel our importance to her as the purchasers and consumers of her manufactures, and the great injury she will sustain through a total privation of our friendship.

In searching for materials to substantiate the facts stated in the preamble to the resolution, it is only necessary to refer to the history of the conduct of the British Government towards us for a very short period. By turning a few pages of that history we will find that a large number of our fellow-citizens

have been forcibly taken from their homes—for his ship is a seaman's home—have been put on board British ships of war and compelled to fight her battles against a power between whom and her own Government there exists no difference. The general notoriety of this truth precludes the necessity of a reference to any particular document to prove the correctness of the statement. Was such a reference necessary, I might point to a report from the Department of State, made at the last session of Congress. In that report we find that, at that time, fifteen hundred and thirty-eight persons, claiming to be American citizens, had been able to extend their application for relief to their own Government; and though Great Britain claimed some of these as her subjects, agreeably to her doctrine of *non-expatriation*, the great mass was acknowledged to be Americans, for whose detention no other cause could be assigned but because she stood in need of their service. And is it not a fair presumption that this number was but a small proportion of those who were actually impressed? Changed from ship to ship, and the vessels in which they are frequently changing their station, and guarded with the most scrupulous attention, it is almost impossible for them to find any opportunity of applying to their own Government or any of its officers for relief.

This open, this flagrant violation of our rights as men, and as citizens of an independent nation, certainly demands the interposition of Government. To what cause are we to ascribe the neglect with which these unfortunate men have been treated? A few years ago, when some of our people had the misfortune to be made prisoners by the Algerines, and at a later period, when some others fell into the hands of the Tripolitans, the feelings of the Government and of the whole country were alive. All voices united in requiring the energy of the Government to be exerted, and its purse to be opened, so that no means to obtain the liberty of the captives might be left untried. Success has crowned these endeavors, and those who were unfortunately slaves are now enjoying their freedom. In what respect, I would ask, does the situation of those who have been impressed from on board their own vessels, and who are forcibly detained on board British ships of war, differ from that of the Algerine and Tripolitan prisoners? So far as respects the Government, the infringements of its rights are greater in the former than in the latter case. The situation of the individual is no better. A wound inflicted by a British cat-of-nine-tails is not less severely felt than if it had proceeded from the lash of an Algerine. The patient submission

with which we have so long endured this flagrant outrage on the feelings of humanity and on the honor of our country, must have excited the astonishment of the whole world; but it must also have impressed them very forcibly with an idea of the moderation of our Government, and of its strong predilection for peace. I trust, however, we will now show them that there is a point beyond which we will not suffer; that even although we may not think it advisable to make reprisals, we will at least withdraw our friendly intercourse from that Government, whose whole system of conduct towards us has been that of distress and degradation; and that, as the business is now taken up, it will be pursued with zeal and ardor, until relief is extended to this unhappy class of sufferers, and security obtained against similar aggressions on their persons in future, by such arrangements as ought to be deemed satisfactory.

In relation to the capture and condemnation of our vessels, contrary to what we consider, and to what I verily believe to be the law of nations, I shall not detain the committee with many observations. I have no intention of entering into a discussion of the abstract question, whether a trade is justifiable in war which is not open in time of peace. I will only observe, that on the principles of reason and justice, and from such authors as I have had an opportunity of consulting, the right for which we contend does appear to me to be clearly established. In some late publications, this question has received a very luminous and ample discussion, and the right insisted on by us has been placed on such ground, and supported by reasoning so clear, so cogent, and so conclusive, that Great Britain, with all her boasted talents, will find it extremely difficult to find answers for them.

But even admitting the British doctrine to be correct, what, I would ask, has been the conduct of that Government under it? Has it been that of a nation actuated by motives of liberality and friendship? Has it been that of a civilized and polished nation? Has it been such as justice and the fair and honorable conduct of our Government has given us a right to expect? No person, I think, is prepared to answer in the affirmative. It does not appear that the principle was practised on during the last, nor for some time after the commencement of the present war. I will not undertake absolutely to say that they relinquished it, but the trade which it now prohibits was permitted to be carried on to a great extent without any interruption from their cruisers. Numbers, allured by the prospect of gain, were induced to engage

in the profitable business, and supposing themselves safe under the protection of law, had their vessels and effects seized to a large amount. The capture and condemnation of their property was to them the first promulgation of the law. Ignorance of what it was impossible for them to know, was imputed to them as a crime, and an honorable dependence on the justice of a Government professing to be friendly, was prosecuted with penalty and forfeiture.

But even independent of our just cause of complaint arising from this principle, apparently new, thus unjustly brought into operation, how has that Government conducted in relation to captures, in which, after the most minute investigation, all the ingenuity of her courts have not been able to discover any principle to warrant the condemnation? The perplexing difficulties, the vexatious delays, and the enormous expense attending the prosecution of a claim through every stage of its progress, place an almost insurmountable barrier in the way of obtaining justice. In fact, all her commercial maxims, and the whole system of her conduct, discover a manifest intention, a fixed determination, to consummate the ruin of the commerce of this country.

From this very brief view of the conduct of the British Government towards us, and I have confined it merely to the points stated in the preamble to the resolution; every candid, every unprejudiced person, I think, must acknowledge, that we are arrived at a crisis; that we have reached a period at which the honor, the interest, and the public sentiment of the country, so far as it has been expressed, call loudly on us to make a stand. The evil we have already suffered is great, and it is progressing. Like a cancerous complaint, it is penetrating still deeper towards our vitals. While we yield year after year, Great Britain advances step by step; yet a little longer and our commerce will be annihilated, and our independence subverted.

Here the great difficulty presents itself. What are the proper steps to be taken? what measures that we can adopt will be most likely to effect the object we have in view, and in its operation produce the smallest inconvenience to ourselves? I, sir, have reflected much on this subject. I have considered, so far as I was capable, the bearing which every measure which I have heard proposed would have on it. The result of my reflections is, that, under all the circumstances of the case, the resolution, which is now

the subject of immediate discussion, ought to be adopted. What is the resolution? what does it say? It addresses Great Britain in this mild and moderate, though manly and firm language: You have insulted the dignity of our country by impressing our seamen, and compelling them to fight your battles against a power with whom we are at peace. You have plundered us of much property by that predatory war which you authorize to be carried on against our commerce. To these injuries, insults, and oppression, we will submit no longer. We do not, however, wish to destroy that friendly intercourse that ought to subsist between nations, connected by the ties of common interest, to which several considerations seem to give peculiar strength. The citizens of our country and the subjects of yours, from the long habit of supplying their mutual wants, no doubt feel a wish to preserve their intercourse without interruption. To prevent such interruption, and secure against future aggressions, we are now desirous of entering into such arrangements as ought to be deemed satisfactory by both parties. But if you persist in your hostile measures, if you absolutely refuse acceding to any propositions of compromise, we must slacken those bonds of friendship by which we have been connected, you must not expect hereafter to find us in your market, purchasing your manufactures to so large an amount. What will the people of this country say of this proposition? Will they not be ready to exclaim, that it is too mild for the present state of things? What will be the opinion of foreign Governments respecting it? Will they not say that we have extended the principle of moderation too far? What must be its impression on Great Britain herself? Sir, if she is not lost to every sense of national justice, she must acknowledge its equity and fairness. But I would inquire particularly what would be its operation on the people of that country? If carried into effect, I believe it will strike dismay throughout the Empire. Its operation will be felt by every description of people, but more especially by the commercial and manufacturing part of the community. The influence of these two classes is well known in that country. They are the main pillars of its support. They are the sources of its wealth. Their representations, therefore, are always attended to. And what language must they speak on this occasion? It must be evident that a regard to their own interest will lead them to remonstrate loudly against that system which will produce an annual defalcation in the sale of their manufactures, of thirty millions of dollars. This is their vulnerable part. By attacking them in their warehouses and workshops we can reach their vitals, and thus raise a set of

advocates in our favor, whose remonstrance may produce an abandonment of those unjust principles and practices which have produced the solemn crisis.

Mr. J. CLAY.—By the resolution before us we are prohibited from importing from Great Britain any articles, however necessary or convenient they may be; while, at the same time, we are permitted to carry any articles to her market. The effect will be, that while our productions are accumulating in the hands of the British manufacturers and merchants, they will have no means of paying for them; and of consequence debts to a very large amount will become due from British merchants to American citizens. Even at the present day, I have great doubts whether there are not greater sums due by the merchants of Great Britain to the citizens of the United States than there are recoverable debts due by American citizens to them. If so, what will become of the second expedient proposed to be resorted to by my colleague, that of sequestration? The balance of injury, instead of being in our favor, will be against us. If my colleague had looked over the report of the Secretary of the Treasury, and had attended to the amount of American property afloat, he would have seen that there is not less than one hundred millions of dollars worth of American property at the mercy of the cruisers of Britain. I believe that the naked vessels, independent of the products they carry, amount in value to more than thirty millions of dollars. It will be seen that the commerce of the United States in exports and imports amounts to one hundred and fifty millions, of which it is fair to calculate that one-third is constantly exposed on the ocean. Of this amount about forty millions is carried on between the United States and the power to whom it is proposed to cut off intercourse. With this fact staring us in the face, would it be politic to expose so much property to the retaliation of the British Ministry? When the gentleman spoke of the amount of British depredations, he ought to have stated the amount of those recently committed. I believe I am not very wrong in stating the whole amount of American property detained by British cruisers as not exceeding six millions of dollars. On balancing, therefore, their interests, ought the United States to resort to measures of hostility; to measures which, in the opinion of every man, will justify retaliation?

Mr. CROWNINSHIELD.—The gentleman from Pennsylvania, who has last spoken, regrets that this subject has been taken up so soon, but I regret it

has not been taken up at an earlier period. Although, after I found certain information called for, I moved for other documents, calculated to shed further light on the subject, yet I then said, and I am still convinced that this information could not influence my decision on the subject under consideration. The documents called for are, however, now before us, and it appears that the balance of trade between the United States and Great Britain is from eleven to twelve millions against us. This difference we are obliged to make up by remittances in cash or bills from other countries; when, if we did not purchase of her more than we sell to her, we should not owe this annual balance, and the amount would surely be returned to the United States, very probably in cash, as a balance in our favor from other European nations. The trade, therefore, with Great Britain, so far as relates to the balance, is disadvantageous to us. The gentleman from Pennsylvania (Mr. CLAY) thinks that this resolution will materially injure us, while it will inflict little injury on Great Britain. But there can be no doubt the measure it contemplates will injure Great Britain vastly more than it will injure us. Great Britain has, without any cause whatever, condemned our vessels engaged in the carriage of colonial productions, the *bona fide* property of American citizens. The gentleman has acknowledged that these captures may amount to six millions of dollars. I do not know the amount, but if the adjudications continue, I believe it will soon exceed that sum. But if the amount did not exceed one million, we are bound in duty to protect our merchants. The gentleman, in his remarks, goes on the calculation that Great Britain will go to war with us if we adopt this resolution. But I have no such idea. If, however, I held that opinion, I should not on that account withhold my approbation from it. Because I believe if a war should take place, the United States will have a great advantage over Great Britain. We should be able, in that event, to fit out a great number of privateers, and we should make two captures to their one. If a war should take place, which I do not hesitate to say I should greatly deprecate, we should take twice as much of their property as they would take of ours. But we are not, by the adoption of this resolution, about to enter into war with Great Britain. No such thing is in the contemplation of any gentleman. We are merely about to prohibit the importation of British goods in consequence of her having seized our vessels engaged in carrying on a lawful commerce, and in consequence of her seizure of American citizens protected by the American flag.

In November, 1793, Great Britain adopted a similar principle with regard to the colonial trade, except that the orders issued at that time went further than the present principle. In consequence of these orders four or five hundred of our vessels were seized. Every one knows the conduct of the American Government at that time. A treaty was finally made in which Great Britain promised to pay for the aggressions committed by her vessels on neutral rights. But nearly ten years elapsed before our merchants received compensation for their losses. This principle slept till 1801. Great Britain did not find it convenient to call it again into existence before that time. It then appears by a correspondence between Mr. King, then our Minister at the Court of Great Britain, and Lord Hawkesbury, that she attempted to renew it at this time. Mr. King, however, remonstrated; and he finally received a note from Lord Hawkesbury who had referred the subject to the Attorney-General of Great Britain, admitting that the seizure, under this principle, was not warrantable. The opinion is this: that the neutral has a right to carry on a commerce with the enemies' colonies. That the continuity of the voyage is broken when the return cargo is landed in the neutral country, and has paid duties there, and that the goods can afterwards be safely transported to any belligerent country in Europe, in the same bottom on which they were originally imported, or on any other neutral bottom whatever. This appears to have settled the question, and numerous decisions in England both before and since that time have confirmed the principle as a correct one.

As to the impressment of our seamen, that too is a subject of most serious complaint. We have called for a document on this point, which unfortunately is not yet on our tables. It is so extensive, and the information drawn from such various sources, that the Secretary of State has not yet been able to present it. We have, however, understood, that the number of our impressed seamen amounts to above 3,000. During the last war Great Britain impressed upwards of 2,000 of our seamen, of which she restored 1,200, proved to be American, and 800 remained in her possession at the peace. In the short period of two years she has impressed 3,000 seamen. I believe that we are bound, by all peaceable means, to obtain the liberation of these men. Lately, one of our frigates was shipwrecked off Tripoli, and 300 men taken captives. We immediately passed a new appropriation bill, and sent out several additional frigates. The affair has terminated honorably

to our country, and our seamen are released. Will we not now do as much for 3,000 seamen, as we then did for 300, which are but a tenth part?

Mr. J. RANDOLPH.—I am extremely afraid, sir, that so far as it may depend on my acquaintance with details connected with the subject, I have very little right to address you, for in truth, I have not yet seen the documents from the Treasury, which were called for some time ago, to direct the judgment of this House in the decision of the question now before you; and, indeed, after what I have this day heard, I no longer require that document or any other document—indeed, I do not know that I ever should have required it—to vote on the resolution of the gentleman from Pennsylvania. If I had entertained any doubts, they would have been removed by the style in which the friends of the resolution have this morning discussed it. I am perfectly aware, that on entering upon this subject, we go into it manacled, handcuffed, and tongue-tied; gentlemen know that our lips are sealed on subjects of momentous foreign relations, which are indissolubly linked with the present question, and which would serve to throw a great light on it in every respect relevant to it. I will, however, endeavor to hobble over the subject, as well as my fettered limbs and palsied tongue will enable me to do it.

I am not surprised to hear this resolution discussed by its friends as a war measure. They say (it is true) that it is not a war measure; but they defend it on principles which would justify none but war measures, and seem pleased with the idea that it may prove the forerunner of war. If war is necessary—if we have reached this point—let us have war. But while I have life, I will never consent to these incipient war measures, which, in their commencement, breathe nothing but peace, though they plunge at last into war. It has been well observed by the gentleman from Pennsylvania behind me (Mr. J. CLAY), that the situation of this nation in 1793 was in every respect different from that in which it finds itself in 1806. Let me ask, too, if the situation of England is not since materially changed? Gentlemen who, it would appear from their language, have not got beyond the horn-book of politics, talk of our ability to cope with the British navy, and tell us of the war of our Revolution. What was the situation of Great Britain then? She was then contending for the empire of the British channel, barely able to maintain a doubtful equality with her enemies, over whom she never gained the superiority until Rodney's victory of the twelfth of April. What is her

present situation? The combined fleets of France, Spain, and Holland, are dissipated, they no longer exist. I am not surprised to hear men advocate these wild opinions, to see them goaded on by a spirit of mercantile avarice, straining their feeble strength to excite the nation to war, when they have reached this stage of infatuation, that we are an over-match for Great Britain on the ocean. It is mere waste of time to reason with such persons. They do not deserve any thing like serious refutation. The proper arguments for such statesmen are a straight waistcoat, a dark room, water gruel, and depletion.

It has always appeared to me that there are three points to be considered, and maturely considered, before we can be prepared to vote for the resolution of the gentleman from Pennsylvania: First. Our ability to contend with Great Britain for the question in dispute: Secondly. The policy of such a contest: Thirdly. In case both these shall be settled affirmatively, the manner in which we can, with the greatest effect, react upon and annoy our adversary.

Now the gentleman from Massachusetts (Mr. CROWNINSHIELD) has settled at a single sweep, to use one of his favorite expressions, not only that we are capable of contending with Great Britain on the ocean, but that we are actually her superior. Whence does the gentleman deduce this inference? Because, truly, at that time when Great Britain was not mistress of the ocean, when a North was her prime minister, a Sandwich the first lord of her admiralty, when she was governed by a counting-house administration, privateers of this country trespassed on her commerce! So, too, did the cruisers of Dunkirk; at that day Suffrein held the mastery of the Indian seas. But what is the case now? Do gentlemen remember the capture of Cornwallis on land, because De Grasse maintained the dominion of the ocean? To my mind no position is more clear, than that if we go to war with Great Britain, Charleston and Boston, the Chesapeake and the Hudson, will be invested by British squadrons. Will you call on the Count de Grasse to relieve them, or shall we apply to Admiral Gravina, or Admiral Villeneuve to raise the blockade? But you have not only a prospect of gathering glory, and what seems to the gentleman from Massachusetts much dearer, profit, by privateering, but you will be able to make a conquest of Canada and Nova Scotia. Indeed! Then, sir, we shall catch a Tartar. I confess, however, I have no desire to see the Senators and Representatives of the Canadian

French, or of the tories and refugees of Nova Scotia, sitting on this floor or that of the other House—to see them becoming members of the Union, and participating equally in our political rights. And on what other principle would the gentleman from Massachusetts be for incorporating those provinces with us? Or on what other principle could it be done under the constitution? If the gentleman has no other bounty to offer us for going to war, than the incorporation of Canada and Nova Scotia with the United States, I am for remaining at peace.

What is the question in dispute? The carrying trade. What part of it? The fair, the honest, and the useful trade that is engaged in carrying our own productions to foreign markets, and bringing back their productions in exchange? No, sir. It is that carrying trade which covers enemy's property, and carries the coffee, the sugar, and other West India products, to the mother country. No, sir, if this great agricultural nation is to be governed by Salem and Boston, New York and Philadelphia, and Baltimore and Norfolk and Charleston, let gentlemen come out and say so; and let a committee of public safety be appointed from those towns to carry on the Government. I, for one, will not mortgage my property and my liberty, to carry on this trade. The nation said so seven years ago—I said so then, and I say so now. It is not for the honest carrying trade of America, but for this mushroom, this fungus of war—for a trade which, as soon as the nations of Europe are at peace, will no longer exist,—it is for this that the spirit of avaricious traffic would plunge us into war.

I am forcibly struck on this occasion by the recollection of a remark made by one of the ablest (if not the honestest) Ministers that England ever produced. I mean Sir Robert Walpole, who said that the country gentlemen (poor meek souls!) came up every year to be sheared—that they lay mute and patient whilst their fleeces were taking off—but that if he touched a single bristle of the commercial interest, the whole sty was in an uproar. It was indeed shearing the hog—"great cry and little wool."

But we are asked, are we willing to bend the neck to England; to submit to her outrages? No, sir, I answer, that it will be time enough for us to vindicate the violation of our flag on the ocean, when they shall have told us what they have done in resentment of the violation of the actual territory of the United States by Spain—the true territory of the United States, not your new-fangled country over the Mississippi, but the good old United

States—part of Georgia, of the old thirteen States—where citizens have been taken, not from our ships, but from our actual territory. When gentlemen have taken the padlock from our mouths, I shall be ready to tell them what I will do, relative to our dispute with Britain, on the law of nations, on contraband, and such stuff.

I have another objection to this course of proceeding. Great Britain, when she sees it, will say the American people have great cause of dissatisfaction with Spain. She will see by the documents furnished by the President, that Spain has outraged our Territory, pirated upon our commerce, and imprisoned our citizens; and she will inquire what we have done? It is true, she will receive no answer, but she must know what we have not done. She will see that we have not repelled these outrages, nor made any addition to our army and navy—nor even classed the militia. No, sir, not one of your militia generals in politics has marshalled a single brigade.

Although I have said it would be time enough to answer the question which gentlemen have put to me when they shall have answered mine, yet as I do not like long prorogations I will give them an answer now. I will never consent to go to war for that which I cannot protect. I deem it no sacrifice of dignity to say to the Leviathan of the deep—we are unable to contend with you in your own element, but if you come within our actual limits we will shed our last drop of blood in their defence. In such an event I would feel, not reason, and obey an impulse which never has, which never can deceive me.

France is at war with England—suppose her power on the continent of Europe no greater than it is on the ocean. How would she make her enemy feel it? There would be a perfect non-conductor between them. So with the United States and England—she scarcely presents to us a vulnerable point. Her commerce is now carried on for the most part in fleets—where in single ships they are stout and well armed—very different from the state of her trade during the American war, when her merchantmen became the prey of paltry privateers. Great Britain has been too long at war with the three most powerful maritime nations of Europe not to have learnt how to protect her trade. She can afford convoy to it all—she has eight hundred ships in commission, the navies of her enemies are annihilated. Thus this war has presented the new and curious political spectacle of a regular annual increase (and to an immense amount) of her imports and exports, and

tonnage and revenue, and all the insignia of accumulating wealth, whilst in every former war, without exception, these have suffered a greater or less diminution. And wherefore? Because she has driven France, Spain, and Holland from the ocean. Their marine is no more. I verily believe that ten English ships-of-the-line would not decline a meeting with the combined fleets of those nations. I forewarn the gentleman from Massachusetts and his constituents of Salem, that all their golden hopes are vain. I forewarn them of the exposure of their trade beyond the Cape of Good Hope (or now doubling it) to capture and confiscation—of their unprotected seaport towns, exposed to contribution or bombardment. Are we to be legislated into war by a set of men, who in six weeks after its commencement may be compelled to take refuge with us up in the country? And for what? A mere fungus—a mushroom production of war in Europe, which will disappear with the first return of peace—an unfair trade. For is there a man so credulous as to believe that we possess a capital not only equal to what may be called our own proper trade, but large enough also to transmit to the respective parent states the vast and wealthy products of the French, Spanish and Dutch colonies? It is beyond the belief of any rational being. But this is not my only objection to entering upon this naval warfare; I am averse to a naval war with any nation whatever. I was opposed to the naval war of the last Administration, and I am as ready to oppose a naval war of the present Administration, should they meditate such a measure. What! shall this great mammoth of the American forest leave his native element and plunge into the water in a mad contest with the shark? Let him beware that his proboscis is not bitten off in the engagement. Let him stay on shore, and not be excited by the muscles and periwinkles on the strand, or political bears, in a boat to venture on the perils of the deep. Gentlemen say, will you not protect your violated rights? and I say, why take to water, where you can neither fight nor swim? Look at France—see her vessels stealing from port to port on her own coast—and remember that she is the first military power of the earth, and as a naval people second only to England. Take away the British navy, and France to-morrow is the tyrant of the ocean.

This brings me to the second point. How far is it politic in the United States to throw their weight into the scale of France at this moment, from whatever motive—to aid the views of her gigantic ambition—to make her mistress of the sea and land—to jeopardize the liberties of mankind? Sir, you may help to crush Great Britain, you may assist in breaking down her

naval dominion, but you cannot succeed to it. The iron sceptre of the ocean will pass into his hands who wears the iron crown of the land. You may then expect a new code of maritime law. Where will you look for redress? I can tell the gentleman from Massachusetts that there is nothing in his rule of three that will save us, even although he should outdo himself, and exceed the financial ingenuity which he so memorably displayed on a recent occasion. No, sir, let the battle of Actium be once fought, and the whole line of seacoast will be at the mercy of the conqueror. The Atlantic, deep and wide as it is, will prove just as good a barrier against his ambition, if directed against you, as the Mediterranean to the power of the Cæsars. Do I mean (when I say so) to crouch to the invader? No! I will meet him at the water's edge, and fight every inch of ground from thence to the mountains—from the mountains to the Mississippi. But after tamely submitting to an outrage on your domicil, will you bully and look big at an insult on your flag three thousand miles off?

But, sir, I have yet a more cogent reason against going to war, for the honor of the flag in the narrow seas, or any other maritime punctilio. It springs from my attachment to the Government under which I live. I declare, in the face of day, that this Government was not instituted for the purposes of offensive war. No! It was framed (to use its own language) “for the common defence and the general welfare,” which are inconsistent with offensive war.^[35] I call that offensive war, which goes out of our jurisdiction and limits for the attainment or protection of objects not within those limits, and that jurisdiction. As in 1798 I was opposed to this species of warfare, because I believed it would raze the constitution to its very foundation—so, in 1806, I am opposed to it, and on the same grounds. No sooner do you put the constitution to this use—to a test which it is by no means calculated to endure—than its incompetency becomes manifest, apparent to all. I fear if you go into a foreign war, for a circuitous, unfair carrying trade, you will come out without your constitution. Have not you contractors enough yet in this House? Or, do you want to be overrun and devoured by commissaries, and all the vermin of contract? I fear, sir, that what are called “the energy men” will rise up again—men who will burn the parchment. We shall be told that our Government is too free; or, as they would say, weak and inefficient. Much virtue, sir, in terms! That we must give the President power to call forth the resources of the nation. That is, to filch the last shilling from our pockets—to drain the last drop of blood from

our veins. I am against giving this power to any man, be he who he may. The American people must either withhold this power, or resign their liberties. There is no other alternative. Nothing but the most imperious necessity will justify such a grant. And is there a powerful enemy at our doors? You may begin with a First Consul. From that chrysalis state he soon becomes an Emperor. You have your choice. It depends upon your election whether you will be a free, happy, and united people at home, or the light of your Executive Majesty shall beam across the Atlantic in one general blaze of the public liberty.

For my part, I will never go to war but in self-defence. I have no desire for conquests—no ambition to possess Nova Scotia. I hold the liberties of this people at a higher rate. Much more am I indisposed to war, when, among the first means for carrying it on, I see gentlemen propose the confiscation of debts due by Government to individuals. Does a *bona fide* creditor know who holds his paper? Dare any honest man ask himself the question? 'Tis hard to say whether such principles are more detestably dishonest, than they are weak and foolish. What, sir, will you go about with proposals for opening a loan in one hand, and a sponge for the national debt in the other? If, on a late occasion, you could not borrow at a less rate of interest than eight per cent., when the Government avowed that they would pay to the last shilling of the public ability, at what price do you expect to raise money with an avowal of these nefarious opinions? God help you, if these are your ways and means for carrying on war! if your finances are in the hands of such a Chancellor of the Exchequer. Because a man can take an observation, and keep a log-book and a reckoning; can navigate a cock-boat to the West Indies, or the East, shall he aspire to navigate the great vessel of State—to stand at the helm of public councils? *Ne sutor ultra crepidam*. What are you going to war for? For the carrying trade? Already you possess seven-eighths of it. What is the object in dispute? The fair, honest trade, that exchanges the product of our soil for foreign articles for home consumption? Not at all. You are called upon to sacrifice this necessary branch of your navigation, and the great agricultural interest—whose handmaid it is—to jeopardize your best interests for a circuitous commerce, for the fraudulent protection of belligerent property under your neutral flag. Will you be goaded, by the dreaming calculations of insatiate avarice, to stake your all for the protection of this trade? I do not speak of the probable effects of war on the price of our produce. Severely as we must

feel, we may scuffle through it. I speak of its reaction on the constitution. You may go to war for this excrescence of the carrying trade, and make peace at the expense of the constitution. Your Executive will lord it over you, and you must make the best terms with the conqueror that you can. But the gentleman from Pennsylvania (Mr. GREGG) tells you that he is for acting in this, as in all things, uninfluenced by the opinion of any minister whatever—foreign, or, I presume, domestic. On this point I am willing to meet the gentleman—am unwilling to be dictated to by any minister, at home or abroad. Is he willing to act on the same independent footing? I have before protested, and I again protest against secret, irresponsible, overruling influence. The first question I asked when I saw the gentleman's resolution, was, "Is this a measure of the Cabinet?" Not of an open declared Cabinet; but, of an invisible, inscrutable, unconstitutional Cabinet, without responsibility, unknown to the constitution. I speak of back-stairs' influence—of men who bring messages to this House, which, although they do not appear on the Journals, govern its decisions. Sir, the first question that I asked on the subject of British relations, was, What is the opinion of the Cabinet? What measures will they recommend to Congress?—(well knowing that whatever measures we might take, they must execute them, and therefore, that we should have their opinion on the subject.) My answer was, (and from a Cabinet Minister too,) "*There is no longer any Cabinet.*" Subsequent circumstances, sir, have given me a personal knowledge of the fact. It needs no commentary.

But the gentleman has told you that we ought to go to war, if for nothing else, for the fur trade. Now, sir, the people on whose support he seems to calculate, follow, let me tell him, a better business, and let me add, that whilst men are happy at home reaping their own fields—the fruits of their labor and industry—there is little danger of their being induced to go sixteen or seventeen hundred miles in pursuit of beavers, raccoons, or opossums, much less of going to war for the privilege. They are better employed where they are. This trade, sir, may be important to Britain, to nations who have exhausted every resource of industry at home, bowed down by taxation and wretchedness. Let them, in God's name, if they please, follow the fur trade. They may, for me, catch every beaver in North America. Yes, sir, our people have a better occupation—a safe, profitable, honorable employment. While they should be engaged in distant regions in hunting the beaver, they dread lest those whose natural prey they are should

begin to hunt them, should pillage their property, and assassinate their constitution. Instead of these wild schemes, pay off your debt, instead of prating about its confiscation. Do not, I beseech you, expose at once your knavery and your folly. You have more lands than you know what to do with; you have lately paid fifteen millions for yet more. Go and work them, and cease to alarm the people with the cry of wolf, until they become deaf to your voice, or at least laugh at you.

Mr. Chairman, if I felt less regard for what I deem the best interests of this nation than for my own reputation, I should not, on this day, have offered to address you, but would have waited to come out, bedecked with flowers and bouquets of rhetoric, in a set speech. But, sir, I dreaded lest a tone might be given to the mind of the committee—they will pardon me, but I did fear, from all that I could see or hear, that they might be prejudiced by its advocates, (under pretence of protecting our commerce,) in favor of this ridiculous and preposterous project; I rose, sir, for one, to plead guilty; to declare in the face of day that I will not go to war for this carrying trade. I will agree to pass for an idiot if this is not the public sentiment, and you will find it to your cost, begin the war when you will.

Gentlemen talk of 1793. They might as well go back to the Trojan war. What was your situation then? Then every heart beat high with sympathy for France, for *republican France*! I am not prepared to say, with my friend from Pennsylvania, that we were all ready to draw our swords in her cause, but I affirm that we were prepared to have gone great lengths. I am not ashamed to pay this compliment to the hearts of the American people, even at the expense of their understandings. It was a noble and generous sentiment, which nations like individuals are never the worse for having felt. They were, I repeat it, ready to make great sacrifices for France. And why ready? Because she was fighting the battles of the human race against the combined enemies of their liberty; because she was performing the part which Great Britain now, in fact, sustains, forming the only bulwark against universal dominion. Knock away her navy, and where are you? Under the naval despotism of France, unchecked and unqualified by any antagonizing military power; at best but a change of masters. The tyrant of the ocean, and the tyrant of the land, is one and the same, lord of all, and who shall say him nay, or wherefore doest thou this thing? Give to the tiger the properties of the shark, and there is no longer safety for the beasts of the forest or the

fishes of the sea. Where was this high anti-Britannic spirit of the gentleman from Pennsylvania, when his vote would have put an end to the British treaty, that pestilent source of evil to this country? and at a time, too, when it was not less the interest than the sentiment of this people to pull down Great Britain and exalt France. Then, when the gentleman might have acted with effect, he could not screw his courage to the sticking place. Then England was combined in what has proven a feeble, inefficient coalition, but which gave just cause of alarm to every friend of freedom. Now the liberties of the human race are threatened by a single power, more formidable than the coalesced world, to whose utmost ambition, vast as it is, the naval force of Great Britain forms the only obstacle.

I am perfectly sensible and ashamed of the trespass I am making on the patience of the committee; but as I know not whether it will be in my power to trouble them again on this subject, I must beg leave to continue my crude and desultory observations. I am not ashamed to confess that they are so. At the commencement of this session, we received a printed Message from the President of the United States, breathing a great deal of national honor, and indignation at the outrages we had endured, particularly from Spain. She was specially named and pointed at. She had pirated upon your commerce, imprisoned your citizens, violated your actual territory; invaded the very limits solemnly established between the two nations by the Treaty of San Lorenzo. Some of the State Legislatures (among others the very State on which the gentleman from Pennsylvania relies for support) sent forward resolutions pledging their lives, their fortunes, and their sacred honor, in support of any measures you might take in vindication of your injured rights. Well, sir, what have you done? You have had resolutions laid upon your table, gone to some expense of printing and stationery—mere pen, ink, and paper, that's all. Like true political quacks, you deal only in handbills and nostrums. Sir, I blush to see the record of our proceedings; they resemble nothing but the advertisements of patent medicines. Here you have “the worm-destroying lozenges,” there “Church's cough drops;” and, to crown the whole, “Sloan's vegetable specific,” an infallible remedy for all nervous disorders and vertigoes of brain-sick politicians; each man earnestly adjuring you to give his medicine only a fair trial. If, indeed, these wonder-working nostrums could perform but one-half of what they promise, there is little danger of our dying a political death, at this time at

least. But, sir, in politics as in physics, the doctor is oftentimes the most dangerous disease; and this I take to be our case at present.

But, sir, why do I talk of Spain? “There are no longer Pyrenees!” There exists no such nation, no such being as a Spanish King, or Minister. It is a mere juggle, played off for the benefit of those who put the mechanism into motion. You know, sir, that you have no differences with Spain; that she is the passive tool of a superior power, to whom, at this moment, you are crouching. Are your differences, indeed, with Spain? And where are you going to send your political panacea, resolutions and handbills excepted, your sole arcanum of Government, your king cure all? To Madrid? No—you are not such quacks as not to know where the shoe pinches—to Paris. You know, at least, where the disease lies, and there you apply your remedy. When the nation anxiously demands the result of your deliberations, you hang your head and blush to tell. You are afraid to tell. Your mouth is hermetically sealed. Your honor has received a wound which must not take air. Gentlemen dare not come forward and avow their work, much less defend it in the presence of the nation. Give them all they ask, that Spain exists—and what then? After shrinking from the Spanish jackall, do you presume to bully the British lion? But here the secret comes out. Britain is your rival in trade, and governed as you are by counting-house politician; you would sacrifice the paramount interests of the country, to wound that rival. For Spain and France you are carriers, and from good customers every indignity is to be endured. And what is the nature of this trade? Is it that carrying trade which sends abroad the flour, tobacco, cotton, beef, pork, fish, and lumber of this country, and brings back in return foreign articles necessary for our existence or comfort? No, sir, it is a trade carried on—the Lord knows where, or by whom; now doubling Cape Horn, now the Cape of Good Hope. I do not say that there is no profit in it—for it would not then be pursued—but it is a trade that tends to assimilate our manners and Government to those of the most corrupt countries of Europe. Yes, sir, and when a question of great national magnitude presents itself to you, it causes those who now prate about national honor and spirit to pocket any insult; to consider it as a mere matter of debit and credit; a business of profit and loss, and nothing else.

The first thing that struck my mind, when this resolution was laid on the table, was *unde derivatur*? A question always put to us at school. Whence

comes it? Is this only the putative father of the bantling he is taxed to maintain, or, indeed, the actual parent, the real progenitor of the child? Or, is it the production of the Cabinet? But, I knew you had no Cabinet, no system. I had seen despatches relating to vital measures laid before you the day after your final decision on those measures, four weeks after they were received; not only their contents, but their very existence, all that time unsuspected and unknown to men whom the people fondly believe assist with their wisdom and experience at every important deliberation. Do you believe that this system, or rather this no-system, will do? I am free to answer it will not, it cannot last. I am not so afraid of the fair, open, constitutional, responsible influence of Government, but I shrink intuitively from this left-handed, invisible, irresponsible influence, which defies the touch, but pervades and decides every thing. Let the Executive come forward to the Legislature; let us see while we feel it. If we cannot rely on its wisdom, is it any disparagement to the gentleman from Pennsylvania to say that I cannot rely upon him? No, sir, he has mistaken his talent. He is not the Palinurus on whose skill the nation, at this trying moment, can repose their confidence. I will have nothing to do with his paper, much less will I endorse it, and make myself responsible for its goodness. I will not put my name to it. I assert that there is no Cabinet, no system, no plan; that which I believe in one place, I shall never hesitate to say in another. This is no time, no place, for mincing our steps. The people have a right to know; they shall know the state of their affairs; at least, as far as I am at liberty to communicate them. I speak from personal knowledge. Ten days ago there had been no consultation; there existed no opinion in your Executive department; at least, none that was avowed. On the contrary, there was an express disavowal of any opinion whatsoever, on the great subject before you; and I have good reason for saying that none has been formed since. Some time ago, a book was laid on our tables, which, like some other bantlings, did not bear the name of its father. Here I was taught to expect a solution of all doubts, an end to all our difficulties. If, sir, I were the foe—as I trust I am the friend of this nation—I would exclaim, “Oh, that mine enemy would write a book!” At the very outset, in the very first page, I believe, there is a complete abandonment of the principle in dispute. Has any gentleman got the work? [It was handed by one of the members.] The first position taken is the broad principle of the unlimited freedom of trade between nations at peace, which the writer endeavors to extend to the trade

between a neutral and a belligerent power, accompanied, however, by this acknowledgment: “But, inasmuch as the trade of a neutral with a belligerent nation, might, in certain special cases, affect the safety of its antagonist, usage, founded on the principle of necessity, has admitted a few exceptions to the general rule.” Whence comes the doctrine of contraband, blockade, and enemy’s property? Now, sir, for what does that celebrated pamphlet, “War in Disguise”—which is said to have been written under the eye of the British Prime Minister—contend, but this “principle of necessity?” And this is abandoned by this pamphleteer at the very threshold of the discussion. But, as if this were not enough, he goes on to assign as a reason for not referring to the authority of the ancients, “that the great change which has taken place in the state of manners, in the maxims of war, and in the course of commerce, make it pretty certain” (what degree of certainty is this?) “that either nothing will be found relating to the question, or nothing sufficiently applicable to deserve attention in deciding it.” Here, sir, is an apology of the writer for not disclosing the whole extent of his learning, (which might have overwhelmed the reader,) is the admission that a change of circumstances, (“in the course of commerce,”) has made (and, therefore, will now justify) a total change of the law of nations. What more could the most inveterate advocate of English usurpation demand? What else can they require to establish all, and even more than they contend for? Sir, there is a class of men—we know them very well—who, if you only permit them to lay the foundation, will build you up, step by step, and brick by brick, very neat and showy, if not tenable arguments. To detect them, it is only necessary to watch their premises, where you will often find the point at issue surrendered, as in this case it is.

Again: Is the *mare liberum* any where asserted in this book, that free ships make free goods? No, sir; the right of search is acknowledged; that enemy’s property is lawful prize, is sealed and delivered. And, after abandoning these principles, what becomes of the doctrine that a mere shifting of the goods from one ship to another, the touching at another port, changes the property? Sir, give up this principle, and there is an end to the question. You lie at the mercy of the conscience of a Court of Admiralty. Is Spanish sugar, or French coffee, made American property, by the mere change of the cargo, or even by the landing and payment of the duties? Does this operation effect a change of property? And when those duties are drawn back, and the sugar and coffee re-exported, are they not (as enemy’s

property) liable to seizure upon the principles of the “Examination of the British doctrine,” &c.? And, is there not the best reason to believe, that this operation is performed in many, if not in most cases, to give a neutral aspect and color to the merchandise?

I am prepared, sir, to be represented as willing to surrender important rights of this nation to a foreign Government. I have been told that this sentiment is already whispered in the dark, by time-servers and sycophants. But, if your Clerk dared to print them, I would appeal to your Journals. I would call for the reading of them, but that I know they are not for profane eyes to look upon. I confess that I am more ready to surrender to a naval power a square league of ocean, than to a territorial one, a square inch of land within our limits; and I am ready to meet the friends of the resolution on this ground at any time.

Let them take off the injunction of secrecy. They dare not. They are ashamed and afraid to do it. They may give winks and nods, and pretend to be wise, but they dare not come out and tell the nation what they have done. Gentlemen may take notice if they please, but I will never, from any motive short of self-defence, enter upon war. I will never be instrumental to the ambitious schemes of Buonaparte, nor put into his hands what will enable him to wield the world, and on the very principle that I wished success to the French arms in 1793. And wherefore? Because the case is changed. Great Britain can never again see the year 1760. Her continental influence is gone for ever. Let who will be uppermost on the continent of Europe, she must find more than a counterpoise for her strength. Her race is run. She can only be formidable as a maritime power; and, even as such, perhaps not long. Are you going to justify the acts of the last Administration, for which they have been deprived of the Government at our instance? Are you going back to the ground of 1798-'9? I ask any man who now advocates a rupture with England to assign a single reason for his opinion, that would not have justified a French war in 1798? If injury and insult abroad would have justified it, we had them in abundance then. But what did the Republicans say at that day? That, under the cover of a war with France, the Executive would be armed with a patronage and power which might enable it to master our liberties. They deprecated foreign war and navies, and standing armies, and loans, and taxes. The delirium passed away—the good sense of the people triumphed, and our differences were accommodated without a

war. And what is there in the situation of England that invites to war with her? It is true she does not deal so largely in perfectibility, but she supplies you with a much more useful commodity—with coarse woollens. With less profession, indeed, she occupies the place of France in 1793. She is the sole bulwark of the human race against universal dominion; no thanks to her for it. In protecting her own existence, she ensures theirs. I care not who stands in this situation, whether England or Buonaparte. I practise the doctrines now that I professed in 1798. Gentlemen may hunt up the journals if they please; I voted against all such projects under the Administration of John Adams, and I will continue to do so under that of Thomas Jefferson. Are you not contented with being free and happy at home? Or will you surrender these blessings that your merchants may tread on Turkish and Persian carpets, and burn the perfumes of the East in their vaulted rooms? Gentlemen say it is but an annual million lost, and even if it were five times that amount, what is it compared with your neutral rights? Sir, let me tell them a hundred millions will be but a drop in the bucket, if once they launch without rudder or compass into this ocean of foreign warfare. Whom do they want to attack? England. They hope it is a popular thing, and talk about Bunker's Hill, and the gallant feats of our Revolution. But is Bunker's Hill to be the theatre of war? No, sir, you have selected the ocean, and the object of attack is that very navy which prevented the combined fleets of France and Spain from levying contribution upon you in your own seas; that very navy which, in the famous war of 1798, stood between you and danger. Whilst the fleets of the enemy were pent up in Toulon, or pinioned in Brest, we performed wonders to be sure; but, sir, if England had drawn off, France would have told you quite a different tale. You would have struck no medals. This is not the sort of conflict that you are to count upon, if you go to war with Great Britain. *Quem Deus vult perdere prius dementat*. And are you mad enough to take up the cudgels that have been struck from the nerveless hands of the three great maritime powers of Europe? Shall the planter mortgage his little crop, and jeopardize the constitution in support of commercial monopoly, in the vain hope of satisfying the insatiable greediness of trade? Administer the constitution upon its own principles; for the general welfare, and not for the benefit of any particular class of men. Do you meditate war for the possession of Baton Rouge or Mobile, places which your own laws declare to be within your limits? Is it even for the fair trade that exchanges your surplus

products for such foreign articles as you require? No, sir, it is for a circuitous trade—an ignis fatuus. And against whom? A nation from whom you have any thing to fear?—I speak as to our liberties. No, sir, with a nation from whom you have nothing, or next to nothing, to fear; to the aggrandizement of one against which you have every thing to dread. I look to their ability and interest, not to their disposition. When you rely on that the case is desperate. Is it to be inferred from all this that I would yield to Great Britain? No. I would act towards her now, as I was disposed to do towards France, in 1798-'9; treat with her, and for the same reason, on the same principles. Do I say I would treat with her? At this moment you have a negotiation pending with her Government. With her you have not tried negotiation and failed, totally failed, as you have done with Spain, or rather France; and, wherefore, under such circumstances, this hostile spirit to the one, and this—I will not say what—to the other?

But a great deal is said about the laws of nations. What is national law but national power guided by national interest? You yourselves acknowledge and practise upon this principle where you can, or where you dare—with the Indian tribes for instance. I might give another and more forcible illustration. Will the learned lumber of your libraries add a ship to your fleet, or a shilling to your revenue? Will it pay or maintain a single soldier? And will you preach and prate of violations of your neutral rights, when you tamely and meanly submit to the violation of your territory? Will you collar the stealer of your sheep, and let him escape that has invaded the repose of your fireside—has insulted your wife and children under your own roof? This is the heroism of truck and traffic—the public spirit of sordid avarice. Great Britain violates your flag on the high seas. What is her situation? Contending, not for the dismantling of Dunkirk, for Quebec, or Pondicherry, but for London and Westminster—for life; her enemy violating at will the territories of other nations, acquiring thereby a colossal power that threatens the very existence of her rival. But she has one vulnerable point to the arms of her adversary, which she covers with the ensigns of neutrality; she draws the neutral flag over the heel of Achilles. And can you ask that adversary to respect it at the expense of her existence? and in favor of whom? An enemy that respects no neutral territory of Europe, and not even your own. I repeat that the insults of Spain towards this nation have been at the instigation of France; that there is no longer any Spain. Well, sir, because the French Government does not put this in the

Moniteur, you choose to shut your eyes to it. None so blind as those who will not see. You shut your own eyes, and to blind those of other people, you go into conclave, and slink out again and say, “a great affair of State!”—*C’est une grande affaire d’Etat!* It seems that your sensibility is entirely confined to the extremities. You may be pulled by the nose and ears, and never feel it, but let your strong box be attacked, and you are all nerve—“Let us go to war!” Sir, if they called upon me only for my little *peculium* to carry it on, perhaps I might give it; but my rights and liberties are involved in the grant, and I will never surrender them while I have life. The gentleman from Massachusetts (Mr. CROWNINSHIELD) is for sponging the debt. I can never consent to it; I will never bring the ways and means of fraudulent bankruptcy into your committee of supply. Confiscation and swindling shall never be found among my estimates to meet the current expenditure of peace or war. No, sir, I have said with the doors closed, and I say so when the doors are open, “pay the public debt;” get rid of that dead weight upon your Government—that cramp upon all your measures—and then you may put the world at defiance. So long as it hangs upon you, you must have revenue, and to have revenue you must have commerce—commerce, peace. And shall these nefarious schemes be advised for lightening the public burdens; will you resort to these low and pitiful shifts; dare even to mention these dishonest artifices to eke out your expenses, when the public treasure is lavished on Turks and infidels, on singing boys and dancing girls, to furnish the means of bestiality to an African barbarian?

Gentlemen say that Great Britain will count upon our divisions. How? What does she know of them? Can they ever expect greater unanimity than prevailed at the last Presidential election? No, sir, it is the gentleman’s own conscience that squeaks. But if she cannot calculate upon your divisions, at least she may reckon upon your pusillanimity. She may well despise the resentment that cannot be excited to honorable battle on its own ground; the mere effusion of mercantile cupidity. Gentlemen talk of repealing the British Treaty. The gentleman from Pennsylvania should have thought of that, before he voted to carry it into effect. And what is all this for? A point which Great Britain will not abandon to Russia, you expect her to yield to you—Russia! indisputably the second power of continental Europe; with not less than half a million of hardy troops; with sixty sail-of-the-line, thirty millions of subjects, and a territory more extensive even than our own—Russia, sir, the storehouse of the British Navy, whom it is not more the

policy and the interest than the sentiment of that Government to soothe and to conciliate—her sole hope of a diversion on the continent, and her only efficient ally. What this formidable power cannot obtain with fleets and armies, you will command by writ—with pothooks and hangers. I am for no such policy. True honor is always the same. Before you enter into a contest, public or private, be sure you have fortitude enough to go through with it. If you mean war, say so, and prepare for it. Look on the other side; behold the respect in which France holds neutral rights on land; observe her conduct in regard to the Franconian estates of the King of Prussia. I say nothing of the petty powers—of the Elector of Baden, or of the Swiss—I speak of a first-rate Monarchy of Europe, and at a moment, too, when its neutrality was the object of all others nearest to the heart of the French Emperor. If you make him monarch of the ocean, you may bid adieu to it for ever. You may take your leave, sir, of navigation—even of the Mississippi. What is the situation of New Orleans if attacked to-morrow? Filled with a discontented and repining people, whose language, manners, and religion, all incline them to the invader—a dissatisfied people, who despise the miserable Governor you have set over them—whose honest prejudices and basest passions alike take part against you. I draw my information from no dubious source; but from a native American, an enlightened member of that odious and imbecile Government. You have official information that the town and its dependencies are utterly defenceless and untenable. A firm belief that (apprised of this) Government would do something to put the place in a state of security, alone has kept the American portion of that community quiet. You have held that post, you now hold it, by the tenure of the naval predominance of England, and yet you are for a British naval war.

There are now but two great commercial nations—Great Britain is one, and the United States the other. When you consider the many points of contact between our interests, you may be surprised that there has been so little collision. Sir, to the other belligerent nations of Europe your navigation is a convenience, I might say, a necessary. If you do not carry for them they must starve, at least for the luxuries of life, which custom has rendered almost indispensable; and if you cannot act with some degree of spirit towards those who are dependent upon you as carriers, do you reckon to browbeat a jealous rival, who, the moment she lets slip the dogs of war, sweeps you at a blow from the ocean. And *cui bono*? for whose benefit? The planter? Nothing like it. The fair, honest, real American merchant? No,

sir, for renegadoes; to-day American, to-morrow Danes. Go to war when you will, the property, now covered by the American, will then pass under the Danish, or some other neutral flag. Gentlemen say that one English ship is worth three of ours; we shall therefore have the advantage in privateering. Did they ever know a nation to get rich by privateering? This is stuff, sir, for the nursery. Remember that your products are bulky, as has been stated; that they require a vast tonnage to transport them abroad, and that but two nations possess that tonnage. Take these carriers out of the market. What is the result? The manufactures of England, which (to use a finishing touch of the gentlemen's rhetoric) have received the finishing stroke of art, lie in a small comparative compass. The neutral trade can carry them. Your produce rots in the warehouse. You go to Eustatia or St. Thomas, and get a striped blanket for a joe, if you can raise one. Double freight, charges, and commission. Who receives the profit? The carrier. Who pays it? The consumer. All your produce that finds its way to England, must bear the same accumulated charges—with this difference, that *there* the burden falls on the home price. I appeal to the experience of the late war, which has been so often cited. What then was the price of produce, and of broadcloth?

But you are told England will not make war; that she has her hands full. Holland calculated in the same way in 1781. How did it turn out? You stand now in the place of Holland, then without her navy, and unaided by the preponderating fleets of France and Spain, to say nothing of the Baltic Powers. Do you want to take up the cudgels where these great maritime States have been forced to drop them? to meet Great Britain on the ocean, and drive her off its face? If you are so far gone as this, every capital measure of your policy has hitherto been wrong. You should have nurtured the old, and devised new systems of taxation, and have cherished your navy. Begin this business when you may, land-taxes, stamp-acts, window-taxes, hearth-money, excise, in all its modifications of vexation and oppression, must precede or follow after. But, sir, as French is the fashion of the day, I may be asked for my *projet*. I can readily tell gentlemen what I will not do. I will not propitiate any foreign nation with money. I will not launch into a naval war with Great Britain, although I am ready to meet her at the Cowpens or on Bunker's Hill—and for this plain reason, we are a great land animal, and our business is on shore. I will send her money, sir, on no pretext whatever, much less on pretence of buying Labrador, or Botany Bay, when my real object was to secure limits, which she formally

acknowledged at the peace of 1783. I go further: I would (if any thing) have laid an embargo. This would have got our own property home, and our adversary's into our power. If there is any wisdom left among us, the first step towards hostility will always be an embargo. In six months all your mercantile megrims would vanish. As to us, although it would cut deep, we can stand it. Without such a precaution, go to war when you will, you go to the wall. As to debts, strike the balance to-morrow, and England is I believe in our debt.

I hope, sir, to be excused for proceeding in this desultory course. I flatter myself I shall not have occasion again to trouble you. I know not that I shall be able, certainly not willing, unless provoked in self-defence. I ask your attention to the character of the inhabitants of that Southern country, on whom gentlemen rely for support of their measure. Who and what are they? A simple, agricultural people, accustomed to travel in peace to market with the produce of their labor. Who takes it from us? Another people, devoted to manufactures—our sole source of supply. I have seen some stuff in the newspapers about manufactures in Saxony, and about a man who is no longer the chief of a dominant faction. The greatest man whom I ever knew—the immortal author of the letters of Curtius—has remarked the proneness of cunning people to wrap up and disguise in well-selected phrases, doctrines too deformed and detestable to bear exposure in naked words; by a judicious choice of epithets to draw the attention from the lurking principle beneath, and perpetuate delusion. But a little while ago, and any man might have been proud to have been considered as the head of the Republican party. Now, it seems, it is reproachful to be deemed the chief of a dominant faction. Mark the magic of words. Head—*chief*. Republican party—*dominant faction*. But as to the Saxon manufactures. What became of their Dresden china? Why the Prussian bayonets have broken all the pots, and you are content with Worcestershire or Staffordshire ware. There are some other fine manufactures on the continent, but no supply, except perhaps of linens, the article we can best dispense with. A few individuals, sir, may have a coat of Louvier's cloth, or a service of Sevres china; but there is too little, and that little too dear, to furnish the nation. You must depend on the fur trade in earnest, and wear buffalo hides and bear skins.

Can any man who understands Europe pretend to say that a particular foreign policy is now right because it would have been expedient twenty, or

even ten years ago, without abandoning all regard for common sense? Sir, it is the Statesman's province to be guided by circumstances; to anticipate, to foresee them; to give them a course and a direction; to mould them to his purpose. It is the business of a counting-house clerk to peer into the day-book and ledger, to see no further than the spectacles on his nose, to feel not beyond the pen behind his ear? to chatter in coffee-houses, and be the oracle of clubs. From 1783 to 1793, and even later, (I don't stickle for dates,) France had a formidable marine—so had Holland—so had Spain. The two first possessed of thriving manufactures and a flourishing commerce. Great Britain, tremblingly alive to her manufacturing interests and carrying trade, would have felt to the heart any measure calculated to favor her rivals in these pursuits. She would have yielded then to her fears and her jealousy alone. What is the case now? She lays an export duty on her manufactures, and there ends the question. If Georgia shall (from whatever cause) so completely monopolize the culture of cotton as to be able to lay an export duty of three per cent. upon it, besides taxing its cultivators, in every other shape, that human or infernal ingenuity can devise, is Pennsylvania likely to rival her and take away the trade?

But, sir, it seems that we, who are opposed to this resolution, are men of no nerve, who trembled in the days of the British treaty—cowards (I presume) in the reign of terror? Is this true? Hunt up the Journals; and let our actions tell. We pursue our old unshaken course. We care not for the nations of Europe, but make foreign relations bend to our political principles and subserve our country's interest. We have no wish to see another Actium, or Pharsalia, or the lieutenants of a modern Alexander playing at piquet, or all-fours, for the empire of the world. It is poor comfort to us to be told that France has too decided a taste for luxurious things to meddle with us; that Egypt is her object, or the coast of Barbary, and, at the worst, we shall be the last devoured. We are enamored with neither nation; we would play their own game upon them, use them for our interest and convenience. But with all my abhorrence of the British Government, I should not hesitate between Westminster Hall and a Middlesex jury, on the one hand, and the wood of Vincennes and a file of grenadiers, on the other. That jury-trial, which walked with Horne Tooke and Hardy through the flames of ministerial persecution, is, I confess, more to my taste than the trial of the Duke d'Enghein.

Mr. Chairman, I am sensible of having detained the committee longer than I ought; certainly much longer than I intended. I am equally sensible of their politeness, and not less so, sir, of your patient attention. It is your own indulgence, sir, badly requited indeed, to which you owe this persecution. I might offer another apology for these undigested, desultory remarks—my never having seen the Treasury documents. Until I came into the House this morning, I had been stretched on a sick bed. But when I behold the affairs of this nation, instead of being where I hoped, and the people believed, they were, in the hands of responsible men, committed to Tom, Dick and Harry, to the refuse of the retail trade of politics, I do feel, I cannot help feeling, the most deep and serious concern. If the Executive Government would step forward and say, “such is our plan, such is our opinion, and such are our reasons in support of it,” I would meet it fairly, would openly oppose, or pledge myself to support it. But, without compass or polar star, I will not launch into an ocean of unexplored measures, which stand condemned by all the information to which I have access. The Constitution of the United States declares it to be the province and the duty of the President “to give to Congress, from time to time, information of the state of the Union, and recommend to their consideration such measures as he shall judge expedient and necessary.” Has he done it? I know, sir, that we may say, and do say, that we are independent, (would it were true;) as free to give a direction to the Executive as to receive it from him. But do what you will, foreign relations, every measure short of war, and even the course of hostilities, depend upon him. He stands at the helm, and must guide the vessel of State. You give him money to buy Florida, and he purchases Louisiana. You may furnish means; the application of those means rests with him. Let not the master and mate go below when the ship is in distress, and throw the responsibility upon the cook and the cabin-boy. I said so when your doors were shut; I scorn to say less now that they are open. Gentlemen may say what they please. They may put an insignificant individual to the ban of the Republic—I shall not alter my course. I blush with indignation at the misrepresentations which have gone forth in the public prints of our proceedings, public and private. Are the people of the United States, the real sovereigns of the country, unworthy of knowing what, there is too much reason to believe, has been communicated to the privileged spies of foreign governments? I think our citizens just as well entitled to know what has passed as the Marquis Yrujo, who has bearded

your President to his face, insulted your Government within its own peculiar jurisdiction, and outraged all decency. Do you mistake this diplomatic puppet for an automaton? He has orders for all he does. Take his instructions from his pocket to-morrow, they are signed “Charles Maurice Talleyrand.” Let the nation know what they have to depend upon. Be true to them, and (trust me) they will prove true to themselves and to you. The people are honest—now at home at their ploughs, not dreaming of what you are about. But the spirit of inquiry, that has too long slept, will be, must be awakened. Let them begin to think—not to say such things are proper because they have been done—of what has been done, and wherefore, and all will be right.

The committee then rose, and the House adjourned.

THURSDAY, March 6.

Non-Importation of British Goods.

The House resolved itself into a Committee of the Whole on the state of the Union on Mr. GREGG’s resolution.

Mr. N. WILLIAMS.—The subject now under consideration calls for a display of all the knowledge and experience of commercial men and statesmen. And although I do not profess to be of either class, yet if I should chance to bestow a mite of information upon a subject of such vast importance to this country, it will no doubt be favorably received by this honorable committee.

The resolution now under discussion has for its principal object the protection of the active commerce of our country; it therefore becomes us perhaps, before we enter into the merits of the measure proposed, to inquire whether commerce is of itself so important to us, as to demand our protection. This first inquiry might seem unnecessary, and even extraordinary, had we not witnessed so recently, upon this floor, the very light and trivial manner in which the commerce of this country has been treated, and had we not heard the very strange opinion, that it ought to be left to take care of itself.

It is possible that the agricultural class, which embraces a very great and respectable part of the population of our country, will look for some evidence of the benefits to be derived to them from the protected enterprise of our merchants. Those benefits, however, are so obvious to an attentive observer, that very little need be urged to render them apparent. It has been justly said that agriculture and commerce are handmaids to each other. Indeed, their interests are strongly and durably interwoven. Commerce has a direct tendency to raise the price of the product of the farmer's labor, by seeking in every part of the world the best markets for our articles of export, and by bringing back and scattering through the country that circulating medium which cherishes industry, and sweetens the toils of the laborer. If we had not an active commerce among our citizens, it is evident that foreign merchants and nations only would be enriched by the profits of our agriculture, would convert us into mere diggers of the soil for their benefit, and would thereby gain the means of insulting and degrading us more abundantly. The price of our produce will lessen in the proportion that we curtail the means of transporting it to the best foreign markets, and the means will assuredly be curtailed if we withdraw our protection from the enterprise of our citizens upon the ocean. Declare to foreign nations that the active commerce of this country meets no longer the fostering care of Government, and you will soon hear of their ten-fold insolence upon the seas; and our vessels, frowned from the enjoyment of their rights there, will find an asylum in our harbors only, where they will be left to rot. The produce of our country must share a similar fate, unless we consent to dispose of it to foreign merchants and speculators, at any price they may please to offer for it. But what is not less important, if we have a regard for morals and happiness, a horrid picture here presents itself; that moment you stagnate the vent of your grain, an extensive inland country will be inundated with whiskey and the destructive vices which flow from the free use of it.

Although important, this is far from being the most important view which may be taken of this subject. It is a conceded point that our Government must by some means or other have revenue. The greatest statesmen and patriots of this country have united, I believe, in considering commerce as our most fruitful source of revenue and riches. It presents a mode of fiscal exaction, the most in union with the spirit and feelings as well as the interests of the American people—that of indirect taxation. By this mode

the consumers of articles of foreign growth and manufacture, contribute freely and copiously to the support of our Government, and to that fund which is destined to the payment of the national debt, and this too without feeling in a great degree the weight of the contribution. But the moment, sir, we give up this source of revenue, or expose it to the cupidity and rapacity of foreign powers, a resort to modes of taxation less congenial with the spirit of freedom must be inevitable. Let those who are for giving up this, look about and see what other sources of revenue our country can furnish. Experience, that mother of wisdom, has already instructed us, that excise laws are too odious in many parts of our country to be borne; indeed this source of revenue would at best be trifling. Personal property is of a nature too occult and too liable to shift and change to become a safe and permanent source of revenue. The sale of the public lands, relied on by some, is an expedient which on many accounts will be slow and inefficient; but if the sentiment prevails of leaving commerce to take care of itself, and my notions are correct that such a measure will paralyze the industry of the farmer, it may very justly be doubted, whether our wild lands will meet with a ready market. What then, I would ask, remains, but a land tax, to supply a fund to meet the necessary calls of our Government; a tax so odious in many parts of our country, as to be one of the powerful causes of the overthrow of one administration, and if again resorted to, may possibly produce the destruction of another.

Should considerations like these, thoroughly pursued, prove insufficient to convince gentlemen that the commerce of this country is worthy to be shielded by her protecting arm, I may despair of doing it, perhaps, by any further arguments within my power to adduce. But it is certainly deserving the remembrance of this honorable body, that our Government, by the course it has taken, has long since pledged itself to support the rights and interests of our merchants upon the ocean. Aside of the immense revenues drawn from their enterprise and industry, we may consider the measures alone, adopted by our Government, to protect and guarantee their interests, by compacts with foreign nations and armaments for their defence, as having the direct effect of luring them to embark their property upon the seas with the most implicit security, and with almost a certain assurance that this protection should be continued. In short, I do not see how it can be denied that these privileges are as much entitled to the protection of Government, as those, equally, though not more sacred, which are enjoyed

by our fellow-citizens upon land. To relinquish any of them would be taking a step towards a dastardly abandonment of our independence as a nation—and would be announcing to every people on earth, that we have become so tame and submissive, that we are willing to be converted into simple tools and instruments for their use and profit, and to desert the defence of our own sacred rights. Whatever course policy or wisdom might have dictated to this nation *à priori* respecting commerce, it is evidently too late now to retrace our steps; nay, we cannot do it, short of treachery towards the mercantile interest, and without rendering ourselves a subject of derision and contempt to all Europe. If we shrink on the present occasion from that bold and energetic course which the times seem to call for, what a respectable figure we shall cut in history! This will be our story:—“The American nation, finding her commerce in the Mediterranean pestered by the petty barbarous powers surrounding that sea, blustered and talked manfully like Bobadil in the play. Now this hero was invincible, or he would not have talked so valiantly. ‘Twenty more—kill them! Twenty more—kill them too!’ But the moment their rights upon the ocean were assailed by a nation at once respected and powerful, they meanly shrunk from the contest, and in vain did their admired Executive endeavor to rally the representatives of the people, in support of the firm and dignified measures which he recommended.”

If therefore it is clear, as I trust it is, that commerce is the great supporter of agriculture—that it is at the same time the most rational and most prolific source of revenue and riches to our country, and if, in addition to this, Government has pledged itself to a vast body of respectable citizens, in every part of the United States, to protect their property legally employed in commerce—to say that this commerce shall now be left to take care of itself—of all the insulting mockeries ever offered to this nation, this appears to me the most insulting. But with many, and I do not suffer myself to doubt, with a great majority of this committee, this question may be considered as at rest. Commerce is worthy of our protection. Our natural situation, and the laudable enterprise of our citizens, which leads them into every sea and to every land, have made it ours, and we cannot abandon it without being guilty of the most palpable folly.

Mr. MASTERS.—I shall not deny that Great Britain has insulted us by impressing our seamen, neither shall I deny that that nation has committed

wanton aggressions and depredations on our commerce, and that commerce ought to be protected. That the resolution under consideration is the best course to be pursued for the interest of this nation, I shall contend against.

Restraints and prohibitions between nations have always arisen from two circumstances—the first, to promote their home industry or manufactures. The liberal price of wages, joined with the plenty and cheapness of land, which induces the laborer to quit his employer and become planter or farmer himself, who rewards with the same liberality which induces his laborers to leave their employment for the same reasons as the first: therefore, it is impossible for manufactures to flourish in this country in our present situation.

The case in most other countries is very different, where the price of labor is low, and the rent and the profit consume the wages of the laborer, and the higher order of people oppress the inferior, which I hope never to see in this country.

It may rationally be calculated that some of the Eastern and Middle States will eventually become manufacturing States; some of those States are nearly filled with people, and many individuals have large capitals employed in foreign commerce, to the amount in many instances of two and three hundred thousand dollars each. When peace takes place in Europe, and things come down to their natural standard, and they can no longer employ that capital to advantage in commercial speculations, they will withdraw the same from that employment; they must make use of those capitals somewhere; they cannot invest them to any advantage in our public funds, bank stock or other corporations, beyond a certain extent; they therefore, by the aid of water-works and machinery, will naturally employ those capitals in manufactures, and I trust the time is not many years distant. That is not now the case, and can have no bearing on the present question; indeed, it is hardly contended that the resolution is brought forward for that purpose; it must therefore be brought forward for some other purpose.

The other circumstance which gives rise to prohibitions between nations, arises from the violence of national animosity, which generally ends in war. This circumstance has brought this resolution into existence; the preamble speaks warlike language, and the whole taken together is a prelude to war

with a nation who has two hundred ships-of-the-line, four hundred frigates, besides gun-brigs and other armed vessels, whose revenue is between forty and fifty millions sterling, who can go to war with us without any additional expense to themselves, who will sweep the ocean of American commerce, amounting to nearly one hundred millions of dollars. What then will be the situation of your carrying trade? What then will be the situation of your commerce and your country?

But the honorable gentleman from Massachusetts (Mr. CROWNINSHIELD) has told us “if we go to war, we can do Great Britain the most injury.” The navigation of their merchant vessels is principally carried on under convoy. Some individuals may fit out a few privateers and capture now and then a vessel, and put some prize money in their private pockets; it cannot be of any advantage to the nation, which will groan under poverty and distress.

It appears to me a matter of great deliberation how far we ought to adopt the present resolution, by prohibiting the importation of British manufactures. In every country it ever was, and always must be, the interest of the great body of the people to buy whatever they want, of those who sell it cheapest. We cannot procure the same articles so cheap elsewhere; even should the measure not involve us in a war, prohibitions and revenge naturally dictate retaliation, and nations seldom fail to do it. The honorable mover of the resolution (Mr. GREGG) asks us “how it is to be inferred, we cannot abide by and execute this system?” It is to be inferred from retaliation, and observation of nations who have preceded us. When France, in 1667, laid discriminating duties on Holland, the Dutch retaliated by the prohibition of French wines, brandies, and the like: a war followed, and the peace of Nimeguen regulated their commercial disputes. About that time the English prohibited the importation of lace manufactured in Flanders; the Government of that country, which was then under the dominion of Spain, immediately retaliated and prohibited all importation of English woollens. Soon after this, the French and English mutually began their heavy duties and prohibitions, and have ever since been in commercial disputes, quarrels, and hostilities; and we, with our eyes open, are now going into the same system. The same honorable gentleman has also said it would attack Great Britain in her vitals, in her manufactories and warehouses. It seems a bad method of compensating injuries done to us, to do another worse injury to

ourselves, which I believe will be the case by adopting the present resolution; it will have a natural tendency to retaliation and revenge.

Mr. SMILIE.—I am in favor, Mr. Chairman, of the resolution under consideration; and lest it should be supposed that I am an enthusiast in respect to commerce, and deserve to be classed among that desperate order of men called merchants, according to the representation which we have had yesterday from the gentleman from Virginia, I beg leave to make a few remarks on the abstract question, whether commerce ought to be considered as beneficial in its relation to the United States. I have long thought that there was an essential difference between what is, in the common language of the world, a splendid, and great, and a happy people. I have been led to think that the situation of the people of the United States, separated from the rest of the world by an ocean of three thousand miles, possessing an immense region of land, having full employment for all her people in the cultivation of the earth—having, from the variety of her climate and the difference of her soil, the means of supplying herself, not only with all the necessities of life in abundance, but with many of its comforts, and even some of its luxuries—from these considerations, I have been led to think it had been happier if the American people, when they became an independent nation, had found themselves without commerce, and had still remained so. Thus circumstanced, they would certainly have avoided those dangers which flow from the weakness of an extended trade, and those luxuries which have hitherto proved so fatal to morals, happiness, and liberty. In my opinion, we should have been a happier people without commerce. Among the considerations which have induced me to believe that this would have been a happy state, is, that we should have enjoyed a perfect state of safety. We should not have been under the necessity of conflicting with foreign nations; because commerce, and commerce alone, can produce those conflicts. I have expressed this opinion, to show that I have not been led by any particular attachment to commerce, to take that part which I have declared I would do on the present occasion. But what was the situation of the American people when they first found themselves a nation? And what are the duties imposed upon us by the compact we entered into? As to any abstract opinions we may entertain on this subject, they ought to have no influence here upon us. I stand *here* on other ground, and dare not resist the dictates of duty. I was astonished yesterday to hear it mentioned by the gentleman from Virginia, (Mr. J. RANDOLPH,) and boldly asserted, referring

to the constitution, that the American Government was under no obligation to protect any property of its citizens one foot from the shore. I was astonished at this declaration, because I could see to what it went. I saw, if this was the opinion of the Southern States, where it would end. The situation of this people, when they became a nation, was this: the Eastern States might properly be said to be a commercial people, as they lived by commerce; the Middle States were partly commercial and partly agricultural; the Southern States, properly speaking, were agricultural. This opposition of character must have created great difficulty in forming the constitution, and, in truth, this and other points threw great obstacles in the way of its formation. But a spirit of concession overcame all difficulties. Is it, however, to be believed, that the Eastern States, properly commercial, or the Middle, partaking equally of the commercial and agricultural character, would have united with the Southern States, if they had been told that commerce was to receive no protection? No, sir, it cannot be believed. But I take higher ground—the compact itself, referred to by the gentleman from Virginia. Let us examine the powers vested in Congress under this compact, and decide whether commerce was, or was not intended to be protected. If there was nothing specific in these powers, the first page would show the intention of its framers. “We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare,” &c. If we go on to the tenth page, we shall there find the power given to Congress, “to provide and maintain a navy.” Is the protection of commerce contemplated here, or is it not? In other parts of the instrument, we perceive the power to regulate commerce vested in Congress. Will any man pretend to say that the power of establishing a navy can be exercised independent of commerce? Every man of common sense knows that a navy cannot even exist without it.

Having sufficiently established the right of commerce to protection under the constitution, I come now to consider the resolution under consideration. We find our rights invaded by foreign nations, and an attack made by one nation on our carrying trade, which, in my opinion, cannot be warranted by the law of nations. I shall not condescend to argue this point. I believe it to be a lawful trade, let whoever may deny it. I have taken some pains to make myself acquainted with the subject, by reading several treatises upon it; and, notwithstanding the contempt with which a certain book was yesterday

treated by the gentleman from Virginia, I will venture to predict that, when the mortal part of that gentleman and myself shall be in ashes, the author of that work will be considered a great man. Nor do I judge in this exclusively from my own opinion, but from the opinions of men of distinguished talents, from different and distant parts of the Union, who all concur in saying that the writer has conclusively established the principle he contends for. Indeed, I could not have believed, had I not heard it, that a Representative of the American people, in the face of the Legislature, would have relinquished so precious a principle! But there was a curious feature in all the luminous discoveries yesterday disclosed to us by the gentleman from Virginia, in which he strictly observed the rule of the rhetorician—where a point could not be justified, to get over it as well as he could. On the impressment of our seamen he said nothing. He knew that the American feelings would not bear it. When I think of what is called the carrying trade, I consider it a small evil compared to this. It has been compared to Algerine slavery, but it is worse. What is this impressment? Your citizens are seized by the hand of violence, and if they refuse to fight the battles of those who thus lay violent hands upon them, you see them hanging at the yard-arm. In the first place, they are obliged to expose their persons to murder, in fighting the battles of a nation to which they owe no allegiance. They are obliged to commit murder, for it is murder to take away the life of a man who has given us no offence, at the same time that they expose their own persons to the commission of murder. This is the true point of light in which I have always considered this horrid and barbarous act, for which, indeed, I cannot find language sufficiently strong to express the indignation I feel. This is the situation of our country. Our commerce depredated upon in every sea, our citizens dragged from their homes, and despoiled of all they hold dear. We are told we are not to mind these things—that the nation who commits the outrages is a powerful nation. But really, as an American, I cannot feel the force of this observation.

The gentleman from Virginia yesterday assumed it as a principle, and the whole of his argument turned on it, that this is a war measure, and that its friends are for going to war. Were I satisfied with the truth of this remark, I should change my mind with regard to the resolution. But is it a war measure? I believe the same duties and obligations exist between nations, as between individuals in a state of nature. If my neighbor treats me with injustice, I have a right to decline all intercourse with him, without giving

him a right to knock me down. If we deem it our interest not to trade with a particular nation, have we not a right to say so?—a nation with whom we have no commercial treaty, and towards whom, therefore, in regard to trade, we have a right to act as we please? If a commercial treaty existed between us, it would be our duty to observe it; but, without one, we have an undoubted right to say whether we have or have not a use for her productions. If, then, this be a peace measure, why treat it as a war measure? But it is said that it will lead to war. Britain is said to be a great nation, high spirited, and proud, and therefore we must not take this step for fear of the consequences. Trace this argument—see where it leads us. It leads us to this: that, with a powerful nation we must on no account whatever quarrel, though she may commit ever so many aggressions on our right. No, we must not, let her go whatever length she may, until, on this same principle, we shall be called upon to surrender our independence, because we have to deal with a powerful nation! If we do not make a stand now against her aggressions, when or where shall we do it? But one alternative will remain—to bend our necks, to crouch beneath the tyrant, to submit without murmur to her insolence and injustice.

FRIDAY, March 7.

Importations from Great Britain.

The House again resolved itself into Committee of the Whole on the state of the Union—Mr. GREGG's resolution still under consideration.

Mr. SLOAN.—I do not rise to deny, but to acknowledge myself one of those horn-book politicians, alluded to by a gentleman from Virginia, and to assure this committee that I do not envy or begrudge that member either his superior genius, talents, or learning; and further to ask on behalf of myself, and others of this class, the favor of being permitted to deliver our sentiments on this, and other important subjects, in such language as we are capable of, until our constituents may have an opportunity of electing other members, of superior learning and talents, and farther advanced in political knowledge. This is a favor I hope will not be denied, otherwise a great number of American citizens, the remainder of this and the ensuing session, must go unrepresented.

In answer to the assertion that our late conduct respecting Spain was such as we dare not mention; that we dare not take off the injunction of secrecy; that we are ashamed to let the nation know the secret—permit me to assure that gentleman, and this committee, that I feel neither shame, nor compunction of heart, for the part that I acted in that business, not doubting that, when the injunction is taken off, and the public acquainted with the whole transaction, the real friends of the peace and interest of the United States will fully approve the conduct of the majority, (with whom I had the pleasure to act,) and which, were I, by side-glances and insinuations, to endeavor to impress the public mind with a belief that a majority of their Representatives had acted in a manner they were ashamed of, I conceive my constituents would thenceforth consider me unworthy of their confidence, and, consequently, of a seat on this floor.

We are told that we have no Cabinet. Is it necessary? is it recognized by the constitution? No! The President's powers are defined, and have, for five years, been fulfilled to the satisfaction of the people.

I have heard of British Cabinets, British Ministers, and British Privy Councils. Of their conduct I formed a very bad opinion, before the member alluded to was out of his nurse's arms, and have seen no cause to change that opinion. It is therefore pleasing to me to hear that we have no such institution.

Mr. Chairman, however great my gratitude to the member for his paternal care over the children in politics on this floor, which roused him from his sick bed to give his superior opinion upon this subject before our weak and feeble minds had been misled by Tom, Dick, and Harry, or some other arrogant chap that might have some knowledge of steering a ship at sea, but totally ignorant in navigating our vessel of State, I say, notwithstanding I gave all the attention in my power to his eloquent speech of two hours and forty-eight minutes, there were divers parts which my weak brain could not comprehend, and which I beg leave to lay before this committee for the purpose of receiving further information.

1. I cannot comprehend how our demanding the release of our impressed seamen, and restitution for unjust captures of our vessels, can be construed as throwing our weight in the scale of France, for the purpose of supporting a set of men who do not support the public weal of the United States.

2. Nor can I possibly discover that Great Britain stands precisely in the same situation that republican France did in '93. For information on this subject, let me ask, was it not British gold and British intrigue that then formed the coalition against republican France? And is it not the same that has formed the present coalition against monarchical France? Have the armies of France, in either case, advanced beyond their own territory, previous to the raising and advancing towards them of powerful armies for the express purpose of subjugating them, and dividing their property among the coalesced powers? If the accounts received are true, they have not.

Before I sit down, let me ask the members of this committee, (especially you in whose ears the expiring groans of your brethren in arms—of your beloved fellow-citizens—yet vibrate; slain by the murderous hands of the mercenaries of Great Britain, or more barbarously deprived of life by famine or pestilence,) can you, while that same monarch reigns, and who, instead of diminishing, has added to the long and black catalogue of crimes set forth in our Declaration of Independence, which induced you to risk your lives in opposition to his tyranny; can you with complacency, or any degree of approbation, sit and hear that Government who continues her tyranny and injustice to these United States—witness the capture of our vessels and impressment of our seamen—held up by a member on this floor, as the only barrier we have against the tyranny of that nation who in our struggle assisted us with vessels of war, arms, ammunition, men, and money; whose soldiers fought by your side, and bled to support American liberty and independence, and whose Government continues friendly towards us? I hope not; I believe you cannot; your hearts must turn indignant from such language. For my own part I am free to declare, that, since I have had the honor of a seat on this floor, I have heard nothing that has so hurt my feelings. I have borne them in silence. I am happy in obtaining a few moments in my plain unlearned way to express them, that this committee and all the United States may know that I retain the same abhorrence against British tyranny that I did in the Revolutionary war, and also the same love for the liberty and independence of the United States.

Mr. FINDLAY said he had been long in the habit of observing, that, when a subject was discussed which occasioned numerous arguments, the question was often lost sight of. In the heat of debate, instead of the subject before them, the preceding argument became the text to him that replied, and his to

the next who took the floor, and so on, in succession, until some member succeeded in calling the attention of the members to the original subject. Though the present question had but a few days engaged the attention of the Committee of the Whole, yet, in his opinion, several of the speakers on the floor had lost sight of it, further than he had formerly observed in so short a time. He would attempt to draw the attention of the committee from these desultory excursions, which settle no point in debate, and often have no visible connection with it, to the important question they were called upon to decide; and in doing so, he would take no notice of any thing that had been offered as argument, which was not necessarily connected with the question. He would neither be the advocate nor apologist for any one nation of Europe, nor treat any other nation with irritating contempt. Language of the kind that has been used within two days past in this House ought not to be admitted, unless we were employed in discussing a manifesto to support a declaration of war, and even for that purpose it is inconsistent with national dignity. He said, the subject before the House was a resolution, referred to the Committee of the whole House on the state of the Union, to prohibit all importation of goods the produce or the manufacture of Britain, or any of the British dominions; not to prevent Britain or her dependencies from receiving supplies of provisions, raw materials, &c., from us. It does not go to prohibit exportation; but even this should not be done without a very sufficient cause. Two causes are assigned in the preamble to the resolution; first, the impressment of our seamen; second, commercial aggressions.

Mr. F. asked, Was it ever known, in the history of independent nations, that any one nation impressed the citizens or subjects of another nation into their fleets, to fight against a nation friendly to that from which they had been impressed, and to receive no wages or emoluments unless they would enlist; which few of them ever do, except under the lash of the boatswain, which is applied if they appear reluctant to do the meanest drudgery, and who must of necessity hate the nation for which they fought? No, sir, this cannot be shown. The British Government has long been in the habit of impressing their own subjects for seamen. In France, we have been lately told in this House, conscripts are forced to the army. Perhaps the conscripts are the same that we have been accustomed to call the classes of militia in this country; but it is of their own citizens. Impressments to the navy are a very different thing. It is such an exercise of tyranny that it is hoped will

never be exercised in this country. Yet, still, except in the case of our seamen, it is their own subjects: they do not impress Swedes, Danes, or Prussians.

A man impressed is condemned to a slavery of the worst kind. Slavery, for a limited time, is a suitable punishment for crimes; but the sentence with us, and in all nations, civilized or savage, is decided by known and responsible judges to be the breach of some law. But by whom is the sentence of condemnation to slavery passed on our citizens, sailing under the protection of our own flag, chargeable with no crime? Not by a court of justice in any form; not even by an officer of high responsibility; but by some young subaltern of a man-of-war, which is universally admitted to resort to the most arbitrary species of government existing. No other crime is alleged to justify the condemnation, but that he speaks the English language, or has become an American citizen, and no other judge but a lieutenant or midshipman selected for this exertion of tyranny.

We have not long since expressed a just abhorrence of slavery, by a very unanimous vote of this House; we have expressed a very commendable sympathy for the untutored sons of Africa, of a different color from ourselves, stolen or forced from their families and all that is dear to them; and shall we make no exertions to protect our own citizens from a worse kind of slavery? If the planters of South Carolina, or any other State where slaves are employed, should forcibly take any of our sons from the plough, or other lawful and necessary occupation, and set them to work with other slaves in raising cotton or rice, the outrage would be horrid, indeed, but not equal to the impressment of our citizens. The slave to the planter must labor, but he is not obliged to kill those who have given him no provocation, or to be killed himself, and he may be found and redeemed. Money redeemed our captives from the Barbary coast, and we felt for them, and advanced the price.

There is, sir, another point of view presented in the impressment of our seamen which ought to address our attention. It is admitted that several thousand of our impressed citizens are employed on board the British men-of-war, fighting against France. These, it is believed, are sufficient to man five ships-of-the-line. If by our silence we connive at this, or by our wilful neglect of such peaceable means as are within our power to prevent it, may

not this be charged as a breach of neutrality—may it not be justly called war in disguise? But I forbear.

Commercial aggressions, such as capturing our merchant ships laden with cargoes of colonial produce, purchased in return for the produce of our own country and the property of our own citizens, and condemning, contrary to the laws and usages of nations, as approved and practised even by the British courts until August last, and openly in her decisions substituting the instructions of the court in the place of the law of nations, contrary to her own former practice, by which, it is acknowledged by the opposers of the resolution, the British courts have already condemned at least six millions of dollars, of the property of our citizens, on new principles, which not being known to the owners, it was impossible to provide against the events. Though these aggressions have hitherto been principally committed on cargoes of colonial produce, where only we can find a market for the produce of the Middle and Eastern States, yet the principles are equally applicable to much of our East India trade, and to the trade with France, Spain, and Holland, from which we derive most of the favorable balance of trade, which enables us to discharge the unfavorable balance of trade with Great Britain; and she can so apply them without giving notice of her intention at a time when she knows we have the greatest amount of property on the ocean. We cannot admit the plea of necessity, as suggested in a well known British pamphlet, and advocated without reserve by the gentleman from Virginia. To admit this would justify every possible aggression of the power at war against neutral nations. We make no war in disguise against Britain; we favor her as much as in our neutral station and commercial situation we can do. We bear with aggressions from her that would not be offered nor borne with from any other nation. The profits accruing from a favorable commercial balance with other nations is cheerfully thrown into her lap, and if we do not continue to do so it is her own fault. Justice and policy require that she should do so. Britain pretends no cause of complaint against us. We have readily removed such as she ever had. By pleading necessity, the aggression on her part seems to be acknowledged. Let her remove the cause.

Mr. EARLY.—Mr. Chairman, it is my intention, in submitting to the committee those observations which I am about to make, to confine myself entirely to the merits of the question under consideration.

Upon this, as upon another recent occasion, our attention has been summoned at the outset of the discussion to what gentlemen choose to call the spirit of the nation. We are told, that this spirit had been awakened by the events which led to the introduction of the resolution upon the table, and had called upon us in a loud voice, to adopt energetic measures for the vindication of our national honor, and for the protection of our national rights. The facts, sir, are incorrectly represented. The people of this nation, identified with the Government of the nation, will at all times stand ready to support that Government with the energies of the nation, when a proper occasion shall present itself. Governed by persons of their own immediate choice, they will confidently repose in such persons the determination of that question. Does it follow, that because they have pledged to us the support of the national energies, if in our judgment they are become necessary, that therefore we are called upon to take a course which may render them necessary? It is true that the apprehensions of the public have been excited lest a period had arrived in which it would be necessary to put to risk the national peace. Yes, sir, it is too true that alarm has been spread through every quarter of the Union. But by what means, and from what sources? It has been by the incorrect views of the nature and state of the interests at stake, with which our public prints have teemed. It has been by magnifying representations of the injuries really sustained on the one part, and on the other, by imposing calculations as to the sacrifices demanded to effect redress. These incorrect views of the subject are believed to have been the offspring of mercantile influence. It is from this source, by these means, and through these channels, that the public apprehension has been roused upon this occasion. But it is our duty to unmask the influence which has produced the evil, and to let the nation know the true state of the question now to be decided. To let them understand what the injuries are which we are called upon to redress, and the nature and extent of the interests which we are called upon to sacrifice in effecting it.

But, Mr. Chairman, the impressment of American seamen by British cruisers, is held out as one of the objects of redress in the contemplated measure. This, sir, is a grievance which no man will attempt to deny or palliate. It is an evil calling so imperiously for redress, that almost any sacrifice ought to be made, provided it would answer the purpose. But do gentlemen, can they seriously believe that this resolution will produce the desired effect? Can it be for a moment supposed, that a measure at best

weak and inefficient—a measure which in its operation must press with fourfold weight upon ourselves, will produce any serious diversion in our favor, by increasing the number of objects, of which you intend to compel the surrender on the part of your adversary? My fear is that it would only make bad worse, and that instead of 1,500 seamen impressed on board British ships of war, we should have as many thousand made captives, and compelled to fight against their own country.

The resolution under consideration proposes an insurance upon terms vastly disadvantageous. The premium and the risk are out of all proportion. What, sir, is the premium? The sum of \$800,000, the amount of revenue estimated to accrue from the carrying trade. What is the risk? The almost certain sacrifice of the agricultural interest of the nation—the almost certain event of a war, and the consequent risk of the destruction of the constitution and liberties of this nation. For one I cannot underwrite such a policy. I will not pledge my constituents to insure upon such terms.

But we are asked, must the carrying trade be surrendered? In return we ask, must the agricultural interest of the country be sacrificed to preserve it? Must we plunge into a war to preserve it? Must we put to risk the constitution and liberties of the nation to preserve it?

Mr. Chairman, this nation is at peace. We are happy in the enjoyment of our rights at home. We are prosperous beyond the example of any other people in the world. We enjoy the fruits of our own industry, abundantly supplied with all the comforts of life, and increasing rapidly in wealth by good markets for our produce. The merchants receive a profit upon their trade, coextensive with the highest wishes of rational men, and when confined to fair neutral commerce, pursue their occupations with security. Is this a state of things which should be put to the risk of chance for such a boon as the carrying trade? Is this a state of things which should be jeopardized for the profit of a few merchants in a few mercantile towns?

Mr. ELMER.—Mr. Chairman, I will rise to make a few observations on the subject now under consideration, but I will not detain the committee more than a few minutes. The resolution on your table is denounced by gentlemen as a war measure, but I cannot discern its tendency to that point. It is acknowledged on all hands that we have received from Great Britain repeated and grievous injuries. The whole American people are alarmed,

and their feelings excited by the reiterated acts of oppression and insult. A gentleman from Georgia has told you that our constituents have not dictated any measures; it is true, they have not dictated, but they have complained, and they look up to the collected wisdom of Congress to devise a remedy for the evils under which they are laboring. This is the business upon which we are in part assembled, and it is the most important to which our attention will be called; we should therefore engage in it with all that seriousness and impartiality which its importance demands. Every member should divest himself of all national and party prejudice when he decides on a question in which the interest of his country is so deeply concerned. And can we, as men and as patriots, tamely submit to have our seamen impressed, and forced to fight the battles of a foreign nation, and to have our commerce embarrassed, interrupted, and perplexed, and the property of our citizens engaged therein condemned and made the property of the unjust captors? I trust not.

SATURDAY, March 8.

Importation of British Goods.

The House again resolved itself into a Committee of the Whole on the state of the Union, on Mr. GREGG's resolution.

Mr. ELLIOT.—To replace the present question upon the ground which it originally occupied, to examine it with a view to its real merits, and its merits alone, however hopeless might be the task, would certainly be a very useful one. It has indeed been considered as indicative of a species of madness to attempt to stem a torrent which is known to be irresistible; but it is said that there is sometimes method in madness, and there is always honor in a gallant death in a good cause. It is in vain to conceal the fact that this resolution is devoted to destruction; but its supporters owe something to their own feelings, and they owe much more to their country. It will probably be admitted, Mr. Chairman, on both sides of the House—for it will not be pretended that there are more than two sides upon the present occasion, whatever confusion of parties may sometimes appear to exist upon this floor—that a more interesting crisis of our national concerns than the present, in reference to foreign relations, has not existed since the

adoption of the present constitution. Some of the best interests of our country are at stake. But it is not believed by all that our constitution and liberties are involved in any possible issue of this question. Before we even had a constitution, while the elements of our political system were almost without form, and void, the liberties of this people were safe in their own hands, and triumphant over the power of that nation whose vengeance, it is said, we shall provoke by the adoption of this resolution. Our constitution and liberties are safe. The scene is not so awful, but it is impressive. I repeat it, sir, we owe much to our country. The friends of the resolution are prepared for the fate that awaits it; but they have taken their ground from reflection, and they cannot, they will not abandon it against conviction, until overpowered, as indubitably they will be, in the contest.

Two classes of arguments are marshalled in opposition to the motion, one of which is addressed to our hopes, and the other to our fears. To our hopes—of what? Of honorable and successful negotiation, if this measure be abandoned. Great Britain will do us justice if we ask it once more. On what is this hope founded? Let us not go too far back. It was said in ancient times to be dangerous, and doubtless it is dangerous still, to rake open the ashes of a flame not yet extinguished. Do our hopes repose upon events of recent date? Upon the long-continued impressment into her naval service of many of our useful citizens, citizens entitled to the same rights with ourselves, except that they are not delegated to represent the people within these walls? An outrage which no nation but Great Britain practises, and to which no nation but America submits. Upon the constant interpolation of new principles, destructive of our neutral rights, into the venerable code of the laws of nature and nations, or rather the systematic perversion and prostration, to our serious injury, of some of the most sacred principles of those laws. We can soon dismiss this branch of the subject. Coolly and deliberately systematic, severe and unbending, has the injurious conduct of Great Britain toward us long been. Unconnected with strong measures on our part we can discern no reasonable ground for hopes so flattering. Prospects so delusive have no charms for the supporters of the resolution. We repose no confidence upon the justice and liberality of Great Britain, further than as those virtues may correspond with her interest. To that we wish to make an appeal. With myself it has long been a settled opinion, that she would go to war with us whenever it should be her interest to do so. We

wish for peace, we raise our voices for negotiation, but for negotiation sustained by measures of an energetic and commanding character.

Mr. D. R. WILLIAMS.—Mr. Chairman, I feel the necessity of apologizing to the committee for that portion of their time which I shall occupy; not presuming to offer reasons to others why this resolution should not be adopted, I beg their indulgence, while I do that which presents itself at the time as a duty, to declare what are my reasons for voting against it; the deep stake my constituents hold in the measure is my apology.

Such is the magnitude of the subject under discussion, spreading itself over a prodigious extent, running to the heart of some of our most valuable institutions, subverting unmeasurably the plighted faith of the Government, and overturning the foundations of a considerable portion of our revenue, that I feel myself inadequate to trace its influence over even a ramification of that vast interest it lays hold of, much less do I pretend to a view of the whole ground; but, imperfect as that comprehension is, it takes in much more than sufficient to fill me with fear and trembling for its consequences.

We have heard, during the last three days of the present discussion, a great deal said about the spirit of the nation, and that it demands energetic measures. Sir, I ask the gentlemen who urge this as an argument, if there had been as much pains taken to apprise the nation of its true position with Great Britain as there has been to alarm it, whether its anxiety would not have been, at least by this time, quieted? If gentlemen, standing in such a responsible situation to their constituents, as they do upon this floor, had, instead of urging war measures, spoke out the plain language of truth, that at the date of Mr. Monroe's last despatches, Lord Mulgrave had acceded to his request to enter upon an examination of the dispute between the two Governments, whether they would now venture to represent the spirit of the nation as excited in every part of the continent? I presume not. But whence do they learn that this spirit is so excited? It is true we have received spirited resolutions from two towns in Virginia, and a few well-written memorials from a few merchants at a few of the seaport towns refuting the British doctrine; but what else do they say? At Baltimore they believe "redress for the past may be found in amicable explanations." From Philadelphia you are called upon for a naval force for the West India station. Why? To defend their trade in St. Domingo, I suppose, for that appears to be the pith of the memorial. The merchants of New York pledge themselves

to support “all measures *adapted*,” reserving to themselves the right to judge—not such measures as may be adopted by Congress. From Boston “a special mission” is recommended. The inhabitants of the town of Salem tell you “they wish to take no part in the contests which now convulse the world.” Where else than from these documents do gentlemen find the spirit of the nation? Certainly not from the Cabinet, nor from the Executive, for if it were good authority to talk about what we hear out of this House, they have no such wishes. Is it fair then to force the passage of this resolution by attributing that to the nation which perhaps it does not feel; which it certainly would not, if it were fully apprised of its situation abroad, and which the memorials on your table do not speak? Does the resolution provide for “amicable explanations,” for a “special mission,” for a squadron on the West India station? No such thing, sir.

In arguing this subject it is material to ascertain what is the true cause of our present dispute with Great Britain, and to what extent it goes. I say cause of dispute, because it strikes me that, had not the present difficulty arisen, her insults offered in the impressment of our seamen, were in train for amicable adjustment, and will be arranged when the present uneasiness shall be quieted. It cannot be unknown to gentlemen that an investigation of that subject was nearly completed, and in fact would have been, but for the hasty departure of our then Minister from the Court of St. James.

It is taken for granted that the present aggravations originated in her attempts to cramp, say destroy, if gentlemen like it better, our carrying trade. This is the grand pivot on which the whole machinery of national honor, and dignity, and wrongs, and insults, is made to turn. Yes, sir, this carrying trade which Spain and Portugal once shared, but could not retain; which Holland attempted to monopolize; which Van Tromp and De Ruyter fought for, but which she was obliged to relinquish; this carrying trade is the bone of contention for which the sweat, the blood, the lives and fortunes of the American people are to be lavished in maintaining. And what is this carrying trade? Is it any thing different from a partial right, which but a very small part of the community can enjoy, which but a small portion of that part do improve? Is it not a right which is still problematical—whether the exercise is of real national utility? There are many who believe it has been of no solid advantage to Great Britain herself, notwithstanding she has possessed a much greater share of it than any other nation. Certainly it has

been the cause of several long and ruinous wars to her, and if we look back a little upon our own experience, we shall see it has been the germ from which has sprung all our difficulties with that Government since the commencement of a political hurricane—the French Revolution. Since that period our commerce has become a rival of increasing strength with that of Great Britain, and finding it to grow in this branch above competition to the exclusion of hers, she has commenced a system to counteract it, and has commenced it, I have no hesitation in saying, mildly, to what it will progress, if we drive her to it. Gentlemen are surely not unmindful of the untamable pride of that Ministry; they cannot forget that it is formed of men who never do acts of aggression by halves, and who feel no other restraints than those of power. National rights, injuries, and insults, are not graduated on the scale of their policy. The only inquiries with them are, Can we gain by the war? Is this the time to strike the first blow with the most effect? I need not give an instance of this fact. If Great Britain ever had waited for a just cause of war, that is, when she wished for it, we might console ourselves with our safety in agreeing to this resolution; but it is well known that she never did, and in my opinion, with her present Minister, she never will.

The committee now rose, and had leave to sit again.

MONDAY, March 10.

Importations from Great Britain.

The House resolved itself into a Committee of the whole House on the state of the Union, on Mr. GREGG's resolution.

Mr. CLARK.—A sense of duty, prevailing over personal inclination, compels me, Mr. Chairman, to offer a few remarks on the subject under consideration. The measure now under discussion appears to me to involve the best interests of our country; the prosperity, the happiness, and the liberties of America tremble before it. In the hands of the resolution are contained the issues of life and death, and it would be criminal in me not to throw in my mite to rescue our common country from the impending danger. The course which I shall take will differ in some degree from that pursued by those who have spoken in opposition to the resolution. I shall not attempt to draw any marked discrimination between the varying interests of the country, or invidious distinctions between the agricultural and commercial interests. I think they are so essentially united, that one cannot fall to the ground without tumbling the other headlong into ruins. I shall consider the subject relatively to its general policy, and whether, on the principles of that general policy or conditional compact, as has been contended by gentlemen, we are bound to adopt the resolution. If I shall succeed in convincing a single gentleman now in favor of the resolution, that we are not bound by the constitution, and that it will be impolitic to adopt it, I shall consider this amongst the happiest events of my life.

The great objects of our federal engagement, in forming the compact under which we now live, were to establish justice, ensure domestic tranquillity, and provide for the common defence and general welfare of society. Under this constitution gentlemen call upon us, under the pretext of promoting the general welfare, to adopt a resolution which manifestly goes to the promotion of a minor interest. This compact, in providing for the general welfare, must mean that of the whole, or at any rate, of the larger portion of the community; it was never designed to promote a subordinate interest at the sacrifice of the general prosperity. Are we then bound by the

constitutional compact to adopt this resolution? I think not. Thus much as to the constitutionality of the question.

I must consider this resolution as a war measure, and viewing the policy and present situation of Great Britain, against which it is pointed, I have no hesitation to say, that in my opinion, it will produce instantaneous war. A maritime war, for such a one she will wage, will not add one item to her present expenses; neither will it embarrass her measures on the continent? It can have no such effect. She has eight hundred ships on the ocean, flushed with victory and conquest, and a part of her navy is at this moment triumphantly sailing almost in sight of your shores, ready at any moment to seize, should that course appear expedient to her, all our vessels navigating the ocean. It cannot affect her continental operations. The war she will wage, will be altogether maritime. Her navy cannot be essential against her continental enemies in Europe. Already have their fleets been annihilated. The victories off Trafalgar and in the West Indies, have cleared the ocean of almost every sail, and there remains no employment for her navy but to depredate your commerce; and she will do it, you may rely upon it. Those are but indifferently acquainted with Great Britain and the genius of the first Minister, who suppose all the power in their hands will not be made use of. Gentlemen tell you this is not contemplated as a permanent system of commercial arrangement, but a temporary expedient, which by its pressure is to bring our rival to a sense of duty, and make her do us justice. But this temporary measure will have on Britain all the effect of war. Declare war to-morrow, and it can only affect her trade. Can you believe that she will, with all her advantages, remain quiet? It is not her character; she will not do it. I should think contemptuously of her if she should. Will she suffer you to take war measures and not retaliate? Will she be more afraid of you with your four thousand troops, dispersed over the whole western country, and your thirteen armed vessels rotting in the Eastern branch, than of that power whose conquering arm has extended the limits of his sway beyond former comparison, and whose ambition is bounded only by the habitable world?

Mr. EPPES.—After the discussion which has already taken place on this subject, I shall not consider myself authorized to occupy much of the time of the House. As, however, I have on some occasions ventured to express my opinions on this floor, I cannot reconcile to my feelings a silent vote on

a question interesting to the people of the United States generally, and particularly so, to that portion of country which I in part represent.

Whatever difference of opinion may prevail within these walls as to the course which ought to be adopted towards a nation which under the pretence of right has commenced a system of warfare and pillage on our commerce, I hope for the honor and interest of our country we shall finally unite in something. If in a free country there is any principle which ought universally to be admitted, to enforce which reasoning or demonstration should be necessary, it is, that every class of citizens is equally entitled to protection. To secure to man his personal rights, and the fruits of his honest industry, are the two most important objects of a free Government. The Government unwilling to use for that security the means of which it is possessed, does not deserve the support of freemen. Our constitution makes no discrimination between different classes of citizens, nor can we in our legislative capacity. The citizen whose capital is vested in a ship has an equal right to protection in using for his benefit and happiness that ship, with the cultivator of the soil in using his plough. To arrest by violence his ship, and confiscate his property, is to the merchant the same injury as it would be to the farmer to arrest his plough and destroy his crop. In each case the citizen must look to the community for the removal of every obstruction thrown by violence in the way of that perfect freedom in the use of his property which constitutes its value. It is true, and no man will deny the correctness of the principle, that every nation has a right to abandon any particular commerce injurious to its interests or dangerous to its safety. This is the natural right of all nations, and particularly of free countries, where the general welfare of the community is the supreme law. While, however, a commerce remains lawful, the citizen embarks in it with the same right to expect protection as in any other lawful occupation; for a Government to refuse it, is a violation of that fundamental principle in free government; that protection on the part of the Government is the basis of support on the part of the citizen. If we are unable or unwilling to interpose in behalf of our citizens, when their personal rights have been invaded—their property captured and condemned under principles unknown to the law of nations—let us give up the farce of pretending to self-government, and go back to the degraded state of colonies.

The ground of difference between the United States and Great Britain is too well known for me to dwell on this part of the subject. It has been stated on this floor by a gentleman from Massachusetts, in terms clear, forcible, and manly. The impressment and detention of our seamen is an injury which has justly excited the indignation of the people of America for the last ten years. Every attempt to arrest by negotiation this serious injury has failed, and each year adds new victims to the roll of impressed seamen. The recent captures of American property to the amount of six millions of dollars, under doctrines new and manifestly unjust, is a serious injury to the individuals and to the community. And although I have no doubt, as has been eloquently stated on this floor, that American merchants have in some instances disgraced that character by covering the property of the enemies of Great Britain, I am equally certain that the injuries done to *bona fide* American merchants, trading fairly on American capital, are sufficiently numerous to justify and demand the interposition of this Government.

While, however, I have no doubt as to the right of the citizen on the one hand to demand protection, and of the duty of the Government on the other to extend it to him, I am willing to acknowledge all the difficulties of our present situation. I consider it no disgrace to this infant nation to say we are not able to meet on the ocean a nation—a match on that element for all the world combined. I hope the period will never arrive when the substance of the citizen here shall be squandered on a navy competent to meet on the ocean the navy of Great Britain. Separated from the rest of the world, at too great a distance to fear invasion, possessing a country abounding with productions valuable to the different nations of Europe with whom we have commercial relations—if we are not able to meet on the ocean Great Britain or any other European power, we can say to them all, Respect in your intercourse with us the principles of justice, or we hold no intercourse with you; if you will not traffic with us on principles that are fair, we will neither receive your manufactures, nor send to you our productions. We are now for the first time about to test this principle so important to a nation jealous of fleets and armies. Of the various measures of the kind which may be resorted to—high discriminating duties—a prohibition of certain enumerated articles, a general prohibition, and as a dernier resort a suspension of all intercourse, are the remedies within our reach. It is a mere question of convenience and expediency to which of these we shall resort. I should prefer for myself, as a first step, the mildest. It is not, in my opinion,

the interest of this nation to dissolve at a single blow its commercial connection with Great Britain. The commerce, if carried on, on principles that are fair, is mutually advantageous to the two countries. In Great Britain we find the best market for our most valuable productions, and with us she finds the best market for her manufactures. To prohibit, at a single blow, imports to the amount of thirty-five millions of dollars, however injurious it might be to the manufacturers of Great Britain, would certainly be a serious injury to our own citizens. I cannot but hope that a milder measure will cause the British Government to respect our rights and pursue a course manifestly dictated by a regard to its own interest. If, however, Great Britain is so lost to her own interest as to persevere in a system of injustice calculated to deprive her of the best market for her manufactures—a market daily increasing, with the increasing population of this infant country—let us on our part proceed with that caution and moderation, which shall evince that the course we are determined to pursue is founded on principle, and will never be abandoned until our wrongs are redressed. I am willing to adopt for the present a prohibition of enumerated articles; if that shall fail, to pass hereafter a total prohibition, and finally, to put forth our whole strength, and say, we hold no future intercourse with you; but dissolve for ever all commercial relations with a nation, which takes for its national law the base principle of necessity, and makes itself the exclusive judge of that necessity.

Mr. NICHOLSON said he had been desirous for some days to offer to the committee his opinions on the subject now under consideration; but as other gentlemen had manifested a similar disposition, he had yielded the floor to them. It was now his intention to offer such remarks as appeared to him pertinent.

The resolution of the gentleman from Pennsylvania, (Mr. GREGG,) in his opinion, was objectionable in all its parts. There was no point of light in which he could view it, in which objections did not present themselves. He read and commented on the preamble; the style of which he said he did not like, because, instead of a spirit of amity and conciliation, it breathed little less than defiance. While we profess to speak the language of peace, we declare to Great Britain, that unless she will meet us at that precise point which we think proper to mark, we will, in the words of the gentleman from Pennsylvania, stab her in the vitals. While we declare that we approach her

as friends, yet our style is that of an enemy. The olive branch that is held out conceals a dagger in its boughs. This threatening manner he said was not calculated to preserve peace in private life, and how could it be expected to succeed between nations? Did gentlemen imagine that Great Britain, even surrounded as she was by her enemies, was yet so tame as to submit to threats? Was the character of her first Minister so little known, as to induce a belief that he would tremble at the rod held over him? No, sir, they are not sunk so low; and if we really wish for an amicable adjustment of our differences, we ought to proceed as friends and not as enemies. A mere commercial regulation, he said, might not, perhaps, produce war; it was the threat held out in the preamble, and the hostility manifested on the floor of the House of Representatives, that were calculated to wound the national pride of Britain, and, therefore, to excite enmity between the two countries. What does the preamble say? We have marked a point from which we will not recede, and to which we demand that you shall come; if you do not, we strike at your most essential interests; in the language of the gentleman from Pennsylvania, we will stab you in your vitals. Is this the way to conciliate? Is this your method of opening a negotiation? Believe me, sir, instead of presenting the olive branch, we carry a firebrand that will kindle a flame which we may find it difficult to extinguish. Great Britain will feel all this—she will at once ask, is it fair, is it manly, is it honorable to threaten me now, when I am contending for all that is dear to me? Will you insult me in my distress, and while you sustain my enemy on one hand, with the other endeavor to unnerve the arm which you acknowledge is raised in defence of its own existence?

If the subsequent parts of the resolution were unobjectionable, the preamble itself would determine me against the whole. To preserve peace, let us proceed to our object in a peaceable manner. If, indeed, gentlemen are for war, then they are right in advocating this measure.

The resolution, he said, embraced two points: the one related to the carrying trade; the other to the impressment of American seamen. The latter had always been a source of great anxiety to him. No man in America had deplored the evil more than he did, and none should be more ready to apply the remedy, when an effectual remedy could be devised. To him, however, it was a matter of no little surprise, that gentlemen had so long slept upon a subject, on which they now appeared to manifest so much zeal. He himself

twice proposed measures with a view to obtain redress, but he had not been able to carry them through the House. Gentlemen, who now zealously volunteered their services, rendered him no assistance then. At the last session he had introduced a bill on the subject, and such were the variety of objections to it, that it was committed and recommitted several times. Difficulties presented themselves from all quarters; alterations and amendments innumerable were adopted, until finally it was shuffled through the House, in so imperfect a state that it was not worth the time which had been spent on it. Strong measures were not then the order of the day, nor would they be now, if the impressment of American seamen was the only ground of complaint. Great Britain has pursued this practice for ten or twelve years past, but these patriotic merchants, who are now so clamorous, presented you with no memorials on the subject. No, sir. It is the carrying trade alone, which has covered your tables with the memorials of the merchants, because their interests are affected, and it is out of this that the resolution of the gentleman from Pennsylvania has grown. Although I do not admit the correctness of the principle assumed by Great Britain, in relation to the carrying trade, yet I am willing to acknowledge that with me it is an object of secondary importance only, when compared with the other violations of our flag, in the impressment of our seamen.

I have thus endeavored to show with what success the committee must determine, that, by adopting this resolution, we hazard a war; that the course of commerce will be materially, suddenly, and, therefore, injuriously changed; that inasmuch as we cannot procure from other countries many important articles with which Britain supplies us, the revenue will be much diminished; and that the value of our own products will be lessened to an incalculable amount. Having been a considerable time on the floor, I feel extremely exhausted, and will, therefore, close my remarks, although it was my wish to have said much more on this subject; particularly to point out the different effects to be produced by the adoption of the measure now under discussion, and that which was submitted by myself. To my own proposition, however, I am not exclusively attached. I have thought and do still think it the best which has been proposed. This I trust will be the opinion of the House. Believing the conduct of Great Britain towards this country not to be justified, I am willing to unite in such measures as may induce her to do us justice. But I will not go to the extent proposed in this

resolution, because I am persuaded it will operate much more injuriously upon ourselves, than upon those whom we intend to affect by it.

Mr. MACON.—Mr. Chairman, I feel myself bound by the call which has been made by three gentlemen from Pennsylvania, (Messrs. GREGG, SMILIE, and FINDLAY,) with whom I have long been in the habit of friendship, a friendship on my part sincere, to state the reasons which will govern my conduct on this occasion; whether they may be satisfactory to others or not, they are perfectly so to me. That a difference of opinion subsists between the members with regard to the measures best adapted to the present crisis of our affairs, is evident from the number of resolutions on your table. An attempt has been made to liken this resolution to one agreed to in 1793; but are they alike? I think not. That was general, and operated alike on every part of the Union, while this, in my opinion, is special, and will only operate on one part of the Union; and this partial operation will be severely felt by that section of the country which I in part represent. Besides this clear difference in the two resolutions, will not all the three gentlemen agree that there is a great and striking difference in our affairs with Great Britain—in 1793 and now? Her motives may be as unfriendly now as then; but I speak of facts known to all, not of motives; she then held the western posts, she then detained an immense property belonging to the Southern people, both in violation of the treaty of peace. She then instigated the Indians to war on the frontiers, and then, as at this time, impressed our sailors and captured our vessels; besides, the United States had not then relinquished the principle, that free ships should make free goods. In relinquishing this principle, they, in a great measure lost sight of the carrying trade, by peaceable means; but, if gentlemen wish to turn to Europe, they will find that, in 1793, the treaties of Pavia and Pilnitz were in force. Let the facts which I have stated be compared with those of the present day, and all must confess that there is a very considerable difference. I have said this much to show that there is no analogy in the facts of the present time and those of 1793, and that there is no change of opinion in me. If, however, I am mistaken, it is an honest mistake.

This nation, in my opinion, must take her choice of two alternatives: to be happy and contented without war, and without internal taxes; or to be warlike and glorious, abounding with what is called honor and dignity, or in other words taxes and blood. If it be the first, the people will continue to

enjoy that which they have hitherto enjoyed—more privileges than have fallen to the lot of any nation with whose history we are acquainted; they will, as they have done, live plentifully on their farms, and such as choose, will carry on a fair trade, by exchanging our surplus productions for such foreign articles as we may want. If we take the other ground we shall, I fear, pursue the same career, which has nearly, or quite ruined all the other nations of the globe. Look at the people of England, legally free, but half their time fighting for the honor and dignity of the Crown, and the carrying trade, and see whether they have gained any thing by all their battles for the nation except taxes, and these they have in the greatest abundance. Look also at France, before the Revolution, and we shall see a people possessing a fertile country and fine climate, having the honor to fight, and be taxed as much as they could bear, for the glory and dignity of the *grand monarque*. Let us turn from these two great nations, and view Switzerland during the same period; though not powerful like the others, we shall see the people free and happy without wars, contented at home, because they had enough to live comfortably on, and not overtaxed. The history of these three nations ought to convince us that public force and liberty cannot dwell in the same country.

I mean not to impute improper motives to any one, nor to examine the Journal after changes, though I am perfectly willing to have it thumbed over, from the day I took a seat in the House to the present, after my name; and if, on examination, it shall appear that I have changed my political principles, or have not uniformly adhered to them, I am willing to bear the name of a political hypocrite. I have formerly been, on very great questions, in very small minorities; on a most important question, in a minority not sufficient to command the yeas and nays. I will say no more on this subject; nothing can be more disagreeable than to talk about one's self, and nothing could justify it but the call which has been made; perhaps I have already said too much on it, but it was impossible to say less.

The dispute with Great Britain is most unquestionably for the carrying trade; a trade which is less beneficial to the nation than any other, and a trade which has produced most of our disputes with foreign nations, and it is the only trade that requires expensive protection. Will any one contend that this trade is half as important as the coasting trade? This cannot and will not be contended, for every one knows that the coasting is the best

trade. It not only exchanges the products of one part of the nation for those of another, but it also tends, by making us better acquainted with each other, to connect us more intimately, and to make every part harmonize for the public good. The trade which I consider the next best for a nation to carry on, is the direct trade for home consumption, by which the surplus produce of one country is exchanged for that of another; and in this as in every branch of trade, this great rule will be adhered to—buy cheap and sell dear if you can. With the coasting and direct trade agriculture is more nearly connected than with any other. But a nation may be agricultural without being commercial. The Swiss cantons and Milan were of this description, and it may be remarked that Milan is the most populous country in Europe. China is said to be of the same character; but, as little is known of that country, I shall not quote it to establish a fact which is clearly established by the other two. A country may also be commercial without being highly agricultural, as was the case with Venice and some other European powers. But let us pursue that system which our own experience has proved to be the best for the United States; for, since the adoption of the present constitution, and before this day, we have had trying times. It will be remembered, that during the French Revolution, we had complaints against France. Her government issued orders of which we justly complained; one of them, I believe, declared all the productions and manufactures in Great Britain to be contraband of war; this, if executed, would have nearly cut off all communication with a nation with whom we carried on the greatest trade. What did we then do? We sent ministers to France, with two of whom she refused to have any intercourse, but pretended to be willing to negotiate with the other. All the ministers finally returned home, and we took half-way measures against her, which are the worst of all measures, and which produced a sort of half war, which I believe injured us more than her—for besides the actual expense, which may be estimated at not less than \$10,000,000, it nearly ruined the agricultural people by reducing the price of produce; flour it reduced from twelve and fourteen dollars per barrel to six; and tobacco, from ten and twelve dollars per hundred to three; and it had no doubt the same effect on other articles of exportation. And how were we relieved from these evils? We again sent ministers, who were received, and they made a treaty. Besides what has been before stated of the conduct of Great Britain, it will not be forgotten that she declared all France in a state of blockade, and this order would have cut off all commercial

intercourse with her, who then wanted much of our produce. To Great Britain, also, a minister was sent, and he made a treaty. I am now desirous that the same steps should be pursued before we adopt decisive measures. We once laid an embargo, of which we tired. This shows the necessity of acting cautiously, and of taking no measures which we cannot adhere to. All the gentlemen who have supported the resolution now under consideration, have expressed doubts whether it would produce greater effects on Britain or ourselves. This is surely doubting its policy, and if its policy be doubted by its friends, what ought to be the result of our inquiries, especially when it is believed that its adoption will materially injure one part of the country, and that part entirely agricultural? Does the public good, about which we have heard so much, require that a measure which its friends seem to think of doubtful policy, ought to be adopted, when none can doubt but it will injure, if not sacrifice, the real interest of a part of the community? Examine the report of the Secretary of the Treasury, and it will, at one glance, show from what quarter the great export is made to Great Britain; cut off the import, and you will lessen the price of the export, if it shall be exported. But we are told that we are bound to protect commerce, meaning, I suppose, that this resolution must be adopted. Then if we are really bound, and there is no discretion, nothing of expediency, there is no occasion for this investigation. But gentlemen well know, that on every question, discretion may and will be exercised. But have we really done nothing for commerce and navigation? On this subject I can confidently appeal to those most interested. What, since the adoption of the present constitution, has made this the second commercial nation in the world? Before that we had but little claim to the character of a commercial people. Have not the protecting duties on the tonnage of foreign vessels, and on goods imported in them, produced the effect? They have secured to our vessels the carrying our own productions, which encourages navigation in proportion to their bulk. Let gentlemen inquire the number of cargoes which tobacco and cotton alone furnish the American vessels. Besides this encouragement given to navigation, has not a law been passed to favor the fisheries, and thereby to form sailors for the use of the merchant service? It may be right here to observe that I neither approved nor voted for that law, but no attempt has ever been made to repeal it. This is the encouragement by which, during a time of peace, we have become the second commercial nation in the world, and this too in the short space of time since the adoption of the present

constitution—say, if you please, since the 3d of March, 1789. One consequence, a little curious, is produced by this encouragement, which is this: When Europe is at peace, the protecting duties prevent any competition by foreign vessels to carry our productions, and when at war, so many of our vessels carry for the belligerent nations, that freight is nearly as high with us as it is with them, so that what the agricultural people pay in time of peace to encourage, they lose the benefit of when Europe is at war, and when it is most wanted.

Among the arguments urged to show the effect of this measure on Great Britain, one is that it will ensure us a powerful aid in that country; that the British merchants and manufacturers, whose interests will be seriously affected, will give you all their assistance. This argument has been completely answered by a gentleman from Georgia, (Mr. EARLY.) But if gentlemen really calculate to make friends on the other side of the water, it seems to me that a different plan would produce more effect. Cut off all intercourse between them and us, and adhere to the plan long enough, and you will find the merchants and manufacturers of England joined by all the inhabitants of the West Indies, to have the intercourse opened. The Assembly of Jamaica have acknowledged that they cannot get supplies in plenty except from the United States; but this plan would operate as much on beef, pork, fish, and flour, as on tobacco or cotton. But this would be too strong for them, while they are desirous to adopt a measure which will have the same effect on cotton and tobacco. What is this but a sacrifice of a part of the agricultural interests of the country to what they believe will be a protection for the carrying trade? I should like it quite as well if the attempt was not to be made solely at the risk of one part of the Union. The evil is felt in one part, but the remedy is to be applied in another. Adopt general measures, which will operate equally in every part of the country, and if the shoe is to pinch, let it pinch all alike, and all will then be willing to have it off as soon as possible.

I am willing to acknowledge that a dollar got by this carrying trade, and made the property of the nation, is just as good as a dollar got any other way, even by the cultivation of land. But does it follow from thence that you are to make more sacrifices to get the dollar in that way than it is worth? I think not. The adoption of the resolution, besides its unjust and partial operation, will considerably affect the revenue, and no ways and

means are proposed to meet any deficiency. On the present question we risk a revenue of ten millions of dollars raised on the consumption of foreign articles in the Union, to gain—what? (I speak only of revenue) an additional sum of \$850,000, which additional sum you will lose as soon as you depart from your neutrality. It is asked again and again, if we have not a right to the trade about which so much has been said? If the doctrine that free ships should make free goods had obtained, there could be no doubt on the question; but I mean not to examine the right but the effect of the resolution; nor do I mean to deny that the trade is of some use to the nation. Merchants would not so anxiously pursue it, if they made no profit by it; and their profit adds to the national stock, and may affect the price of native articles offered for sale. I am also willing to acknowledge that a cargo of flour or any other native production sent to the West Indies, and there fairly exchanged for sugar, and the sugar brought home, that the sugar is as much ours as the produce of our own soil, and this sugar so obtained we have a right to carry to those that may want it. But the question before the committee is not a question of right, but of expediency. Is the protection which will be given to this carrying trade, by the adoption of the resolution, of that sort and of such certainty, as to justify the adoption of a measure, which will operate excessively hard on one part of the Union? The right of deposit at New Orleans before we purchased the country, was certainly as well established as our right to carry coffee and sugar to France and Spain, or any where else—it was a right acknowledged by treaty. But when the deposit was refused, what did we do? we took pacific measures, and succeeded. We heard then much about honor and dignity, and that it was our duty to enforce our right by arms; but notwithstanding all this, we adopted no measure like the present; we then acted for the general welfare. Does it follow, because I am opposed to the resolution, that I am unwilling for our citizens to own vessels? It does not. I am willing they may have as many as they please, and do as they please with them, so that they do not involve the nation in war by them. On this subject the interests of the husbandman in New Hampshire and Georgia are the same.

The gentleman who introduced the resolution expressed a wish that no party or geographical feelings should be brought into the debate. If there was no cause for geographical feelings, why then wish, or why anticipate them? Let the report of the Secretary of the Treasury be examined, and it will be seen that there is cause for this feeling; indeed, the statement, made

from that document by a gentleman from Georgia (Mr. EARLY) must have convinced all of the partial operation of the resolution. On the first page of the report it appears, that the annual exports to Great Britain and her dependencies are estimated at about \$15,690,000, of which sum, tobacco and cotton alone make \$8,860,000; it also appears, that we exported to the dominions of Great Britain in Europe, for each of the three years ending on 30th September:—in 1802, the sum of \$12,066,521; and that cotton, tobacco, rice, pitch, tar and rosin, made of that sum \$8,485,762; in 1803, the sum of \$16,459,264, and that the same articles made of that sum, \$11,912,493; in 1804, the sum of \$11,787,659, and that the same articles made of that sum, \$9,443,807. These articles are selected, because they are the produce of one section of the Union. The same part of the country produces the following articles in common with other parts of the nation, but the proportion of each is not known:—flour, wheat, beef, pork, staves, heading, boards, plank, scantling, timber, flaxseed, skins, wax, hams, bacon, turpentine, spirits, lard, and Indian meal, and I may add, pickled fish; some of these articles are carried to the Middle and perhaps to the Eastern States, and are there exported, or consumed; and, if consumed, enable them to export more of their own productions.

It has also been said, that if we adopt the resolution, and cannot get what we want from Great Britain, we will manufacture for ourselves. This sounds well on this floor, but I very much doubt the practicability of making this nation manufacture for itself, while we have land enough for every industrious citizen to become a landholder, and a cultivator of the soil. Connecticut and Massachusetts have tried the experiment, and both without success, and both on articles in which it was most likely to succeed; if these States, with their population, could not succeed, what chance of success is there in other States? The practicability ought to be satisfactorily shown before we enter on the plan. It may, as has been said, prevent our wives from wearing silk gowns, and ourselves from wearing broadcloth; whether it will produce this effect is quite uncertain; fashion is as great a tyrant as any we have to contend with; it will, I fear, be difficult to destroy its influence by legislating. The gentleman from Pennsylvania (Mr. SMILIE) and myself, plain as we are, are both obliged in some degree to yield to it; we can no more contend with it, than we can fly to Europe.

I come now to that part of the subject where every man must feel the injury done to his fellow-citizens; I mean the impressment of our seamen. Is there a father who does not feel this? No; not one in the nation; and that man who shall devise a certain remedy for this evil, will deserve the thanks of his country; he will, indeed, be its greatest benefactor; he, like the impressed sailor, will have a place in the tenderest part of the hearts of his countrymen. If a plan to prevent this injury was only made known, the very knowledge of the plan would put an end to the injury. But can gentlemen seriously believe that the adoption of the resolution will produce this effect? The means are not adequate to the end, I conceive; at least, it remains to be shown that they are. I will, without hesitation, state what I believe to be the best remedy for the evil. It is this: to agree with Great Britain that neither country shall employ the sailors of the other; and to agree, also, on the proof that shall be required on both sides; we might expect that Great Britain would adhere to an agreement of this kind, because it would be her interest to do so, and on her interest alone, I should rely. In considering this subject, we must look at things as they really are, and not as we would wish them to be. The British Government exercise the right, or rather the power, of impressing their sailors; and, I believe, in time of war, of prohibiting their going into foreign service. Under these circumstances, it may be advisable for us not to employ them, notwithstanding we may do it with their consent, especially if it would prevent their impressing our countrymen. If the merchants really be the friends of the American sailors, they would willingly agree to such a regulation. If they would not be willing, is it not clear they would employ British sailors at the risk of having ours impressed? On this subject it might not be improper to state that I have been informed, in some parts of the world, certificates of persons being American citizens are sold, and that the market has been well supplied. I have also been informed that a British officer in Philadelphia actually procured one for the purpose of enabling him to go home. This favored Great Britain. I have given this information, to show that others, besides citizens, may obtain certificates. Impressments, I fear, can only be prevented by negotiation; indeed, I have heard that the two Governments have been engaged on this interesting subject. I hope it will be resumed, and that it will end in securing to our countrymen their safety on the ocean.

We are told that the nation calls for strong measures, that the President has recommended them, and that men of the greatest talents think them

requisite. This may be true, but as I have neither seen nor heard of this call of the nation, and as I do not know the opinions of others, I shall certainly pursue my own. The first Message of the President to Congress, most unquestionably pointed as strong towards Spain as it did to Great Britain; and, hitherto, but little has been said about the usage we received from her. But the recommendation of the President alone, is not always a good reason for legislating, I apprehend, because every President has recommended subjects for the consideration of Congress, on which no act was ever passed. If ever the liberties of this nation are destroyed by strong measures, it will be when the recommendation of the President shall alone be deemed good cause for their adoption. At present, we have choice of all the resolutions on the table, notwithstanding all that has been said in favor of the one now under consideration. No doubt can be entertained, but the mover of each thinks his own the best. From the number, it would seem there was no difficulty in finding remedies for the injuries we have received.

Again: we must adopt this resolution, or we shall be degraded. This is no new phrase to me; I have formerly heard it so often, and on so many occasions, that I have become a sort of a skeptic on it. We shall not be degraded by living in peace with all the world. We shall not be degraded by not following the example of the European nations, by rushing into war, on every opportunity that may offer. War is nothing but another name for blood and taxes; we shall not be degraded, being free and happy at home; but we shall be degraded, if we fail in paying the national debt, or if we refuse to observe treaties constitutionally made. This will be the worst kind of degradation, because it will proceed from a want of morality. In order to induce us to adopt the resolution, we are seriously told that the revenue is derived from commerce. This I deny, and say that it is derived from the whole labor of the community. Stop the laborer in his field, and the revenue is gone. Commerce is useful, it is the means by which our productions are exchanged for the productions of other countries.

It has been said that the land tax overthrew one Administration; adopt this measure, and you may possibly overthrow another. I doubt whether the gentleman who made the assertion is altogether correct in point of fact; it may have aided, but other laws were passed, which undoubtedly had more effect, and were more obnoxious in the part of the country where I live. I

mean the attempt to raise an army without an actual war; an army of officers, almost without soldiers; the Alien and Sedition laws. It was also said, we were pledged to protect this carrying trade. This reminds me of what I once heard said before, which is this: that we were pledged to pay the salaries of certain judges, after the law was repealed under which they were appointed. I believe we are as much pledged in one case as in the other, and not more; I know of nothing binding in this country, except the constitution and the laws. A majority of both Houses of Congress may pass a law to give the carrying trade what protection they please, and that law will be binding. We are also called on to become the champions of the laws of nations, as if all nations would at once agree with us what these laws really are, and as if a majority of them adhered to their principles; when we know that scarcely a nation in Europe pays any regard to them; and that they will, at different times, entertain different opinions on the same subject. Have not most of them formerly declared, that free ships should make free goods, and have not some of the same nations since given up the principle? Before we undertake this business, would it not be prudent to endeavor to ascertain the opinions of other nations, whose interest may be most like our own? I wish no alliance with any of them; but, if all the nations of Europe should be willing to yield the principle which we are desirous to maintain, no man will be mad enough to say we ought to contend for it. There is certainly a great difference of opinion as to the nature of the measure. Some think it a war measure; others that it may lead to war, and others again, consider it entirely pacific. Without attempting now to inquire which of the three opinions is most correct, it is sufficient for me, that I believe it will not produce the effect intended, and that its operation on the United States will be partial. If, however, it should be adopted, and produce war, that war we must support with all our strength; and if it produce a good effect, I, for one, will rejoice as much as any man in this House. A great many appeals have been made to the spirit of 1776; that spirit was not only the spirit of liberty, but also of magnanimity and justice; all the measures then taken operated equally on every part of the Union.

It is said, this is the right time to settle all our disputes with Great Britain, because she is now hard pushed. If we wish to make a treaty that may be lasting, we ought not to take any unjust advantage of her situation; if we do, whenever she shall be free from her present embarrassments, she will be

discontented and restless under it, and never satisfied until she gets clear of it. The true rule for us, is to take no advantage, and in all cases to act justly.

I agree in opinion with the gentleman from Pennsylvania, (Mr. SMILIE,) that war destroys the morals of the people. Hence I was greatly surprised when he followed this correct sentiment with an assertion that he would rather have war than loss of national honor. This thing called national honor has ruined more than half the people in the world, and has almost banished liberty and happiness from Europe. Destroy the morals of the people, and we may play over such a game of war as has been played in France; nothing less than to perpetuate the liberty and happiness of the nation ought to induce us to go to war.

It is a little remarkable that the United States have, since the adoption of the present constitution, become the second commercial power in the world; when, if we believe the public prints, she has lost capital enough to have ruined the most wealthy nation in Europe. Million after million is lost, and yet her prosperity is unrivalled, either in ancient or modern times. I know full well that, according to the opinions of the writers on the laws of nations, we have just cause of war against Great Britain. I also know as well, that we have heretofore had as good a cause of war against both Great Britain and France. We then preferred peace—the result has been prosperity. What destroyed the prosperity and liberty of Venice, of Genoa, and of Holland? Wars, and wars, too, generally undertaken to protect the carrying trade.

TUESDAY, March 11.

Importation of British Goods.

Mr. MACON.—Much has been said about the spirit of the nation, and that we are far behind it—meaning, I suppose, those who oppose the resolution. As to my part, I know not how the spirit of the nation has been ascertained. There is no manifestation of it on the table. It is, however, true, that two towns have sent resolutions pledging their lives and fortunes to support whatever measures Congress may adopt. There are, also, several memorials from the merchants and insurance companies; but if gentlemen take these for the manifestation of the national spirit, they are, I think, mistaken. The

national spirit is to be found nowhere but among those who are to fight your battles. These people may, for aught I know, be of that number. They may have been before Tripoli, and they may now be ready to enter into the army or navy. Addresses, we well know, will not fight battles, nor fill regiments. We have seen, in former days, the Speaker's table loaded with addresses from almost every part of the Union, pledging, also, their lives and fortunes to support any measures that the then Administration might adopt. What was done? Among other acts, one was passed to raise twelve regiments of infantry. There was no difficulty in getting officers—unless, indeed, it was to make the selection out of the great number who applied—but how was it about privates? Instead of getting enough for the twelve regiments, scarcely enough for four could be enlisted. At that time, too, we heard a great deal about the spirit of the nation, and saw a something of the spirit then talked of, in a corps called the —— Blues. Those who then spoke of the spirit of the nation were deceived. They took the vaporings of the towns and the noise of the addressers to be really the spirit of the nation. But, be assured, sir, that whenever the spirit of this nation shall move, every individual, in every department of the government, will move too.

The ocean must be considered a common and undivided property, to which each nation has a right; hence the difficulty of affording the same security and protection there as on land, where each knows the spot where his dominion ends and his neighbor's begins. It is vain, therefore, the real situation of the United States being considered, to expect from her that perfect protection on the ocean which she can afford within her territorial limits. I believe this cannot be done, even to that part of the ocean from whence we get our exports. Other nations also frequent the same place, for the same purpose. This, like the rest, is joint property. Not so with our land, no nation pretends to claim a right to cultivate that.

The gentleman from Vermont (Mr. ELLIOT) has told us, that by adopting the resolution we shall encourage other European nations to manufacture for us. It is, I conceive, quite enough for the agricultural part of the community to pay their money to encourage the manufactures of this country. It is as much as I am willing to do. But what certainty have we, if we adopt the resolution, and give the proposed encouragement, that any of them will leave their present occupation, be that what it may, to take our

advice? Each one of them may think that their interest is as well understood at home as we can possibly understand it.

The gentleman from Massachusetts (Mr. BIDWELL) stated the case of our prisoners at Tripoli, as a case in point. He is, I think, mistaken. We were at open war with that power, when the frigate Philadelphia unfortunately struck on the rocks in the harbor of Tripoli. The result is known. The enemy got possession of the vessel, and the crew were made prisoners of war. There then existed a state of actual war between the United States and the Tripolitans. In the present case we have just cause of complaints against Britain, and are endeavoring to have them settled by negotiation. I will state a case which seems to me to compare better with the situation of our unfortunate countrymen who may be now impressed on board the British ships of war. It is the case of Captain O'Brian and his crew, who were captured by the Algerines, and remained with them so long, that I believe the captain, in the latter part of the time, dated all his letters to his friends by the year of his captivity. I have understood they suffered as much as any people could bear. We had then, I believe, no addresses, no resolutions, nor memorials from the merchants and insurance companies. But this case may not be thought to apply to that part of our complaints which relate to the capture of our vessels, carrying coffee and sugar to France and Spain, by the British armed ships. I will state one which I think has some; it is the case of Scott, of South Carolina, which has been decided in this House. He claimed pay for property taken by the Indians at a time when no open and declared war existed. He got nothing from the national Government. The United States in a treaty gave the property up to the Indians. I believe, at the time it was taken, some hostilities had been committed. Permit me here to observe, that no agent was appointed by the Government to endeavor to recover this property, and that I well recollect, when the claim was under debate, that it was stated by a member of the House that one of the Indian agents had got the treaty, at his desire, so formed, as to relinquish a claim for the property.

I have endeavored to confine my observations to the resolution now under consideration, and to answer some of the arguments urged in its support; though I confess, that, while examining this, I have also paid some attention to the others on the table. I wish gentlemen, before they vote, would seriously consider whether this is the best. I think it is not. When we

reflect on the happiness we enjoy, the prosperity of the nation, the growth of the villages, towns, and cities, the improving state of agriculture, the number of turnpike roads, bridges, and canals, which are undertaken in many parts of the Union, and that one improper act may alter for a time this happy state, and retard every improvement, we ought to be cautious before we change the ground on which we stand. Complaints have been made of delay on this important subject; they are, in my opinion, without foundation. It required serious deliberation and no time has been lost. It is always far better to decide rightly than quickly. It is immaterial to other nations what estimate we form of our own strength—there are two rules by which they will judge: the number of men and the state of the treasury. Indeed, it seems of late to have become a maxim in war, that the longest purse is the longest sword. It is true that we have a single million in the treasury to spare; it is equally true that resolutions are before us, which, if adopted, will require at least that sum to carry them into execution. In this situation, ought we to take measures which may endanger the revenue without providing ways and means to meet any deficiency? We talk of war with an almost empty treasury; no two things can be less connected, except that they are both bad. I have stated that which appeared to me to be the best plan to secure our seamen from impressment; but the man who shall actually produce the plan which shall have the effect, will deserve the gratitude of the nation.

In this time of difficulty we are all embarked in the same ship; my ardent prayer is, that whatever shall be done, may promote the interest and happiness of all.

Mr. G. W. CAMPBELL.—Mr. Chairman, I rise to submit to the committee some of the reasons that will govern my vote on the measure now under discussion. In doing this, it is not my intention to go over the various grounds taken in this debate, or to answer the several arguments that have been advanced, in support of principles to which I am opposed. My object will be to lay before the committee such a view of the subject as I conceive best calculated to ascertain the true ground on which we stand, and the measures which, in the present crisis of our affairs, it would be advisable to adopt.

I am not disposed, Mr. Chairman, to pursue measures that will crimson the American fields with the blood of her citizens, any more than other

gentlemen who have spoken on this subject; nor am I willing that thousands of innocent persons should suffer distress and ruin, for the benefit of a few individuals—a few merchants; which, it has been stated, will be the effect of the measure before you; neither, sir, will I ever give my vote for any measure that shall appear to me calculated to sacrifice the agricultural interest of this nation to that of commerce, or have a tendency to enhance the latter at the expense of the former; and so far as the resolution before you appears to me likely to produce this effect, I shall oppose it. The people whom I have the honor to represent are chiefly agriculturists, and it will always be my wish and my pride, to support their interests, and to cherish and promote the agricultural interest of this country in general, so far as it may be in my power. But I am not, at the same time, prepared to see the nation suffer, without resistance, every indignity with which Great Britain may choose to treat her, and submit patiently to every aggression and outrage her cruisers, under her authority, may choose to commit on our citizens and our commerce. I conceive it our duty to take such measures as will prove to the world a determination on our part to resist injuries and maintain our rights. In regard to the commercial relations of this country with foreign powers, I deem it proper on this occasion to declare it as my opinion, which I have always entertained, that it would have been better for the American people, if Government had never given protection to commerce, out of sight of our own territory, or beyond the reach of our cannon from our shores. It would have been well for us, if the American flag had never floated on the ocean, under the authority of Government, to waft to this country the luxuries and vices of European nations that effeminate and corrupt our people, to excite the jealousies and cupidity of those powers whose existence, in a great degree, depends on commerce, and to court, as it were, their aggressions, and embroil us in their unjust and bloody contests. If we had guarded against those pending evils by leaving commerce to seek her own protection, except within the limits of our own jurisdiction, we should have had a fair prospect of continuing to flourish a free, independent, and happy nation, much longer than I fear will be our destiny to do, if we continue to become more and more entangled in European politics and intrigues—to be subject to feel the effects of European convulsions, and national contests, in consequence of being deeply engaged in commercial relations with European powers. If we had adopted this policy, foreign nations would have vied with each other for our

commerce and our friendship, and would convey the surplus productions of our country from our storehouses, and furnish us in return with those articles and manufactures of their countries, which our necessities or convenience might require; and we might then behold the collisions of the great powers on the continent of Europe, and their jarring interests contending for superiority, without endangering our peace or our happiness, and with no other inconvenience than the regret we might feel for the miseries and sufferings of that portion of the human family, with whom, however, we had no immediate connections.

But, Mr. Chairman, we have assumed the character of a commercial nation, abroad as well as at home. Our Government has, in some degree, pledged the nation to protect commerce, and under this impression our citizens have embarked largely in trade, and made considerable progress therein. The enterprising spirit of our merchants has raised this nation to rank, in regard to commerce, the second in the world, and from this source also, our revenue is chiefly derived. Under these circumstances, I am not prepared to say this is the propitious moment to retrace our steps, and without even giving notice of our intention to do so, abandon our merchants and their property to the rapacity of a foreign nation. I conceive, on the contrary, it is our duty to afford them such protection as the resources of our country, and the prospects we have heretofore held out, would authorize them to expect.

In examining this subject, the first important inquiry that presents itself, is, in regard to the grounds of complaint which have occasioned the resolution before you to be proposed. There are two. First, the impressment of our seamen; and second, the unjust, and, as we believe, unauthorized aggressions committed on our commerce by the cruisers of Great Britain. If you look at the documents on your table, you will see that our seamen have been impressed by that nation for years past, without the color of right, and in a manner, which it is not pretended, on this floor, is authorized by justice, or sanctioned by the laws or usages of nations. They have been treated in the most inhuman manner, if information is to be relied upon; compelled to perform the hardest duty in her ships of war, and forced against their will to fight her enemies, who were at the same time on terms of friendship with us. They have been taken from sea to sea, and from place to place—from one country or island to another; shifted from ship to ship, and often sent to

distant parts of the world, so as to place them beyond the research of their friends or their country, and put it out of the power of either to reclaim them, by producing the proofs required of their citizenship to obtain their liberation. It has been stated that Great Britain has always been willing to deliver up such impressed seamen as were proved to be *bona fide* American citizens. But this is a fallacious pretext on her part, from which little or no benefit can arise to us. She impresses our people, without inquiring in regard to their citizenship, or paying the least regard to their protections. Their friends knew not where to find them, the Government cannot ascertain where they are, and years sometimes pass before it is known whither they have been carried. It has, therefore, in most cases, been found impossible to procure their release, and restore them to their friends and their country; and there are at this moment, unjustly detained by that nation, between two and three thousand of our seamen; who have been impressed without any other pretext, than that they spoke the English language, or resembled, in their persons, the inhabitants of the British empire. Our Government has, in vain, remonstrated, time after time, on this subject to the Court of St. James. No satisfactory arrangements could be obtained, nor is there any fair ground to expect a change in the conduct of that Government in this respect. Complaints have been made and repeated in every quarter of the Union on this subject. The outrages committed on our citizens have made an impression on the public mind, that demands on our part the adoption of some decisive measure to correct the growing evil. It has, indeed, been said by some gentlemen on this floor, that there exists the prospect of the fair adjustment of our differences with Great Britain on this subject. I would ask those gentlemen, upon what information this opinion is founded? For myself, Mr. Chairman, I know of no just ground to authorize such expectation. The documents on your table do not justify a belief, that there is at this time the least prospect of adjustment. They inform us, there was once such a prospect, but that it has long since vanished; and so far as we can collect information from those documents, as well as from other sources, there is not to be found in the conduct of the British Ministers, the slightest foundation for a belief that they are disposed to relinquish the ground they have taken, unless it is rendered necessary by some effective measures on our part. I would then put it to gentlemen to say, if we are not at this time to take any step whatever, towards vindicating our violated rights, when will be the proper time for us to act? Have we not patiently

endured those injuries long enough? And if not, how much longer must we tamely submit to them? What time can be more favorable than the present to resist them? Will it be when Great Britain has got into her possession a greater number of our seamen? When, instead of near three thousand, she will have gotten six, eight, or ten thousand? Will it then be a more proper time to make a stand—to call upon her by some efficient measure to do us justice—to treat us as an independent nation, or to tell her, that we will at least cease to treat her as a friend? I presume not, sir. I cannot conceive it proper that we should wait for such an event, before we make a stand in defence of our rights. On the contrary, it is my opinion, there can be no time more likely than the present, to render effectual any measures we may adopt. The present state of the war in Europe, which sufficiently occupies the great powers in that quarter, if properly considered, and its probable results, in regard to us, duly weighed, ought, it appears to me, to convince any man of reflection that this is the most favorable moment to insist on finally adjusting our differences on this subject with Great Britain. The right of our seamen to protection, while they sail under our flag is undeniable. It is a perfect right, as much so as the right to be protected within our houses, or in our carriages on the highway. You ought, therefore, never to abandon it, on any pretence whatever; nay, sir, you cannot abandon it, in justice to your citizens, unless, indeed, you are willing to surrender your independence as a nation. The ocean is a highway for all nations, over which no one power has exclusive jurisdiction. If you resign this right now to Great Britain, what reason have you to believe she will not push her demands further, and urge you to resign another, that may be still more important? It is high time that this business was brought to a final close, for if your seamen are to be seized wherever they are found on the ocean, you had better strip your ships of every sail they carry, confine your citizens within the limits of your own jurisdiction, to fight your own battles, should it become necessary, rather than see them exposed against their will, in fighting the battles of a foreign nation.

The second ground of complaint is the aggressions committed on our commerce, contrary to the law of nations, and in violation of every principle of justice. Great Britain assumes to herself the right to interdict to neutral nations a commercial intercourse with the colonies of her enemies, except under such modifications as she has been pleased to prescribe. She justifies the capture of your vessels on the ground of their being engaged in

a commerce, during the war, that was not open to them in time of peace. If this principle be once admitted as correct, and carried to the full extent of which it is capable, it will be found, in its consequences, almost wholly to destroy, not only the commerce of this country as a neutral, but that of every neutral nation in the world. You are told you must not in time of war exceed your accustomed traffic in time of peace. What is the consequence? War, in a great degree, destroys the trade which you were accustomed to enjoy in time of peace, as a great part of it becomes contraband of war; and this new principle shuts up all the avenues of commerce that were opened, in consequence of, or even during the war. What commerce, then, let me ask, will be left to the neutral? None, sir, that will deserve the name of commerce. But the reasons advanced in support of this principle, will go still further to show its destructive consequences. One of the reasons given why you must not carry on this trade, is, because it is beneficial to the enemies of Great Britain, as you thereby furnish them with provisions and other articles of merchandise, which relieve them from the pressure of the war, and prevent her from deriving all the benefits she otherwise would do, from her superiority at sea. If there is any solidity in this reasoning it will go the whole length to prohibit you from carrying the productions of your own farms to any nation the enemy of Great Britain. Your provisions, bread stuffs, beef, and pork, are surely as useful for carrying on war as the produce of the West India islands. She has hitherto, it is true, applied this reasoning only to the productions of the colonies, but it will equally apply to those of your own country. Hence, the injustice and absurdity of the principle must appear evident to every discerning and unprejudiced mind. But she has already, in carrying into effect her new principle, gone further than merely to prohibit neutrals from carrying colonial produce directly to the ports of her enemies. She has laid the groundwork to prevent you from carrying to those ports your own productions. Your vessels are seized and condemned for being engaged in conveying to her enemies colonial produce, which has been fairly purchased and paid for by your citizens, brought to this country, and, according to your revenue laws, made a part of the common stock of the nation. If there is a shade of difference in principle between this case and that in which the produce of your own farms should be captured on its way to the same enemy's ports, it is as flimsy as can be conceived to exist. When your people have purchased the productions of other countries, and fairly paid for them; brought them into your own, and

complied with your municipal regulations respecting them, they become neutralized, and as much a part of the common stock of the nation as if they had been raised on your own farms; and the same principle that would inhibit you from carrying these to the ports of a belligerent, would, by parity of reasoning, prevent you from carrying to the same ports the productions of your own farms.

But, Mr. Chairman, let us for a moment inquire whence Great Britain derives the right, according to any known principle of law or justice, to seize and condemn colonial produce, the property of a neutral, in consequence of its being destined for the ports of the parent State, her enemy? Strangers can acquire no rights against each other, in consequence of the domestic regulations relative to commerce, which a power independent of them may choose to establish. Suppose France, by law, in time of peace, should prohibit the importation of colonial produce to her ports, on the continent, except in her own vessels, Great Britain could have no right to capture an American vessel engaged in such trade. France alone could rightfully seize and condemn such vessel for the infraction of her laws; but no other power could have such right. Suppose such prohibitions removed by France during a war, and the trade declared lawful, could Great Britain thereby acquire a right to capture such vessels for being engaged in a trade now declared lawful, which she could not do when it was unlawful? Certainly she would not. Such doctrine would be contrary to the plainest dictates of reason and common sense. She had no right to capture such vessel while the prohibition continued, and she could not certainly acquire the right by such prohibition being removed. The intervention of war cannot alter the case, for the rights of neutrals, except as to contraband, remain the same in time of war as they were during peace. I must therefore consider this principle assumed by Great Britain as a flagrant violation of the law of nations, contrary to every principle of justice, and such as ought not to be sanctioned by this or any other independent nation. If you tamely submit in this instance, she will assuredly push her aggressions still further; encroach on your rights, step by step, as her convenience and interest may require, until she has effectually destroyed your commerce, and monopolized to herself the whole of its profits. That part of our commerce that becomes immediately subject to the operation of this new principle, has been stated as very unimportant, and under the name of the carrying trade, has been ridiculed as not meriting the notice of Government. A very few remarks

however will, I apprehend, show that it is not so insignificant as has been represented. In our trade with Great Britain, there is a balance in her favor of nearly twelve millions of dollars. This balance must be paid out of the proceeds of the exports of the United States to other countries. Many of those countries that consume a great portion of our produce, cannot give us specie in return. Our merchants must, therefore, in all such cases, return the produce and manufactures of such countries instead of specie; and, as the quantity of foreign produce and goods thus received exceeds the amount necessary to supply the demands for consumption in this country, it becomes important that this surplus should be carried to other markets, where there is a demand for it, and where specie can be obtained in return. This has heretofore been done by our merchants, by first importing such foreign produce into our own country, and then re-exporting the same for a market; and by means of this trade alone have they been enabled to discharge the balance against us in our trade with Great Britain. The annual value of imports into the United States amounts to about seventy-five millions of dollars; of this, twenty-eight millions are re-exported to all parts of the world, and of that amount, eighteen millions go to the dominions of Holland, France, Spain, and Italy—the greater part of which is subject to capture by the new principle of the law of nations acted upon by Great Britain. This is the carrying trade, sir, which gentlemen have considered so unimportant as not to merit the attention of Government. Instead of estimating this trade at \$850,000, as gentlemen have done, being the net revenue derived therefrom, (and which is not considered as paid by citizens of the United States,) it may fairly be estimated at nearly eighteen millions, or about one-fourth of the whole of your imports, nearly in the proportion of eighteen million to seventy-five. For if your merchants are not permitted to re-export the surplus foreign produce to those markets where there is a demand for it, it will remain on their hands and rot in their storehouses. This would also sink the price of your own produce, as there could not be a sufficient demand for it, because your merchants would not receive in return foreign produce. Your trade must, therefore, be diminished nearly in the proportion before stated. I ask gentlemen if this trade is cut off, how your merchants are to get specie to meet the balance in favor of Great Britain of twelve millions of dollars? If this cannot be done, your imports must diminish in proportion as the means of remittance fail, and your revenue must also feel the shock, and suffer in the same proportion as your

importations are lessened. This is a view of the subject which I presume deserves at least the serious consideration of gentlemen, and I beg of them to pause before they agree to relinquish, without a struggle, this portion of our national rights—for, if you submit in this instance to the interdiction imposed by Great Britain of carrying colonial produce to the ports of her enemies, she will assuredly advance her pretensions, as already stated, still further, and insist on the right to prohibit you from supplying them with your own; and it may fairly be asked, on the ground she has taken, where is the difference between sending colonial produce to her enemies and sending your own produce? The quantum of injury to her, and of benefit to them, will be the same; and she will have nearly the same right to prohibit in the one case as in the other. This shows the necessity of taking some decisive step that will convince Great Britain that we are determined not to submit to these aggressions; that will tell her, in firm and manly language, thus far you may go, but not farther. On this subject, also, our Government has remonstrated to that of Great Britain without effect. No satisfactory arrangements could be obtained, and there is no greater prospect of an amicable adjustment of our differences with that nation at this moment than there was a year ago, nor have I any idea that we shall find ourselves in a better situation in this respect, one, two, or three years hence, if we tamely acquiesce, than we now are. There is, therefore, no ground for delay; we can derive no benefit from it; this is the time we ought to act, the most propitious that is likely to present itself.

But, it is insisted, this measure will produce war; I consider it entirely in the nature of a commercial regulation, and such as cannot, as already stated, give any just cause of war. But, it is asked, will Great Britain inquire whether it is, or is not, just cause of war? Will she not consider it so, because it is against her interest? If gentlemen will have it that Great Britain has abandoned every principle of justice, it is vain to expect she will, on any occasion, be governed by reason, or motives of propriety, in her conduct toward us; if she is totally regardless of common right, and governed by her interests alone, she waits only a more favorable opportunity to give our commerce a more deadly blow; and it is, therefore, high time to withdraw ourselves from all connections with her. But, I am not prepared to go this length; I cannot believe a great nation, who holds a dignified rank among the powers of the earth, would expose herself to the indignation and derision of the world, by abandoning all respect for justice

and public right. I must believe she still retains some regard for her national honor; and, if not for her honor, she does for her interest: all that she could say, with any color of justice, would be, that she has the right to adopt other regulations on her part to counteract yours. Let us inquire into the effect of such regulations. She may say, your produce shall not go to her colonies, her islands, or any of her dominions. If she takes this measure, she will prepare the most effectual scourge for her own subjects. She will reduce the inhabitants of those islands not only to a state of starvation, but force them at length, in all probability, into insurrection. We have already witnessed the complaints of those people to the mother country. We have seen the picture they have drawn of their sufferings and distress, and their declarations that they cannot exist without the produce of the United States. How, then, shall Britain retaliate? She cannot do it effectually without injuring herself more than she will you. Hence, I am clearly of opinion, the adoption of proper measures on our part—of measures similar to that before you—would be likely to produce the desired effect in the conduct of Great Britain toward us.

It has, Mr. Chairman, been observed by a gentleman from New York, (Mr. MASTERS,) that national animosity produced the resolution before you. I regret that such an idea should be expressed on this floor. I know of no such animosity, but I believe, on the contrary, if a national partiality exists in this country, it is in favor of Great Britain; not that I believe such partiality criminal; but Great Britain being the parent country, speaking the same language with ourselves, and so many of her subjects becoming citizens of this country, there is naturally felt a degree of attachment towards the people of that nation. If these feelings do not go too far, they are laudable; but in regard to a national animosity to Great Britain, I do not believe it exists in this country, at least to any considerable extent. If gentlemen mean that this animosity exists against tyranny, I hope it will eternally exist, so long as its cause exists.

But, Mr. Chairman, I hope we shall not cherish animosity against France, any more than against Great Britain. Nor do I wish us to cherish partiality for either. There was, I believe, sir, a time when the people of this country felt a generous impulse in favor of the French nation. The flame of liberty that issued from the bosom of America, during the Revolution, had kindled up anew in France, and promised for awhile to illuminate the whole world.

The American people rejoiced at the prospect, and felt a generous sentiment of enthusiasm towards those who appeared to be advocating the cause of liberty and the freedom of man. But I am not prepared to say, that their flame has continued to burn, or that the expectations it created have been realized; but I may, I presume, say, there is no ground to believe that this nation entertains a criminal animosity against or partiality for either Great Britain or France. The same gentleman has observed, what I admit is too true, that Great Britain governs the commerce of the world. This, however, is the strongest reason that could be advanced, against a tame submission to every act of aggression which that Government may choose to commit on your commerce, unless, indeed, you are willing to acknowledge a national pusillanimity, and an inability to resist injury. If we are unable to oppose Great Britain on the ocean, and she will persist in her unjust violation of our rights, let us withdraw from all connections with her—confine ourselves within the limits of our territory, and live independent of her luxuries and her commerce, on the productions and manufactures of our own country.

To conclude my remarks on this subject, I will briefly repeat, that I am decidedly of opinion, the conduct of Great Britain is such, in impressing our seamen, and capturing merchant vessels, on the ground of their being engaged in a trade with her enemies, not open to them in time of peace, is manifestly unjust and unauthorized by the laws of nations. I conceive we have an undoubted right, without giving just cause of war, to regulate our own commerce, and to say from what nations we will, or will not, import articles of consumption; and what description, and under what circumstances. I also believe it our duty at this time to adopt some decisive measure on the subject, that will evince to Great Britain our determination to resist aggression, and to maintain our rights. I would, sir, prefer a measure in which we could, and would persevere, unless it should be found our interest to change it—a measure that would be least likely to paralyze our revenue or affect the agricultural interest. With this view, I would prefer, in the first instance, imposing additional or discriminating duties on certain specified articles, imported from Great Britain; such as would give the preference to other European markets. Or, if more agreeable to the majority of this House, I would concur in interdicting the importation of such articles. And if this should not prove effectual, I would take still stronger ground. I would prohibit the importation of all merchandise, the growth or manufacture of the British dominions. And, should it become

necessary, I would cut off all intercourse with that nation; which would effectually starve her West India islands, and compel her to come to just terms, or abandon her colonies to distress and ruin. These measures I am willing to take, and support in succession, as the occasion may require; and in doing so I shall act under the conscientious and perfect conviction that they are for the good of the nation; that they are necessary to vindicate the injured rights and insulted honor of my country; and that country will, I am confident, in this, justify my conduct.

Mr. JACKSON.—My conviction of the importance of this subject will plead my apology for the trespass I shall make on the time of the committee. I purpose to take a rapid review of the points in discussion between this country and Great Britain, and to touch lightly upon the arguments of gentlemen, who have contended that it is better to surrender them than to assume an attitude of resistance, or to adopt measures perfectly pacific for the purpose of producing a relaxation of the arbitrary systematic attacks upon our neutral rights; for, with one or two exceptions, the objections adduced go to sanction the opinion that the commerce in question ought to be abandoned; and that this Government ought not to do any thing to protect it. The measure presented to the consideration of this committee is calculated to produce a redress of the grievances complained of with so much justice. First, the capture of our vessels sailing on the high seas, in strict observance and obedience to the law of nations; and, secondly, the impressment of our seamen, *bona fide* citizens, protected by the flag of the nation. While we are discussing the proposition of resorting to a remedy to redress these evils, we are met by gentlemen who deny that it is right to do any thing. First, because the Executive has not recommended any particular measure; and, secondly, because the trade under consideration is fraudulent, and the citizens impressed are the subjects of Great Britain.

With regard to the first allegation, that the Executive has not recommended any specific measure, was it not objected under a former Administration that the Executive interfered improperly in legislative measures? Congress possesses the constitutional power of declaring war, and should the Executive recommend a declaration of war to us, I presume we should hear much of the Executive attempting an undue and indecent influence over our legislative powers; for, judging by the past, I have no

doubt that whenever such a recommendation shall be made by the Executive, it will be opposed by the same persons who now call for his recommendation, and express dissatisfaction at his withholding it.

But it is asserted this trade is fraudulent, and it is dishonorable to protect it. So much has been said and written on this subject, that it is altogether useless to combat the arguments urged on this floor; for it is not because a celebrated pamphlet, without an author, has been written on the subject on this side of the water, vindicating the fairness and legality of the trade, or as gentlemen will have it, surrendering the question at the threshold, or because another equally celebrated has been written on the other, declaring it “War in Disguise,” that we will consent to be concluded on the question, as they are all free game, and ought to pass for nothing unless their arguments carry conviction to the mind. The question resolves itself into the consideration whether this trade is fraudulent or not. Can we exchange our productions with the colonies of the belligerent nations—bring here theirs, and carry any surplus beyond our wants to other nations? I conceive that we can; common sense sanctions the opinion. Gentlemen, however, say we cannot. That the property is not changed, but still belongs to the original owner of it, and that our neutral flag fraudulently covers the enemy’s property. But gentlemen deal in a mere coinage of the fancy when they say so. I demand their proofs; they will not accept our opinions; and I with equal propriety reject theirs. How will they show that this is not our property? It is said that a want of capital is a proof of it; but, on investigation, it will be found, that the American capital is fully adequate to the carrying on this trade. Do not we find our merchants engaged in the trade to the East Indies, which requires a capital of three and four hundred thousand dollars, and if the trade to the West India islands be equally profitable, is it not to be presumed that they will likewise engage in it? If this property does not pass by the transfer, as we contend it does, it may be maintained that a horse sold in the open market will be subject to an execution subsequently issued against its previous owner; nay, even that the executor of such owner may sue for and recover it. But this argument shakes every principle involved in commerce to its foundation; its origin is traffic, which induces one man to exchange the surplus beyond what is necessary to him, for that which is necessary, and was the surplus of another; and if the property is not changed by this traffic, nothing is safe, every thing is afloat, and no man knows to whom any property belongs

which may happen to be in his possession. Such a doctrine must destroy all commerce at a single blow. But, say gentlemen, Great Britain indulges us in pursuing the honest carrying trade. I disclaim the position. How can she be said to indulge us with a right sanctioned by the law of nations; a right inherent in every independent nation? I contend that the trade to which I have just alluded, is as just and honest as any other trade of this country afloat on the ocean.

Great Britain not only imposes on our trade the restriction which interdicts our carrying the products of the colonies of her enemies to the mother country, after incorporating them with our own stock, but she disallows all trade with her enemies in time of war not permitted in time of peace. The gentleman from Virginia argues this is correct. He says Great Britain has a preponderance on the ocean, and inquires whether we have a right to check it by supplying her enemy with any thing necessary to relieve his wants. This is going farther than “War in Disguise;” than the time-serving Sir William Scott, who sometimes recollects that he is called on to expound the law of nations as a judge, and at others only to register the orders of the King and Council; or any other man in England. Does not this strike at the root of the whole trade of our country? There is no nation at war that is not more or less supported by our products; they drive from us the means of subsistence, and the carriage of them, it seems, is to be prohibited because Great Britain has a preponderance on the ocean, and can starve out her enemies if we are not permitted to carry to them. Great Britain says you shall not carry on a trade in time of war not permitted in time of peace. She seizes our vessels; inverts the natural principle of evidence; throws the *onus probandi* of showing that this trade then prosecuted was carried on in time of peace, on the owner of the property, and thus our whole trade afloat is exposed to hazard and vexatious interruptions. But, in defiance of this rule set up by herself, Great Britain opens in war her own islands, whose trade is shut up in time of peace. Test then her principle by her practice. It will not be contended that she connives at a fraudulent trade, or justifies it as lawful with herself, when she declares the same trade relatively to her enemies illicit and subject to condemnation. If then she is not governed by narrow and unjust views, she cannot contend that that is right when it respects herself, which is wrong in relation to another. She has yielded that question by opening her ports in war which were shut in peace, and has made, even if there existed a previous doubt,

this trade lawful. But, not confined to going this length, she carries on that trade herself which she denies to us; thus adding another to the numerous outrages committed upon us. If we acquiesce in this doctrine, advocated by Great Britain, sanctioned by her admiralty courts, and enforced by her cruisers, I ask if we shall not violate that honest neutrality which compels us to treat all nations alike? The great principle of a neutral nation, as defined by the law of nations, is, to treat the belligerents with equal impartiality, and not to favor one at the expense of another. By acquiescing in the doctrine that renders this part of our trade liable to capture, we make ourselves a party on the side of one of the nations engaged in war.

This colonial trade is not only lawful, but it is beneficial to the merchant and also the farmer. Gentlemen have attempted to draw a distinction between the mercantile and the farming interests. I shall by and by expose the fallacy of their reasoning; but, at this time, I will confine my remarks to proving that this trade is not only beneficial to the merchant but likewise to the farmer. The colonies from which this trade is derived are fed exclusively from this country—to them we carry our provisions and receive in return their productions. It is not our interest to receive money, if they had it, because we should lose the profit on the return cargo. If we were not at liberty to purchase beyond the consumption of our country, the extent of our exports would be diminished in the same ratio, for not having money to pay for our provisions they could not purchase them. The consequence would be that the trade would fall into retail hands, and the loss would reverberate on the farmer, the demand for his productions would be diminished, and they would rot in our warehouses. This shows that the farmer is as deeply interested in the trade as the merchant.

WEDNESDAY, March 12.

Importations from Great Britain.

Mr. JACKSON.—I admitted, in its fullest latitude, the aversion of the American people to go to war for light and transient causes. They will sedulously foster peace; they will bear and forbear much; viewing war as the scourge of the human race, every honorable exertion will be made by them to avert it; but there is a point of degradation and insult beyond

endurance which no nation can advance to without feeling the vengeance of United America. We have tested this truth by experience. Look to the Revolution, sir, when the noble spirit of the times braved the terrors of treason, misery, and death, rather than tamely submit to the accumulated wrongs that were heaped upon us. I have too much respect for my country to believe that any attempt to rob us of a single right which we then secured by one of the noblest struggles recorded in the annals of the world, would be tamely surrendered. But it is said the spirit of the nation has been roused by the impositions of the newspapers, influenced by the rapacity of the merchants. No, sir; it is by seeing its rights and the rights of its citizens trampled on—prostrated by a lawless banditti on the ocean, respecting no law but their own interest—acknowledging no rights between them and the tyranny of the seas. Is the capture of our seamen, and vessels, and cargoes on the ocean, an imposition? No, sir; it is a fatal reality, witnessed by the miseries and bankruptcies of thousands; and when an honest burst of indignation is re-echoed from the remotest corners of the Union, we are gravely told that we must make a distinction between commerce and agriculture, which it is alleged exists in fact, and cannot be lost sight of. Let us examine this doctrine. The merchant purchases the produce of the farmer, his beef, and pork, and every surplus which he has, and traverses every sea in search of a market for it; the price abroad produces competition at home; the profits to the merchant being always nearly the same, and by this competition the farmer receives a premium proportionate to the demand abroad; but take away this rivalry at home by abandoning your merchants to the depredations of every freebooter—for, if you once pronounce that they are to be abandoned, every sea and shore will be infested by them—and you compel him to quit the ocean, to employ his capital on land, and our farmers will be obliged to take whatever price foreigners coming into our ports may choose to give, and to purchase the productions of other countries from them at whatever price they may choose to ask. The interests of agriculture and commerce are, therefore, intimately connected: but another expedient is resorted to. It is said a distinction is to be kept up between the Northern and Southern interests, and this measure will operate on the South alone. Sir, we ought to know nothing of local interests or geographical divisions, when the rights of an American citizen are invaded; we ought only to know it and feel it as Americans. Did the North use other language when the navigation of the Mississippi was destroyed by

withholding the right of deposit at New Orleans? No, sir, with honorable feelings, their only solicitude was how they should most effectually restore and preserve it. Let us then act with sentiments of the same noble liberality when the pressure of wrongs is most immediately felt by them, but which must and will operate upon us also, for no measure can affect the rights of this nation that will not sensibly injure every part of the Union. If our commerce is disturbed, if our rights on the sea are cut off one by one, and such is the tendency of the present measures of Britain, what will become of our cotton and tobacco? Will they not rot on our hands, or be sold at the price of those who may be pleased to come and purchase them? If commerce languish, agriculture will languish likewise, for one is the handmaid of the other. But, say gentlemen, the value of the trade interrupted by the piratical conduct of Britain, is not worth contending for, is not worth the risk of the present measure, or the hazard of war. I hope, however, we shall not estimate national wrongs by pounds, shillings, and pence. I hope that, when our rights are invaded, we will all be united, not in calculating the cost, but in adopting measures to insure redress. But gentlemen say these aggressions will only last during the war. Sir, the war in Europe, for the last fifteen years, has been almost unintermitted. Were you to hold this language to an individual, and say to him, you are denied free ingress or egress to or from your own mansion, and console him by adding, you can bear with your wrongs, they will last only during your lifetime; he would spurn you from him with indignation. Look at the state of the European world, at its situation for twenty years past, and say what chance have you of peace? I hope our rights will not be thus permitted to be trampled on with impunity, under such a pretext. I hope to see some systematic measures adopted to meet Great Britain, who appears to have formed a deliberate plan to inflict all the injury in her power on this people, whom she looks upon as her most dangerous rival. This step, which she has taken, is a link in the great chain of vassalage, a colossal stride towards effecting that plan which has for its object the dominion of the seas. If we yield one right, as well established as the right to breathe the vital air, it is weak in us to imagine Great Britain will stop here. This would be as contrary to her genius as the genius of this Government is to war.

I consider the aggressions which Britain has made upon our trade alone, a sufficient stimulus to induce us to do something. But when I refer to the three thousand seamen she holds in miserable bondage, I consider the

destruction of this trade as but a drop in the ocean compared with them. But, on this subject, horrid as it is, I find some gentlemen are the apologists of Britain! One gentleman observes that, inasmuch as her own subjects are in our employ, she has a right to take from us an equal number. But there is no analogy between the cases. The act of her subjects in entering into our service is voluntary, while our citizens are kept in her service by violence. Some of our own citizens reside in Britain, and yet we never dreamed of complaining, because she has not banished them from her bosom. No man in his senses can say that Britain is justified in keeping our citizens in slavery, on the ground that we employ her subjects in our service.

If a man has a protection, she says it is fraudulent and tears it to pieces; and if he has not a protection, she declares that conclusive proof that he is not an American citizen. It is very much to be regretted that the law requiring those protections ever passed; and that we had not asserted the right to protect every man sailing under our flag, except the enemies of a belligerent nation. Three thousand of our citizens now groan under this abject slavery! This number have presented their claims to your Government. Besides which, many more are carried from sea to sea, and from one country to another, without being ever able to make their cases known to you. In vain do they endeavor to forward their complaints—an inexorable tyranny denies them the indulgence. It is fair then to infer that the whole number is twice that I have stated, and it really appears to me as if our sensibility were lost in the magnitude of the injury. If there were but a single case of this species of oppression presented to us, it would be more affecting and effective. Draw the picture of a single victim, the only son of aged parents, their staff, the prop of their age, their pride and only support; he toils and labors to obtain a venture, with the pleasing prospect of quadrupling his little capital—they follow him, when ready to leave them, with tears and blessings to the water side, where he embarks; and in a few hours the lessening sail is lost to their view on the bosom of the wide-expanded ocean. They return to their cottage and implore a beneficent God to protect their darling; they count the days of his absence, and when, according to the usual course of events, the period of his return is drawing to a close, each hour awakens new fears and new solicitude. By and by the vessel anchors in its port—they fly to embrace him—but, alas! he is not there—he was, off the harbor's mouth, robbed of his all, impressed by the British, and carried into worse than Algerine slavery—for with those he

would only be compelled to work for his master, whilst these make him work, and fight, under a lash more cruel than the barbarian bastinado, and a despotism more unrelenting than the slave driver's exercise. Their golden dreams are vanished with the recital. The soul shrinks back upon itself; they cast a long and wishful look upon the ocean, and with tottering steps reach their once peaceful, happy home—but no peace, nor happiness, welcomes their return. Hope lingers for awhile, and cheers their drooping spirits—it directs their appeal to the Government, which the old man fought and bled in the field to establish, upon the basis of universal justice, and whose principles he impressed on the mind of his child. Year after year it is deaf to their cries; it sits down and calculates the cost of asserting its rights, with the nicety of a ledger-keeper, and decides in favor of a pusillanimous acquiescence, because the balance of dollars and cents is struck in its favor. Poverty approaches with rapid strides—their last dollar is laid out to procure the means of subsistence; too proud to beg, and too infirm to labor, they know not how to avert their fate; the little plans they have formed without the means of execution, fly like meteors before them—nature is making a mighty struggle with adversity, when it is announced that their boy fell beneath the thousand lashes which were inflicted on him for attempting his escape; and Death, kindly interposing his friendly arm, grants a respite from their miseries! Does not such a case demand our attention? It is not at all comparable to that of many others. Add to the scene which I have feebly portrayed, the distraction of a tender wife, manacled and confined in the cold damp cells of a lunatic hospital—her children bound out by the parish, and all their prospects of life nipped in the bud, occasioned by the impressment of the husband and the father—and then tell me do we violate the principles of the constitution, which declares that it is made to provide for the common defence and general welfare, by vindicating those measures which are well calculated to procure redress? This were indeed to play such fantastic tricks before high heaven, as make even angels weep! Shall we, in the Tripoline war, to rescue from bondage three hundred Americans, perform, through the agency of some of our citizens, acts of perseverance, address, and heroism, unsurpassed in the annals of ancient or modern times, at the sacrifice of the lives of many brave men, who, with some of those that survived the conflict, will be enrolled by a grateful country upon the list of the favorite sons of the American nation—when as many thousands are groaning under the cruel

oppression of Great Britain, and crying to us for succor, without exciting or producing one manly exertion!

THURSDAY, March 13.

Importations from Great Britain.

The House again resolved itself into Committee of the Whole on the state of the Union—Mr. GREGG's resolution still under consideration.

Mr. LEIB.—From the course which has been pursued for several days, I am induced to move that the Committee of the Whole on the state of the Union be discharged from the further consideration of this resolution, and that of the gentleman from New Jersey. Without entering into the merits of the resolution, I will confine myself to stating the reasons on which I make this motion. I did expect, when this subject first came under discussion, to have heard something respecting its merits; that a comparison would have been drawn between the advantages and disadvantages likely to ensue to the United States from its adoption, instead of which I found my colleague sailing round the coast without examining its tendency or bearing. He told us it was pacific, and, in the same breath, said it struck a dagger into the vitals of Great Britain. If, Mr. Speaker, I were to strike a dagger at you, would you not consider it a hostile act? And yet this measure is said to be pacific, and it is represented as having no tendency to war. When this measure was first proposed, I was in favor of it; I was impelled by my feelings against Great Britain, whose injuries I sensibly felt. But I have since listened to the arguments adduced in its favor by my colleagues. What are they? Did they speak of its profits and loss; did they show that it would be advantageous to this country? Instead of this they talked of national honor. But, on this subject, I agree with the poet:

“Act well your part, there all the honor lies.”

I am not disposed to be a duellist for national honor. I am disposed to view this as a question of profit and loss; and if the loss will be greater than the gain, to reject it; and it is because I think that the United States will incur more loss than profit by it, that I wish to get rid of it. I believe it will

have a warlike aspect, and therefore I am against it. I have no idea of fighting all the world. I hope, from the course which this discussion has taken, and from the conviction which it has produced of the inability of the United States to carry this measure into effect, that we will enter on the discussion of some other measure more likely to be effectual. I am willing to get rid of this resolution in the easiest way, and I therefore move you to discharge the committee from its further consideration.

The yeas and nays were then taken on discharging the Committee of the Whole from the further consideration of Mr. GREGG's resolution, and were—yeas 24, nays 101.

The question was then taken on discharging the committee from Mr. SLOAN's resolution, by yeas and nays—yeas 26, nays 98.

The House then resolved itself into a Committee of the Whole on the state of the Union.

The Chairman put the question on considering Mr. GREGG's resolution, on which the committee divided—yeas 47, nays 70.

Mr. J. CLAY moved to consider the resolution offered by himself, and that of his friend from Maryland, (Mr. NICHOLSON.)

FRIDAY, March 14.

Importations from Great Britain.

Mr. MUMFORD said: Mr. Chairman, it is with great diffidence I rise to speak on this question. I am a merchant, unaccustomed to speak in a public body. But, sir, when I see the dearest interests of my country unjustly attacked by a foreign nation, I must beg the indulgence of this committee while I express my sentiments on the serious aspect of our foreign relations. Sir, I do not wish to extenuate the conduct of any nation. I have no predilection for one foreign nation more than another. I shall endeavor to speak the language of an independent American.

Sir, I had indulged the hope that the ninth Congress of the United States had assembled to deliberate on the momentous affairs of their country as Americans; but, sir, it gives me pain, and I regret extremely, to see

gentlemen so far forget the interest of their own country in defending the pretended rights of others. That there should be a difference of opinion respecting our own regulations, was to be expected, but when your lawful commerce is attacked by what the honorable gentleman from Virginia so emphatically terms “the Leviathan of the Ocean,” and attacked, too, contrary to their own acknowledged principles, as laid down in the correspondence between your late worthy Minister, Mr. King, and the British Minister, Lord Hawkesbury, I beg leave to call on the Clerk to read that part of the Boston memorial which relates to that correspondence. [The Clerk read the article.]

I shall now commence my observations on our unfortunate fellow-citizens in British bondage; and in answer to the honorable gentleman from Maryland, whom I very much respect, I do frankly acknowledge that amongst all the petitions presented to you by the merchants of the United States, there is not one word about our impressed seamen, Salem and another port excepted. But, sir, I beg leave to inform this committee, and that honorable gentleman, that before we enter our vessels at the custom-house, we are called upon to witness the recording of this tale of human woe before a notary public, stating all the seamen impressed during the voyage. This is immediately transmitted to the Secretary of State, for the correctness of which I refer you to the documents from that department now on your table. Sir, is it decorous, is it candid, is it liberal, is it respectful to the committee to impute such unworthy motives to the merchants as we have heard expressed on this floor? They are men, sir; and I believe candor will allow them their share of sensibility, and that they sympathize for suffering humanity as much as a planter, a farmer, a lawyer, or any class of the community. Sir, I feel as much as any man for the sufferings of this meritorious class of citizens, having been an eye-witness to the barbarous treatment inflicted by the officers of the British Government on one of them. He was lashed to a scaffold on the gunwale of a boat, and whipped from ship to ship, until he had received five hundred lashes. What was the consequence? He expired the next morning. What was his crime? He had been impressed into their cruel bondage, and had endeavored to regain his liberty! We are asked, what is the remedy for this outrage? There is but one, sir. Demand satisfaction for the past, and in future make your flag protect your citizens, at least on the high seas, the common high road of all nations. Your merchants can insure their property against this “Leviathan of the

Ocean;" but there is no alternative for the poor sailor, he is inevitably doomed to cruel slavery.

I now come to speak of foreign nations. We are told that the American merchants cover Spanish property. This may be the case. I believe it; but it is to a very limited amount. The Spanish merchants have little capital at present to dispose of. Their Government owes them considerable sums of money, and the paper currency of that Government is at such a discount (I believe from 40 to 50 per cent.) that they are not able to extend their commerce, if they were ever so much disposed to do so.

Respecting the French merchants, a great proportion of them in France are bankrupts, in consequence of heavy taxes, contributions, forced loans, and all the impositions of imperial ingenuity. That country depends not on commerce for her revenue; she collects one hundred and twenty millions of dollars per annum, of which twelve millions only are levied upon commerce, being but ten per cent, on the whole revenue. Their merchants have it not in their power to extend their business for want of a capital, which is a fact that will be acknowledged by all commercial men. They are by no means the favorites of the Emperor; he grants them no indulgences, of which the late transactions at the national bank are a sufficient evidence.

Respecting Holland, every person conversant in business knows the cautious calculation of the Dutch merchants; they trade very little on their own account in time of war, but are constantly soliciting the American merchants to make consignments of property to sell on commission. And yet we are told in that oracle, the celebrated pamphlet, "War in Disguise," that France, Spain, and Holland carry on the war against Great Britain with property covered by Americans! Will any rational man believe them?

I now come to Great Britain, sir; not one word has been said about property covered for her. She is immaculate; she is innocent; she can do no wrong. I have good authority for this last expression. The King says so, and others repeat it. Sir, immediately upon the coalition being formed on the continent of Europe, she seized upon your unsuspecting commerce, and surprised it with new principles and new doctrines in her Courts of Admiralty, which operated with her ships of war in the same manner as though they had actually received orders from the Lords of the Admiralty (how insidious! but they understand *decoy*) to capture and bring in all

American vessels bound to enemies' ports; and if by chance any of them escape their fangs, after a mock trial, they are compelled to pay enormous charges, from five hundred to six hundred guineas, and sometimes more. This operates as a premium to carry in all your vessels, knowing beforehand they will have nothing to pay; for, although you gain your cause, you must pay the costs. This, sir, discourages your cautious and best merchants, and they are thus compelled to abandon and decline pursuing a lucrative and lawful traffic.

If there be any property covered for Great Britain, I have every reason to believe, from facts I will state to the committee, that it appertains almost exclusively to some British merchants, lately adopted citizens of the United States, for they take good care to keep all their business in their own hands. They are the honest merchants who own the honest vessels we have heard so much about, and they are engaged in exporting cotton, tobacco, and other produce of our country. Why should they have the preference? it will be asked. I will not tell you what I do not know, (as has been said in this committee,) but I will tell you what I do know. Sir, the real American merchants cannot enter into competition with them. They have their particular friends in England, who are interested, and will of course give them the preference. By a variety of ways they obtain all the freights, to the exclusion of your vessels. Sir, we are often compelled to take in ballast alongside of those very ships who have full freights engaged. Thus, sir, the real American merchant is the dupe of these honest adopted British citizens. These are your slippery-eel merchants, so justly denominated by the honorable gentleman from Virginia, whose acme of mind I much admire. They were indeed, sir, so slippery in some of your districts, that it was found necessary to pass a law excluding all of them who resided in foreign countries from owning any ship or vessel belonging to the United States; for a number of them, after having made fortunes out of your neutrality, had slipped off to Great Britain to spend the money and the remainder of their days. And in order that we might not compromise our neutrality in this deceptive business, our National Legislature has been careful to pass a law in the first session of the eighth Congress, dated 27th March, 1804, to correct the abuse, which has in some measure put a check to it; and yet we are emphatically told that it is only coffee, sugar, and East India goods that are guilty of the sin of interfering with British merchants, those monopolizers of the commerce of the whole world.

I mention these facts, sir, to vindicate the character of the real American merchants; it will stand the test with that of any other nation in the world. Sir, look at your revenue system, examine all the records of your district courts, see how very few fines and forfeitures they have incurred, and then compare them with any class of citizens you please, and you will, I am confident, Mr. Chairman, exculpate them from such disingenuous reflections as have been animadverted upon in this committee. Sir, they make it a point of honor to discourage smuggling, knowing the whole revenue of their country to depend upon that fidelity which they have never ceased to inculcate. I cannot but persuade myself that, on mature reflection, gentlemen will not withhold from that class of the community the protection guaranteed to them by the constitution of their country. It is a fact well known to this committee that the Federal Constitution, under which we now hold our seats in this House, grew out of the great inconveniences we then experienced in our commercial affairs with foreign nations. Surely they are not outlawed. I trust not, sir. I hope better treatment from the hands of my country.

I now come to the true history and the cause of the aggressions of Great Britain. It is very difficult to trace her in all her ramifications of fraud on your neutrality and of injustice on your commerce. Sir, when the present continental coalition was concluded, the “lords of the ocean,” with that colossus the East India Company, the merchants trading from London to the continent of Europe, the West India merchants, and some of our honest adopted citizens from Great Britain, all agreed with common consent to be in the fashion; and they formed a coalition against your commerce, and ordered a book to be written, in which they took a conspicuous part, called “War in Disguise.” This was truly on their part *war in disguise*, and the first act of hostility they commenced upon your unsuspecting commerce; and I hope they may ultimately meet the fate of all other coalitions, at least as far as respects our country. They had ordered, as all coalitions do, a large supply of ammunition; one hundred thousand copies of this instrument of death to your commerce were distributed, at sixpence each, to all parts of the British dominions, in order that your property might be plundered for the use of the naval commanders, who could no longer find any other property on the ocean. This book says, “they must retire on a handsome competency at the close of the war,” no matter from whom it is taken.

Next comes the East India Company, that colossus of mercantile avarice, whose monopoly draws into its vortex all the demand for East India produce in Europe. Your lawful commerce to those markets interfered with them, and was considered incompatible with this monopoly, and must be doomed to destruction.

Next come the merchants trading from London to the continent of Europe. They attend the public auctions, purchase your condemned vessels and their cargoes, procure a license from their Government, and send the same cargo on their own account to the very market your own citizens intended it for.

I now come to some of those honest adopted British merchants; and in order to elucidate that subject, I will beg leave to read a copy of a letter from one of the first houses of respectability in London, said to be in the confidence of the Minister:

“This Government has granted licenses to neutral vessels, who take in a proportion of their cargoes in Great Britain, to proceed to the Spanish colonies to the south of the line, provided the returned cargoes are to be brought to this country; and I have now several expeditions of this nature under my direction for the account of houses on the continent, who prefer subjecting themselves to the conditions Ministers have imposed for the toleration of that trade, to the risk of detention and its consequences, even in the event of restitution.”

This is no fiction, sir, it is a fact. It cuts your commerce like a two-edged sword, involves your neutrality, and prevents your own merchants from going to the same market, the profit on which ultimately centres in Great Britain. There are at this moment British agents in two of your commercial cities, and I suppose more in other parts of the United States as well as in Europe, for they swarm on the industry of all nations. They are acting in concert to carry on this licensed trade with the Spanish colonies, their enemies jeopardizing your neutrality, to the manifest injury of the real American merchants. This is a very valuable branch of commerce, as you may readily suppose from the price that sagacious calculating nation sets upon it. What is the result of all this? Why, sir, if it were not for the interference of this very Government, so much extolled at the expense of

your own, we should enjoy the benefit ourselves. They themselves license vessels to carry on a commerce, which if pursued by your citizens, without their permission, is sure to be plundered. Thus, sir, that Government assails your commerce at home, and condemns it abroad, on the most vexatious and unwarrantable pretensions.

Sir, I beg leave to call the attention of the committee to an important fact. Examine your treaty with Spain, your treaty with France, your treaty with Holland, your treaties with some of the Northern Powers, what do they say? “Free ships make free goods.” What does Great Britain say? “You shall give up the goods of my enemies;” and you accede to it. Is this reciprocal? Is it just? Is it not a humiliating concession? Is this cause of war? What says that oracle, that celebrated pamphlet, on this occasion? Not a word, sir; it is as silent as the grave. Who now has the greatest cause of complaint, Great Britain or her enemies? Her motto is “Universal domination over the seas”—the common highway of all nations—and, unless you assert your rights, you will be swept into the general vortex. We are told that this is a war measure. If it be true, and commercial regulations are of that nature, we are at war with Great Britain at this very moment, for she imposes four per cent, on her exports to our country. You cannot impose any on your exports to that country; it is unconstitutional.

Mr. CHANDLER.—Mr. Chairman, unaccustomed as I am to public speaking, it is with extreme diffidence that I rise to make a few observations on the measures now under consideration; but the subject is so important, that I am unwilling to give a silent vote.

It appears to be acknowledged by all the gentlemen who have spoken before me, that we have just cause of complaint against Great Britain; that she has impressed our seamen and compelled them to serve on board her ships of war, to the number of several thousand; that she holds them in the most degrading servitude, and compels them to fight her battles against a nation with whom we are at peace, and that she has seized and condemned, contrary to the laws of nations, and usage, our ships and property to a very large amount. This fact, Mr. Chairman, is so evident and notorious, that it would be trifling with the time of this committee, were I to attempt to introduce new evidence to prove it.

This point being conceded, it then remains to be determined whether we will tamely submit to these wanton aggressions upon our rights as an independent and a neutral nation, or have recourse to measures of some kind calculated to obtain redress for the past and security for the future. The first, Mr. Chairman, ought to be put out of the question. To submit, without opposition to so wanton and so flagrant violation of our rights, would render us unworthy the name of Americans. For what did we contend with this same Great Britain in 1775 and the succeeding years? When we were few in numbers, and at first without arms, without ammunition, without money, or other established resources, and without allies? Sir, a Warren, a McClary, a Montgomery, a Mercer, and a host of heroes, fought, and bled, and died—for what? For the rights, the liberties, the freedom, and independence of our country. And shall we, Mr. Chairman, without one effort, surrender those dear-bought rights and privileges, the price of which was the best blood of our countrymen? No, sir, we shall not, we will not do it; our faces would be covered with shame, and disgrace as well as injury descend to our children. But, sir, this committee will not consent to a surrender of those rights, which they are constituted to guard and protect. They will, I presume, at least a great majority of them, be disposed to take measures sufficiently strong to compel that haughty nation to do us justice.

I believe, Mr. Chairman, the only difference in opinion with most of us is, what measures will be most likely to have the desired effect, with the least injury to ourselves. For my own part I was in favor of the resolution laid on the table by the gentleman from Pennsylvania. I allude to the one which has been several days under discussion. I was in favor of it, because I believe it would be the most effectual; and no man I think can doubt our right to adopt such a measure, it being only a commercial regulation, such as every independent nation may rightfully make whenever her interest or convenience require it. It would, in my opinion, be most likely to effect our object, because it would most deeply touch that tender point, their interest; and it is their interest which governs them. If we forsake their workshops and warehouses, it will materially affect their manufactures and trade. Indeed, to use the language of the gentleman from Pennsylvania, it will reach the vitals of her commerce; and if it were to go to the vitals of their nation, the fault is not ours; they are the aggressors, we act on the defensive only. If, sir, that nation has two millions of people employed in the cloth manufacture alone, as was stated by a gentleman from Maryland, (which

number, however, I think too large,) she must at least have four millions in the whole employed in manufactures of all kinds. We take from her of these manufactures to the amount of thirty millions annually—a market for which she cannot find elsewhere. Interdict the importation of her goods, and what is the consequence? She cannot pay, and therefore cannot employ her workmen. She will not find her account in manufacturing goods annually to the amount of thirty millions of dollars more than she can find a market for; therefore her workmen, at least one million of them, will be out of employment. How are they to subsist? How can they get their bread? Other means they have not; they cannot find any other occupation; and, if they could, they are not fitted for them. This derangement of business must be severely felt; their merchants and manufacturers will, I believe, be persuasive advocates for us. They will feel the evil, and will powerfully press the Government to do us justice. The Minister will be convinced of the danger. He will be careful not to suffer our custom to be diverted from England; for he knows if the channel of our trade is once turned, it will not easily, if ever, be restored. He will pause before he finally drives his best customer to the necessity of leaving him; for he cannot be ignorant that our trade, consisting of the exportation of raw materials, and the importation of wrought manufactures, will be courted by other nations, who will soon find it for their interest to accommodate us with a supply of our demands on satisfactory terms. I consider, Mr. Chairman, that our commerce is and will be so available to the nations of Europe, as to furnish us the means of commanding respect and procuring justice by commercial regulations. I have no fear that Great Britain will venture on a war with us; but if, from a predetermination to quarrel with us at all events, she should make a commercial regulation, or any other of our measures, a pretext for hostilities, notwithstanding all that has been said on the floor of this House by certain gentlemen, to disparage the troops or militia of our own country, and of our weakness, inferiority, and inability to defend ourselves, and to prove the invincible power of Great Britain, yet I trust she would still find us Americans.

Mr. J. RANDOLPH.—I should have been better pleased if the gentleman who has so eloquently painted the wrongs which we have received from Britain had, instead of telling us of the disease, pointed out the remedy. The gentleman a few days ago offered himself as a collateral security for the facts stated by the President and our illustrious Minister at the Court of

London. Did the gentleman believe that what we could not take from them, we should accept from him? That our commerce has been pirated upon and our seamen impressed we all knew before. But where is the remedy? Gentlemen say they are for taking commanding ground, that will ensure respect. Where is it? Let them give in their project. Is this the remedy, or is this the time? Gentlemen tell us we ought not to stop short of indemnity for the past and security for the future. Are they then for going to war with Britain on the same ground which Mr. Pitt took with the French Republic? Do they expect success in their project? And is peace to be destroyed, and the interests of this people compromitted, until what they please to call indemnity and security shall be obtained? Are they for going to war with Spain and France, and making a similar convention with them that we some time since made with Britain for spoliations committed on our commerce, and then by a kind of legerdemain draw from our own pockets wherewith to pay for those very spoliations? Is this the indemnity they expect to obtain? I want none of it. I almost dread to see a convention with any power across the Atlantic, with a stipulation to pay money, as I fear its only tendency would be to deprive us of that we have left. Make any sort of convention you please, and something will scarcely fail to fall out between the cup and the lip, by which you will have to pay the debts due to you by others. By some sort of legerdemain, the money of your *bona fide* citizens will get into the pockets of your diplomatists or their creatures on this and the other side of the water, into the hands of bureau men, of counting-house politicians. But I find gentlemen undertake to say, because I am indisposed to go to war, I am the advocate and apologist of Great Britain; and because I quote the able pamphleteer, who stands forth the godfather of the doctrines contained in it, I abjure them; and so far from costing me six cents, they cost me one hundred and fifty; and I consider that a better bargain than the other pamphlet, which did not cost me a sous. Am I to be considered as the apologist of Britain, because the defence of this country has been committed to weak advocates, or because its cause has been weakly defended or treacherously abandoned? No; I am the advocate of the circumstances of the times—of the constitution of this people—of common sense—of expediency. What does the gentleman from New York tell you? I admire the resentment he feels for the wrongs committed on our country, and I entertain a respect for him. He tells you every thing I have told you—that American merchants are employed in covering enemy's property. No,

he draws a distinction between native and adopted merchants, and says that he considers the latter as the root of the evil. I agree that this trade is carried on by foreigners naturalized among us. But the gentleman says the other nations of Europe treat us on the principle that free ships make free goods; while Great Britain treats us on the opposite principle, and contends for the principle of contraband of war, and the liability of enemy's property to seizure. Why is there this difference? Because those who treat on the principle of the *mare liberum* find it their interest to treat on this principle. But do they who have the mastery of the ocean consider it as their interest? And yet the gentleman arraigns one country for being governed by her own interest, while he applauds another for being governed by the same feelings.

But the gentleman says the Federal Constitution grew out of commerce. Indeed! I have always understood it grew out of the feeble and lax state of our Federation. I have no doubt the regulation of commerce, and the hope of obtaining an adequate revenue, aided its formation. But will the gentleman undertake to say the constitution was made to give us the mastery of the seas? If so, I will be glad to see how he makes it out. Will he say the finger of Heaven points to war?

Mr. J. CLAY said he was sorry the committee were determined to press this subject. He believed a delay of four or five days would be important; he therefore moved that the committee should rise.

Mr. ALSTON said, it would certainly be unnecessary for the committee to rise, with a view to decide upon the resolution offered by the gentleman from Pennsylvania, (Mr. GREGG.) The committee having refused in the first instance to take up this resolution, and having acted upon that which had been submitted by the gentleman from Maryland, (Mr. NICHOLSON,) was a sufficient evidence of the sense of this House as to its final adoption or rejection. The newspapers emanating from this place to all parts of the United States would convey the sense of the House as fully upon the resolution as though a final vote should have been taken; and should the resolution offered by the gentleman from Maryland be now decided upon, and agreed to, every one would be satisfied that the one offered by the gentleman from Pennsylvania would not be adopted.

Mr. A. said it was time—high time—that this House had come to some determination upon this important subject. It was time that the public mind

was put to rest. It was time that the American people were informed of the extent that we intended to go, and of the steps we intended to take towards Great Britain, in order to meet the aggressions committed by that Government upon the commerce of our country. He verily did believe the resolution submitted by the gentleman from Maryland, the merits of which it was in order upon the present motion to discuss, better calculated to have the desired effect upon that Government on whom it was intended to operate, than any other plan or project which had been submitted or talked of, inasmuch as it was only a commercial regulation or restriction, acknowledged by all Governments in the world to be perfectly within the control of every independent nation. Some gentlemen had thought it not sufficiently strong—that something more efficient should be adopted. For his part, he did believe it much stronger, as to the effect it would have in bringing Great Britain to terms of amicable adjustment, than that which had been submitted by the gentleman from Pennsylvania, and which was now sleeping on the table. This, Mr. A. said, was that kind of commercial regulation that carried with it the appearance of a determination to persevere in it; and, in his humble opinion, it was well calculated to distress that nation who had so long persisted in a regular system of aggression towards us. On the contrary, that which had been submitted by the gentleman from Pennsylvania was such a one as Great Britain would plainly discover we ourselves did not mean to persevere in, because it would readily be seen, that, while it distressed her, it would be equally injurious to us. Another reason suggested itself why he would prefer the resolution now under discussion. It seemed to be understood, on all sides, let which should be adopted, or whatever course should be pursued, that no system was to go into operation immediately—that full time was to be given for an attempt at friendly negotiation. It was intended as an expression of public sentiment. It was, therefore, of great importance to this nation, that the sentiment expressed should be with as much unanimity as possible. It was evident to all that the resolution offered by the gentleman from Pennsylvania, from the violent opposition it had met with, could not, if carried at all, be carried by that majority that the one now under discussion could. If, therefore, he in the first instance had been in favor, he should, after the discussion which had already taken place, think himself, for the sake of harmony alone, perfectly justified in abandoning it. The resolution now under discussion, which was offered by the gentleman from

Maryland, could not be objected to, as the other had been, on the ground of its being in any manner whatever calculated to produce war, if adopted in the full extent in which it was submitted. The object of the present resolution is a prohibition of certain articles, the growth and manufacture of Great Britain and her dependencies, from being imported into the United States; most of which articles, Mr. A. said, he was advised by those better acquainted than himself with mercantile transactions, could be obtained from other countries; and those which could not be obtained, we could either do very well without, or raise within ourselves. What effect, then, would this measure have upon Great Britain? No person would deny that it would lessen in her own country the value of her manufactures. Whilst our citizens at home were perfectly content, the voice of the artisan, the manufacturer, and the laborer in Great Britain, would be raised against the aggressions committed by their own Government, which caused us, and in fact compelled us, in self-defence, to enter into the regulation proposed.

MONDAY, March 17.

Importations from Great Britain.

The motion for the committee to rise having been rejected, the question was taken on the resolution originally proposed by Mr. NICHOLSON, when the committee rose, and the House concurred in its adoption—yeas 87, nays 35, as follows:

YEAS.—Evan Alexander, Willis Alston, jr., Isaac Anderson, David Bard, Joseph Barker, Burwell Bassett, George M. Bedinger, Barnabas Bidwell, William Blackledge, John Blake, jr., Thomas Blount, Robert Brown, John Boyle, William Butler, George W. Campbell, John Chandler, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, George Clinton, jr., Frederick Conrad, Jacob Crowninshield, Richard Cutts, Ezra Darby, William Dickson, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Findlay, James Fisk, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Isaac L. Green, Silas Halsey, John Hamilton, William Helms, David Holmes, John G. Jackson, Thomas Kenan, Nehemiah Knight, Michael Leib, Matthew Lyon, Duncan McFarland,

Patrick Magruder, Robert Marion, Josiah Masters, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Pugh, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, James Sloan, John Smilie, John Smith, Samuel Smith, Henry Southard, Joseph Stanton, David Thomas, Uri Tracy, Joseph B. Varnum, Matthew Walton, John Whitehill, Robert Whitehill, Eliphalet Wickes, David R. Williams, Marmaduke Williams, Nathan Williams, Alexander Wilson, Richard Wynn, Joseph Winston, and Thomas Wynns.

NAYS.—Silas Betton, Phaniel Bishop, James M. Broom, John Campbell, Levi Casey, Martin Chittenden, Leonard Covington, Samuel W. Dana, John Davenport, jr., Elias Earle, Caleb Ellis, William Ely, James M. Garnett, Charles Goldsborough, Seth Hastings, David Hough, James Kelly, Joseph Lewis, jr., Jonathan O. Mosely, Jeremiah Nelson, Roger Nelson, Timothy Pitkin, jr., Josiah Quincy, Thomas Sanford, John Cotton Smith, Thomas Spalding, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Daniel C. Verplanck, and Peleg Wadsworth.

Mr. EARLY moved that the resolution be referred to the Committee of Ways and Means to bring in a bill.

WEDNESDAY, March 19.

Death of Senator Jackson, of Georgia.

A message from the Senate informed the House that the Senate, having been informed that the honorable JAMES JACKSON, Esq., one of the Senators from the State of Georgia, died yesterday, have appointed a committee to take order for superintending his funeral.

The House then proceeded to consider the said message: Whereupon,

Resolved, unanimously, That this House will attend the funeral of JAMES JACKSON, Esq., late a member of the Senate of the United States.

Resolved, unanimously, That the members of this House do wear mourning on the left arm for the space of one month, in testimony of their respect for the memory of that distinguished revolutionary patriot.^[36]

Canal at the Rapids of the Ohio.

Mr. BOYLE, from a committee appointed, on the tenth ultimo, on the memorial of the Legislature of the State of Kentucky, made a report thereon; which was read, and referred to the Committee of the Whole, to whom was committed, on the fifth instant, the report of a select committee on the petition of the President and Directors of the Chesapeake and Delaware Canal Company. The report is as follows:

That, of the practicability of opening the proposed canal, and of its preference to one contemplated on the opposite side of the river, as well on account of the greater facility of its accomplishment, as of the superior advantages that would result to the navigation of the river, when accomplished, may, in the opinion of the committee, be correctly estimated by reference to a draft of part of the river, and notes explanatory thereof, which accompany the memorial. Of the immense utility of the proposed canal no one can doubt who reflects for a moment upon the vast extent of fertile country which is watered by the Ohio and its tributary streams, and upon the incalculable amount of produce which must, of course, necessarily find its way to market by descending that river and encountering the danger and difficulties of passing its rapids. But, besides the general advantages which would result from the completion of the proposed canal, it is, in the opinion of the committee, particularly interesting to the United States, inasmuch as it would greatly enhance the value of the public lands northwest of the Ohio. There can be but little doubt that, by the additional value it would give to the public lands, the United States would be more than remunerated for the aid which the Legislature of Kentucky have solicited.

From these considerations the committee would not hesitate to recommend a donation or subscription of shares to the amount contemplated by the law of the Legislature of Kentucky incorporating the Ohio Canal Company, if they believed the state of the public finances was such as to justify it. But, from the applications already made for aid in

opening canals, it is probable that, if the United States enter upon expenses of this kind, those expenses cannot be inconsiderable; and, as the revenue of the United States is already pledged, almost to the full amount, for purposes, though not more useful, yet more urgent, the committee are induced to submit the following resolution.

Resolved, That it is inexpedient to grant, at present, the aid solicited by the Legislature of Kentucky, in opening a canal to avoid the rapids of the Ohio.

FRIDAY, March 21.

Potomac Bridge.

An engrossed bill to authorize the erection of a bridge over the river Potomac, in the District of Columbia, was read the third time; and on the question that the said bill do pass, it was resolved in the affirmative—yeas 61, nays 52.

About 2 o'clock Mr. D. R. WILLIAMS said he had a motion to make, which required the galleries to be cleared. They were accordingly cleared.

WEDNESDAY, March 26.

Importation of British Goods.

The bill to prohibit the importation of certain British goods, wares, and merchandise, was read the third time.

The yeas and nays were called for on its passage.

The question to recommit the bill having been disagreed to, it passed—yeas 93, nays 32, as follows:

YEAS.—Evan Alexander, Willis Alston, jr., Isaac Anderson, David Bard, Joseph Barker, Burwell Bassett, George M. Bedinger, Barnabas Bidwell, William Blackledge, John Blake, jr., Thomas Blount, Robert Brown, William Butler, George W. Campbell, John Chandler, John Claiborne,

Christopher Clark, Joseph Clay, Matthew Clay, George Clinton, jr., John Clopton, Frederick Conrad, Orchard Cook, Leonard Covington, Jacob Crowninshield, Richard Cutts, Ezra Darby, John Dawson, William Dickson, Elias Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Findlay, James Fisk, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Isaiah L. Green, Silas Halsey, John Hamilton, William Helms, David Holmes, John G. Jackson, Walter Jones, Thomas Kenan, Nehemiah Knight, Matthew Lyon, Duncan McFarland, Patrick Magruder, Robert Marion, Josiah Masters, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Pugh, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Samuel Smith, Henry Southard, Joseph Stanton, David Thomas, Uri Tracy, Philip Van Cortlandt, Joseph B. Varnum, Matthew Walton, John Whitehill, Robert Whitehill, David R. Williams, Marmaduke Williams, Nathan Williams, Alexander Wilson, Richard Wynn, and Joseph Winston.

NAYS.—Silas Betton, James M. Broom, John Campbell, Martin Chittenden, Samuel W. Dana, John Davenport, jr., Caleb Ellis, William Ely, James M. Garnett, Seth Hastings, David Hough, Joseph Lewis, jr., Jonathan O. Mosely, Jeremiah Nelson, Timothy Pitkin, jr., Josiah Quincy, John Randolph, Thomas Sanford, John Cotton Smith, Thomas Spalding, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Thomas W. Thompson, Abram Trigg, Killian K. Van Rensselaer, Daniel C. Verplanck, and Peleg Wadsworth.

THURSDAY, March 27.

Introduction of Slaves into Territories.

Mr. D. R. WILLIAMS, from the committee appointed on the seventh ultimo, presented a bill to prohibit the introduction of slaves into the Mississippi Territory, and the Territory of Orleans; which was read twice, and committed to a Committee of the Whole on Saturday next.

FRIDAY, March 28.

Plurality of Offices.

The House resolved itself into a Committee of the Whole on the following resolutions submitted some time since by Mr. J. RANDOLPH.

Resolved, That a contractor under the Government of the United States is an officer within the purview and meaning of the constitution, and, as such, is incapable of holding a seat in the House.

Resolved, That the union of a plurality of offices in the person of a single individual, but more especially of the military with the civil authority, is repugnant to the spirit of the Constitution of the United States, and tends to the introducing of an arbitrary government.

Resolved, That provisions ought to be made, by law, to render any officer in the army or navy of the United States, incapable of holding any civil office under the United States.

The question was taken on these resolutions without debate.

The first was agreed to—ayes 54, noes 37.

The second was agreed to—ayes 75; and

The third was agreed to without a division.

When the committee rose and reported their agreement to the resolutions.

The House immediately considered the report.

On concurring with the Committee of the Whole in their agreement to the first resolution,

Mr. FISK said he sincerely regretted it was not in his power to vote for this resolution. He regretted there was no such principle in the constitution as is prescribed. Such a principle not being in the constitution, he did not conceive it in the power of the House to make the provision. It was not, in his opinion, in their power to say a man should not hold a seat in that House who was not prohibited by the constitution. It was on this ground only he was against the resolution under consideration.

Mr. J. RANDOLPH.—I think the gentleman from Vermont may in perfect consistence with the principle he has laid down, which I do not mean at present to contest, give his vote in favor of this resolution. He says that this House has not a right to make a disqualification which the constitution itself does not attach to the tenure of a seat on this floor; that the constitution

draws a line between the qualification and disqualification of a member, and that this House has no right to alter them. What do we propose to do? To add a new disqualification? No; to do that which the constitution put in our hands, which it not only authorizes but enjoins upon us. The constitution declares that each House shall be the judge of the qualification of its members. It is clearly, then, the duty of the House to expound what is or is not a disqualification; and we are now only about to declare what is such a disqualification—merely to expound the constitution on this head. I know some gentlemen are startled at the idea of expounding the constitution. But do we not do this every day? Is not the passage of every act a declaration on the part of this House that a decision upon it is among their constitutional powers? Or, in other words, is it not an exposition of the constitution? So, in this instance, I will suppose a man returned to serve as a member of this House, and that he is declared, for some reason, to be disqualified from holding a seat. This, according to the gentleman, would be expounding the constitution. We propose doing no more than saying, if the Secretary of State, or Chief Justice, should come here, they cannot hold a seat. We say that an abuse exists under the constitution, and offer a remedy.

I have heard some quibbling about the meaning of the word “officer.” What is the meaning of office? Agency; it is the office of a man’s cook to dress his dinner, of a tailor to supply him with clothes; and it is the office of a contractor to fatten on the land—to acquire lordships, demesnes, baronies—extensive territory—by the advantage he derives from holding the public money, in virtue of his contract. But it is asked, if a contractor is an officer; and whether he can be impeached? because, under the constitution, all civil officers are liable to impeachment. Would you impeach the Marshal of the District of Columbia? It may be answered that you may impeach him, but that you would not probably do so, because that would be breaking a butterfly on the wheel. Would you impeach a deputy postmaster? And yet when the postmaster at New York accepted his appointment, did he not vacate his seat in the Senate? There is no doubt a contractor is an officer *pro tempore*—it is not an office in perpetuity, but created for a time, and for a particular purpose. And I will ask, if it is not more dangerous to the independence of the two Houses to admit commissioners and contractors within their walls than officers with legal salaries and appointments? If we are to admit either, I say, give me the legal officer, with a determinate salary and definite powers, rather than the contractor who may gain thousands and

tens of thousands of dollars by a single job. But, if the gentleman from Vermont is of opinion that a contractor is not an officer, under the constitution, I hope he will join me in another vote, on an amendment which I shall beg leave to offer—this goes only to purge these walls, not those of the other House. I mean an amendment declaring void all contracts made with members of either House, and on this principle: between the sessions of the Legislature it is possible for a member to receive a lucrative job, by which he may put thousands in his pocket, and which being completed in the recess, and there being nobody to take cognizance of it, it will be impossible to apply a remedy. But, I hope this construction, which, so far as relates to our own House, we have an undoubted right to make, will obtain as the true construction of the constitution.

But it is said that this House, and Houses which may hereafter meet, may give the constitution a different construction. No doubt of it; and this may operate to the end of time. A former House passed a sedition law; a subsequent House deemed the law unconstitutional. It is true they did not declare it so, and I am sorry for it; but there is no doubt of the fact. Now, we may pass a sedition law again to-morrow, and the people rise up against it, and send different members to represent them. The people may again slumber; as long as you keep your hands from their pockets, they will keep their eyes from yours; and, in the same way, this law may be repealed. I can, therefore, see no force in this objection. The courts of justice undertake to expound the constitution, and shall not the House of Representatives be as competent to do this as any court of justice? I will suppose a case, that of a man condemned under the Sedition law by a tribunal of justice. Suppose men of different principles come on the bench, would they hesitate to reverse the preceding decision of the court? Indisputably not. Here, too, then, we would behold varying and repugnant decisions.

Mr. EPPES.—I have no doubt that every objection which can be made to a member of this House holding a civil office during his continuance as a Representative, applies with equal force to his holding a lucrative contract. The framers of the constitution in excluding civil officers from the floor of this House, most certainly intended to prevent any species of dependence which might influence the conduct of the Representative—to prevent his looking up for preferment to the Executive, or being biased in his vote by Executive favor. A lucrative contract creates the same species of

dependence, and every objection which could be urged against an officer, applies with equal force against contractors, who are dependent on the Executive will, and particularly carriers of the mail. While, however, I make this admission, I do not believe we have power to pass this resolution. The words of the constitution are: "No person holding an office under the United States shall be a member of either House during his continuance in office." These words are plain and clear. Their obvious intention was to have excluded officers, and officers only. It would certainly have been equally wise to have excluded contractors, because the reason for excluding officers applies to them with equal force. We are not, however, to inquire what the constitution ought to have been, but what it is. We cannot legislate on its spirit against the strict letter of the instrument. Our inquiry must be, is he an officer? If an officer, under the words of the constitution, he is excluded; if not an officer, we cannot exclude him by law. It is true, as has been stated, that, by the constitution, we are made the judges of the qualifications of our own members. This judgment, however, is confined within very narrow limits. The constitution prescribes the qualifications of a member. We can neither narrow nor enlarge them by law. Our inquiry can go no further than this: has the Representative the qualifications prescribed by the constitution? An extensive meaning has been given to the word "office." How far such a construction of the meaning of this word is warranted, I leave for others to decide. That all contractors are not officers, I am certain. A man, for instance, makes a contract with the Government to furnish supplies. He is certainly not an officer, according to the common and known acceptance of that word. He is, however, a contractor, and, under this resolution, excluded from a seat here. A carrier of the mail approaches very near an officer. The person takes an oath, is subject to penalties, the remission of which depends on the Executive. His duties are fixed and prescribed by law. Near, however, as this species of contract approaches to an office, I do not consider that the word "office" in the constitution can include even this species of contract. I consider the word "office" in the constitution ought to be construed according to the usual import and meaning of that term; and as I do conscientiously believe that the word "office" and the word "contract" cannot be tortured to mean the same thing, I shall vote against the resolution.

Mr. ALSTON.—While I am as much opposed as any man to see any holder of public money within these walls, I cannot justify myself in declaring

what is or what is not the constitution. If in any case this ought to be done, this surely should be the last. What is its effect? To deprive a member of his seat on the vote of a bare majority, when the constitution has declared that "no seat shall be vacated, but on the vote of two-thirds of the members." Let this House say so, and what becomes of a contractor, if any such there be within these walls? The decision of the House will be in violation of the constitution. No man who knows me will imagine that I have any partiality for contractors holding seats within these walls. I have never held a contract, or received a cent of the public money but for my wages as a member of this House. I am, therefore, as disinterested as man can be on this point. If there is a contractor within the meaning of the constitution, let him be pointed out. I am not certain how I shall vote upon such a proposition. But I will not declare beforehand a particular construction of the constitution. If I believe the case comes within the constitution, of which I am not certain, I will vote for clearing the House of such a member. But I will not consent to a majority declaring in this way what they cannot carry into effect. How can this be done? If you cannot get two-thirds of the members of this House to vacate the seat, I ask what becomes of the resolution declaratory of the meaning of the constitution? But it is idle to pass a declaratory resolution unless it can be carried into effect. One thing I will say, if the mover will modify his resolution so as to impose a penalty on any officer who shall make a contract with a member of Congress, I will give it my consent. For I wish to see no man in these walls dependent on the Government. I still adhere to the principle which I set out with, when I entered into public life, for I became a member of the legislature of the State which I have the honor to represent at the age of twenty-one; but there was no office in the gift of any government which I would possess. This is a principle to which I strictly adhere, and I do not believe I have any relation on earth who holds an office, numerous as my relatives are.

Mr. R. NELSON said he was sorry that he could not on this occasion, consistent with the oath he had taken to support the constitution, advocate the resolution under consideration. He agreed that it was highly improper for contractors to hold seats in that House, as there were many cases in which they could not give a free and impartial vote; but in his opinion there was no power to exclude members from a seat, unless that power was contained in the constitution. He said he would give his idea of the spirit and meaning of the constitution on this point. They were bound by its letter

—where the letter and the words of it were plain, they were bound strictly to adhere to them; where, from the wording, the meaning was doubtful, or difficult, every member was bound to put that construction which his judgment dictated. But where there was no difficulty, where the words were plain and obvious, he would ever raise his hands against what was called the spirit of the constitution, or, in other words, giving it a meaning which the words would not bear. If this power existed in the constitution, it must be found under that section which declares, that “No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House, during his continuance in office.” The question then comes to the single point: Is a contractor an officer under the constitution? If he is, there is no doubt he may be excluded from a seat in this House; but if he is not, he cannot be excluded. What then is the idea of an officer under the constitution? It either must be recognized by the constitution, or some law passed in conformity to it, for no man under the Government has a right without law to create as many offices as he pleases. The Postmaster-General has a right to contract for carrying the mail; he may employ for this purpose fifty, five hundred, or five thousand men. Will any body thence contend that the Postmaster-General has the right of creating five thousand offices? Our constitution has been justly extolled as the freest in the world, and as the best calculated to promote the happiness and security of the people. It has been called free in contradistinction to those despotic governments, where all the offices are held up to sale. Is not this the case with contracts? Are they not uniformly given to the lowest bidder? What government of principle then is this, which proposes to put a construction upon the constitution, by which offices under the Government shall be thus exposed to sale? But are they in truth officers of the United States, recognized either by the constitution or laws? No, they are not officers of the United States, they are mere hirelings of the Postmaster-General; he has not the power of setting up the constitution to the highest bidder. If so, it is no longer a free constitution; it does not deserve the eulogiums which have been so justly passed upon it.

Mr. EARLY.—I would not rise to trouble you were not the yeas and nays to be recorded on this question. I am as fully sensible as the honorable

mover of the resolution, or any other gentleman on this floor, of the extreme impropriety, to say the least of it, of persons remaining members of this House who hold a contract under the Government to which any emolument is attached. With him and them I believe, that of all descriptions of appointment, this is the most improper to be blended, where the emoluments are not fixed by law, but rise or fall with circumstances. I am therefore as willing as any person can be to adopt any measure to effect a remedy of this evil, which we possess the constitutional right of doing. My difficulty on this subject is not the same with that presented to the minds of some gentlemen, that we are not authorized to pass a resolution putting a construction upon the constitution. On this subject, by the constitution we are made judges of the qualifications of the members of this House. If so, we are necessarily judges of their disqualification also. One power implies the other. I therefore have no difficulty on this score. The simple question is, in my mind, whether a contractor is an officer under the constitution? My own opinion is decidedly in the negative—an opinion formed after the most mature reflection. I can appeal to you, sir, that I have sought after truth on this subject with industry; and I can appeal to other members to attest my having contemplated early in the session the offering a resolution as the foundation of a law, to give effect to the object of the gentleman from Virginia, to declare void any contract made by any officer under this Government with any member of either House. So far I am prepared to go, if any member shall introduce such a proposition. The passage of such a law will remove the inconvenience which might arise from interfering decisions made in this House at different times, and will prevent the existence of a different rule in the two branches of the Legislature.

Mr. J. RANDOLPH admitted that this might be, as he was convinced it was with many gentlemen, and hoped it was with all, a question admitting of a fair difference of opinion. It was a question that respected the construction of the Constitution of the United States. The point in issue, whether a contractor is or is not an officer of the United States, had been set aside by being begged. Gentlemen argue as if it was proposed to add a new qualification to holding a seat on this floor, when in truth, no such question existed; the only question was, whether there was an existing disqualification. While I am up, said Mr. R., permit me to say the gentleman from Maryland has, with a peculiar infelicity, abandoned the ground which he had first taken. He says that a contract cannot be an office, because the

former are put up to sale; and because no man, under the constitution, can possess the power of creating an indefinite number of offices. And yet, how are those men who carry the mail or discharge the duties of postmasters appointed, but on the mere *dictum* of the Postmaster-General? And how are foreign Ministers appointed? They are not appointed by law. The President nominates as many as he pleases, and is only limited by the money at his disposal. As to the offices under the Postmaster-General, as has been alleged, being let to the lowest bidder, I believe it would be difficult to establish the allegation. I understand that that is not the principle on which they have been let out. We are told that a contract is nothing but a bargain. It certainly is a bargain. But suppose the office of Postmaster-General, as that seems in this debate to have engaged so much of the attention of gentlemen, should be let to the lowest bidder; would the person that discharged those duties be less an officer of the United States? There is one office which I believe is always let to the lowest bidder—a common executioner. Who is he? The deputy of the sheriff: and *quo ad hoc*, he is as much an officer as the superior who employs him.

Mr. ELMER said it was perfectly clear to him, that the members of that House were not at liberty to vote for the resolution under consideration. Both common sense and the constitution forbade considering a contract in the light of an office, and he had never before heard it contended that they were equivalent terms. He would cordially give his vote for any law which could be constitutionally passed, to get rid of speculation and corruption of any sort, but the oath which he had taken to support the constitution limited his power, which he could not transcend.

Mr. KELLY said he would concisely assign the reasons which would induce him to vote against the resolution. He did not believe an officer and a contractor meant the same things. With regard to the contractors holding a seat on that floor, it might happen that a man might be a contractor without being in the least disqualified from impartially discharging all the duties of a member, as the contract which he formed might be more for the good of others than his own benefit. He, however, allowed that where a person held a seat, and made use of the power it gave him to make a contract, he was highly censurable. Still he was of opinion that it was not in the power of the House to declare the two appointments incompatible, unless the constitution expressly authorized them. In examining the constitution he found no such

provision. Though it had been attempted to be shown that a contractor and an officer were one and the same, he believed they were very distinct things. A contractor receives no authority from Government; his contract was derived from an officer, and all the power he possessed was derived from him, who was only amenable for the performance of the duty to the person who appointed him. A contractor could not, therefore, be considered as an officer under the constitution, amenable to the United States.

Several allusions, said Mr. K., have been made to cases which have occurred under the Postmaster-General, but until these shall be particularly pointed out, it will be impossible for us to decide how we are to act. I believe that it does not become this House to pass declaratory acts relative to the constitution. It ought, in my opinion to stand on its own footing; and every case that is presented ought to be decided, not by a declaratory act, but by the constitution itself. My colleague says that the judges of the federal as well as State courts take an oath as well as we do, to support the constitution; and that, notwithstanding they are in the daily habit of construing the constitution. But there is a wide difference between their deciding particular cases which properly come before them, and this House going into a general declaration without any such particular case. Would the judges undertake to declare the meaning of the constitution without the existence of a particular case calling for their decision? So that the very thing which the House is about doing, has been invariably avoided by the judges.

The question was then taken by yeas and nays on agreeing to the resolution—yeas 25, nays 86.

MONDAY, March 31.

Yazoo Claims.

A message was received from the Senate informing the House that they had passed a bill to carry into effect the provisions of the eighth section of the “Act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.”

The bill having been read the first time—

Mr. R. NELSON said he should not, on this occasion, go into an examination of the principles of the bill, as they were well understood by the House. They went to practise one of the grossest impositions he had ever known. In order to get rid of what he considered a stain on the statute book, and a disgrace to the nation, he moved that the bill be rejected.

The question was accordingly put from the Chair, "Shall the bill be rejected?"

On the motion of Mr. LEIB, it was determined to take the yeas and nays.

The question was then put, Shall the bill be rejected? and passed in the affirmative—yeas 62, nays 54, as follows:

YEAS.—Isaac Anderson, David Bard, Burwell Bassett, George M. Bedinger, William Blackledge, John Blake, jun., Thomas Blount, Robert Brown, William Butler, Levi Casey, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John Dawson, Elias Earle, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Silas Halsey, John Hamilton, David Holmes, Walter Jones, Thomas Kenan, Michael Leib, Duncan McFarland, Robert Marion, Josiah Masters, Nicholas R. Moore, Thomas Moore, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newton, jun., Gideon Olin, John Pugh, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Thomas Sanford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Samuel Smith, Henry Southard, Thomas Spalding, Richard Stanford, Philip R. Thompson, Abram Trigg, John Whitehill, Robert Whitehill, David R. Williams, Alexander Wilson, Richard Wynn, and Joseph Winston.

NAYS.—Willis Alston, jun., Joseph Barker, Silas Betton, Barnabas Bidwell, John Campbell, John Chandler, Martin Chittenden, Orchard Cook, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jun., William Dickson, James Elliot, Caleb Ellis, Ebenezer Elmer, William Ely, William Findlay, James Fisk, John Fowler, Isaiah L. Green, Seth Hastings, William Helms, David Hough, John G. Jackson, James Kelly, Joseph Lewis, jun., Matthew Lyon, William McCreery, Jeremiah Morrow, Jonathan O. Mosely, Jeremiah Nelson, Timothy Pitkin, jun., Josiah Quincy, John Russell, Peter Saily, Martin G. Schuneman, John

Cotton Smith, Joseph Stanton, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas W. Thompson, Uri Tracy, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Eliphalet Wickes, Marmaduke Williams, and Nathan Williams.

So the bill was rejected.

Mr. J. RANDOLPH moved that the House adjourn. He said that a few days ago the House had adjourned on account of the death of General Jackson. He hoped they would now adjourn on account of his resurrection. For he had told him, that if he could give a death-blow to the Yazoo business he should die in peace. Adjourned, yeas 58.

TUESDAY, April 1.

Plurality of Offices.

On motion of Mr. JOHN RANDOLPH, the House took up the report of the Committee of the Whole on sundry resolutions agreed to by them on the 28th ultimo. When the question was put on concurring in the report of the Committee of the Whole in their agreement to the second resolution as follows:

2. *Resolved*, That the union of a plurality of offices in the person of a single individual, but more especially in the military with the civil authority, is repugnant to the spirit of the Constitution of the United States, and tends to the introducing of an arbitrary Government:

Mr. BIDWELL said he would very concisely assign his reasons for voting against this resolution. It declares that “the union of a plurality of offices in the person of a single individual, but more especially of the military with the civil authority, is repugnant to the spirit of the Constitution of the United States, and tends to the introducing of an arbitrary Government.” It appeared to him that this was not a correct declaration. If the constitution itself be referred to, it will appear that it recognizes a union of civil and military offices in the same person. Such a union is to be found in the First

Magistrate of the United States, who exercises the highest Executive civil functions, and is at the same time Commander-in-Chief of the Army and Navy, and of the militia while in actual service. The same principle pervaded the constitution, he believed, of every State. There was also a union of civil and military authority in several offices, by acts of Congress. This was the case with the marshals in certain cases, and officers who are charged with the superintendence of Territorial affairs. If it were proper, said Mr. B., as I do not think it is, by a vote of this House, to undertake to define the constitution, it still appears to me that we cannot consistently say that the union of a plurality of offices in the person of a single individual, but more especially of the military with the civil authority, is repugnant to the spirit of the Constitution of the United States. A declaration of that kind would be a vote of censure on the people of the whole United States, for having adopted the Federal Constitution, on the people of the several States, for having adopted their constitutions, and on the Legislature under both Governments, for having passed laws which authorized such a union.

Mr. J. CLAY said, the objections of the gentleman arose from not having properly considered the nature of the union of civil and military office in the First Magistrate. By the constitution, the military was placed in strict subordination to the civil power. For this reason the President of the United States had placed under his control all the officers of the Army and Navy. The union contemplated in the resolution before you, said Mr. C., is that which gives the actual discharge of civil powers to an officer who has actual command of your army. I ask if it was ever in the contemplation of the constitution, that the President should in person head your armies and command your fleets? I believe not. There exists in one of the Territories such a union as is contemplated in the resolution. In Louisiana a person holding the office of Governor, is at the same time Commander-in-chief of the Army of the United States, in virtue of his appointment of Brigadier-General. Will any man pretend to say that a union of offices, such as these, the discharge of whose duties is incompatible, is such a union as is contemplated in the constitution? No; the union in the constitution was only intended to give the President a control over the Army and Navy; while this resolution contemplates the positive and actual union of powers in the same person, powers which at the same time he may be called upon to exercise at different and distant places. To separate these powers is the object of the

resolution. I hope the resolution will be agreed to, and the separation take place.

Mr. J. RANDOLPH.—My friend from Pennsylvania has left me little to say on the question, and indeed I have heard nothing in the shape of argument, or assertion, but what I was prepared to hear, and of which I apprised the House some time ago. It has come out at last from the lips of a man who has prided himself upon being the champion of the Constitution of the United States to-day, although but a few days ago he threatened us with a dissolution of the Union, that the constitution has no spirit in it. He calls on any man to lay his finger on that spirit. What does the Constitution of the United States say? Does it not guarantee to each State a Republican form of Government? Is there no spirit in this? Is not the constitution then devised under the influence of a Republican spirit, for the benefit of the people who are governed by it, and not for the exclusive benefit of those who administer it? Will any man pretend to say that a Republic is any thing or nothing? And that it is congenial to such a Government that the civil and military authority should be vested in the same hands? Is it not of the very essence of such a Government that the military should be kept in strict subordination to the civil power? And have not your laws, which give to marshals in certain cases a power over the military, been passed to keep the military under such subjection? How is the military to be kept in such subjection, when, according to the usage of the Romans, the leader of an army is the Governor of a province? If the constitution has no spirit in it, it is a dead, lifeless thing, not worth the protection of any man of sense. But I am happy that it has a spirit, which I trust will save this nation, even if its letter shall be killed.

Mr. QUINCY said he would merely observe, that, though it were true that a union of civil and military offices in the same person was repugnant to the spirit of the constitution, it was not true that a union of different offices in the same person was repugnant to it. They had to-day united two offices in the same person, in the bill relative to the Territory of Michigan. They had heretofore constituted several of the officers of the Government Commissioners of the Sinking Fund. He could see nothing in the constitution which interfered with a plurality of offices, which in many instances was attended with great practical benefit. As there was therefore

in the constitution nothing explicit against this union, he could not vote for the resolution.

Mr. GREGG said he believed it was contrary to the spirit of the constitution, that civil and military offices should be united in the same person; but, he would ask, what benefit would result from such a declaration? The power of appointing to office was vested in the President and Senate, who were sworn to support the constitution. They were, therefore, the judges of the powers with which they were invested. In the exercise of this power, they have actually declared that they do possess it. What does this resolution amount to? If they undertook to declare the President guilty of such a flagrant act as involved a violation of the constitution, it was their business to impeach him. Mr. G. said, as he could see no good likely to arise from this resolution, he should not vote for it. The practice it referred to was not new, though he had always thought it wrong. He recollected, that, some years since, the Governor of the Northwestern Territory was likewise Superintendent of Indian Affairs and Commander-in-chief of the Army, for all which appointments he drew pay, though no notice had been taken of it. Other instances of the same kind might be pointed out. He did believe this union was contrary to the spirit of the constitution—to the true spirit of a Republican Government—and if the gentleman from Virginia would bring forward an amendment to the constitution to prohibit such a union, he would vote for it.

Mr. J. RANDOLPH.—Six years ago, there could not have been a doubt of the right of this House to pass this resolution—now, the right is disputed. Have we not a right to pass a resolution referring to the constitution, in order to bring in a law grounded on it? Do we not do this every day? One word as to the appointment of General Wilkinson. Gentlemen are fond of sheltering themselves behind great names. I have no hesitation in saying I think the Executive was wrong in making that appointment. I have no hesitation in saying so here, though gentlemen who join me out of doors are reluctant to make the same declaration on this floor. I do not think, however, the persons who made the appointment as reprehensible as the persons at whose importunate solicitation it was made. I believe that a man of good sense, and of upright intentions, may be induced to do that which his own judgment will afterwards condemn. It is well known, that the ante-chambers of our great men were crowded with applicants for offices in

Louisiana. I have understood that for every office there were at least one hundred and fifty applications. Thus much for the idea which has been thrown out of the existence of a scarcity of characters to supply these offices.

Mr. VARNUM considered the resolution as going too far, and said it was a very common thing for two offices to be united in one man. It had been usual to unite the diplomatic character with the military command in our intercourse with the Indians, and a diplomatic character had likewise been given to our naval commander in the Mediterranean. Instances of a plurality of offices in one person were very numerous. If there existed, at present, any case, in which such a union was incompatible with the discharge of official duties, he hoped it would be pointed out; whether there was or was not, he could not say. But where did the responsibility for such appointments lie? Not that House, but the other branch of the Legislature was responsible; for the correct discharge of whose duties they were accountable to the people. Where, then, was the propriety of an interference by the House? If the President made an appointment against the spirit of the constitution, the people would know it. Was it presumable that if a law was to pass this House, predicated on the resolution under consideration, the other branch of the Legislature would agree to it, after having sanctioned the appointments at which it is levelled? Was this House to sit as a court of censure? The constitution did not delegate such a power. Our very laws, in various cases, direct the union of office prescribed by the resolution. Ought we not, then, in the first place, to repeal those laws before we pass a resolution in direct hostility to them?

Mr. V. said, he had no hesitation to observe, that the military and civil office should, in general, be kept distinct; but he believed there were cases where it was necessary. He was perfectly willing to leave the responsibility where the constitution had placed it—in the hands of the President and Senate. With regard to the union of the military office in the cases alluded to, he would not undertake to say whether it was proper or not. He could readily, however, conceive, that the union arose from the most correct motive, as the country was a frontier, which might be menaced with danger, and which might require the united exercise of the military and civil authority to repel it.

Mr. J. CLAY said he would ask whether the ordinary union of military and civil powers in the Governors of the Territories was such as that contemplated in the resolution? The case of the Governor of Louisiana had been alluded to, where the same person, he believed, received the pay of Governor and Brigadier. Is that the case with the other Governors? He believed gentlemen would not say that it was necessary that the Governor of New Orleans should be a brigadier-general in the army; and yet they allowed that to be the most vulnerable point on the frontier. If, then, they say that the union is necessary in one case, they will admit that it ought to be in the other.

Mr. LEIB said that, viewing the resolution as an abstract proposition, he had no objection to giving it his support; but if it was intended as a side attack upon the Administration, he was not prepared to vote for it. Before he was prepared to act on it under this view, he wished for facts which were not before the House. He, therefore, moved a postponement of the resolution till Monday.

The motion to postpone was lost.

The question was then taken on agreeing to the resolution, and decided in the negative—yeas 31, nays 81.

WEDNESDAY, April 2.

Claim of Beaumarchais.

Mr. BASSETT presented to the House a petition of Amelia Eugene Beaumarchais, heiress and representative of the late Caron de Beaumarchais, deceased, by J. A. Chevallie, her attorney, which was received and read, praying to be relieved from an unfavorable settlement at the Treasury of the United States, of the accounts of the deceased, for supplies furnished, and services rendered to the United States, during the Revolutionary war with Great Britain.

Ordered, That the said petition be referred to the Committee of Claims.

Charlestown, Va.

Mr. JACKSON called for the order of the day, on the report of the Committee of Commerce and Manufactures, on the petition of sundry inhabitants of Charlestown, in Virginia, praying that that place should be made a port of entry.

Mr. LEIB moved an indefinite postponement of the report.

Mr. JACKSON opposed this motion, and spoke at some length in favor of the constitutional right of the petitioners to be allowed a port of entry.

Mr. CROWNINSHIELD, though against postponement and in favor of discussing the principle, contested the right.

Mr. LEIB withdrew his motion; when the motion to consider the report was disagreed to—only 13 members rising in favor of it.

Exclusion of Army and Naval Officers from Civil Offices.

The House took up the unfinished business of yesterday, being the report of the Committee of the Whole, agreeing to the following resolution, offered by Mr. J. RANDOLPH:

3d. *Resolved*, That provision ought to be made, by law, to render any officer in the Army or Navy of the United States incapable of holding any civil office under the United States.

Mr. FISK moved to postpone this resolution indefinitely.

This motion was supported by Messrs. FISK, ELMER, and COOK; and opposed by Messrs. J. CLAY, J. RANDOLPH, and J. C. SMITH.

When the question was taken by yeas and nays, and the motion disagreed to—yeas 43, nays 72.

The question was then taken that the House do agree with the Committee of the whole House in their agreement to the said resolution, and resolved in the affirmative—yeas 94, nays 21, as follows:

YEAS.—Willis Alston, jun., Isaac Anderson, David Bard, Burwell Bassett, George M. Bedinger, Silas Betton, William Blackledge, John Blake, junior,

Thomas Blount, Robert Brown, William Butler, John Campbell, Levi Casey, Martin Chittenden, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Leonard Covington, John Dawson, William Dickson, Elias Earle, Peter Early, James Elliot, Caleb Ellis, William Ely, John W. Eppes, William Findlay, James Fisk, James M. Garnett, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Silas Halsey, John Hamilton, Seth Hastings, David Holmes, David Hough, John G. Jackson, Walter Jones, Thomas Kenan, John Lambert, Michael Leib, Joseph Lewis, junior, Duncan MacFarland, Robert Marion, Josiah Masters, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newton, junior, Gideon Olin, Timothy Pitkin, jun., John Pugh, Josiah Quincy, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Peter Saily, Thomas Sammons, Thomas Sanford, Martin G. Schuneman, John Smilie, John Cotton Smith, John Smith, Samuel Smith, Thomas Spalding, Richard Stanford, Joseph Stanton, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Thomas W. Thompson, Uri Tracy, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Robert Whitehill, David R. Williams, Marmaduke Williams, Nathan Williams, Alexander Wilson, Richard Wynn, and Joseph Winston.

NAYS.—Evan Alexander, Joseph Barker, Barnabas Bidwell, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, Ezra Darby, John Davenport, junior, Ebenezer Elmer, Isaiah L. Green, James Kelly, William McCreery, Roger Nelson, John Rhea of Tennessee, John Russell, Ebenezer Seaver, James Sloan, Joseph B. Varnum, John Whitehill, and Eliphalet Wickes.

Ordered, That a bill, or bills, be brought, in pursuant to the said resolution; and that Mr. JOHN RANDOLPH, Mr. DAVID R. WILLIAMS, and Mr. JOHN C. SMITH, do prepare and bring in the same.

FRIDAY, April 4.

Prohibition of Military Officers from holding Civil Office.

Mr. JOHN RANDOLPH, from the committee appointed on the second instant, presented a bill to prohibit officers of the Army and Navy from holding or exercising any civil office; which was read twice, and committed to a Committee of the Whole to-morrow.

TUESDAY, April 8.

Motion to Adjourn.

On motion of Mr. EARLY,

“Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized to adjourn their respective Houses on Wednesday, the sixteenth of April instant.”

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

THURSDAY, April 10.

Navy Appropriations.

The House resolved itself into a Committee of the Whole, on the bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and six.

The bill was read by sections.

The CHAIRMAN having read that part of the bill which makes an appropriation “for repair of vessels, store rent, pay of armorers, freight, and other contingent expenses,”^[37]

Mr. J. RANDOLPH moved to fill the blank with \$411,950.

Mr. D. R. WILLIAMS moved to strike out the words “and other contingent expenses.” He said he made this motion with a view of ascertaining for

what objects these contingent expenses were intended to provide. He would ask the Chairman of the Committee of Ways and Means for information on this point. He believed the sum contemplated to be appropriated unnecessarily large.

Mr. J. RANDOLPH said the gentleman had asked for information which it was not in his power to give. He was as much in the dark as the gentleman as to the items of contingent expenditure; and he should not have moved to fill this blank with so large a sum, but from the conviction that whether they provided the money or not, it would be spent, and an additional appropriation be made the next session. Mr. R. said he viewed an appropriation bill, under present circumstances, a mere matter of form; he believed also all the items of appropriation might as well be lumped together, and it might be declared that a million of dollars were appropriated. Had he been governed by his own opinion, instead of the forms which had been observed, he would have been in favor of drafting the bill in this way, for this reason: If the expenditures of the Navy exceeded this sum by \$600,000 there was no doubt the next Congress would make good the deficiency without any inquiry. He believed this, as what had taken place once might take place again.

Mr. R. said he had addressed a note to the head of the department, stating that on such a day the Committee of Ways and Means wished the appropriation bill to be taken up, and expressing a desire that he would give them information of the items of contingent expenditure, as they consider the sum required unnecessarily large. He had received an answer to this effect—the Secretary said he did not think the sum too large, without entering into any explanation. Mr. R. added, gentlemen may fill the blank as they please; it will be no check on the expenditure.

The Committee divided on agreeing to the sum named by Mr. RANDOLPH—ayes 46, noes 37.

Mr. D. R. WILLIAMS moved to strike out “and other contingent expenses.” He had before said that he had been impelled to make this motion from a sense of duty. This impression had been strengthened by the statement of the Chairman of the Committee of Ways and Means. He could not think it proper to make an appropriation to so large an amount, when the proper organ of the House had without success required information from the head

of the department, from whom he had only received a mere opinion. He hoped the committee would agree to strike out this general appropriation, that all the items of contingent expenditure might be stated to the House, and thereby form some check on the expenditure.

Mr. LEIB said he perceived in another part of the bill other mention made of contingent expenses. He would be glad to know what they were. The House ought to know the various items, or otherwise make a general provision for contingent expenses, and leave it to the head of the department to apply the money as he pleases.

Mr. DANA said the first contingent appropriation was for the navy, the second for the marine corps. If striking out the proposed words would enable the committee to obtain the information sought, he should vote for the motion. He had no objection to voting liberally for a navy; but he thought the Legislature ought to be well informed, as they would otherwise scarcely discharge their duty to their constituents.

The motion of Mr. WILLIAMS, to strike out “and other contingent expenses,” was disagreed to—ayes 32.

Mr. J. RANDOLPH moved to strike out that part of the bill making an appropriation “for completing the marine barracks at the city of Washington.” Mr. R. said this object appeared to require a standing appropriation; and, though the building was finite, the appropriation appeared to be infinite.

Motion agreed to—ayes 66.

The committee rose and reported the bill. The House having taken the report of the committee into consideration,

Mr. D. R. WILLIAMS, called for the reading of the document, stating the annual expenditures on the Navy, by which it appeared that the expenditures had been as follows:

For 1798	\$	570,314	24
1799		2,848,187	26
1800		3,385,340	48
1801		2,117,420	74
1802		946,213	24

1803	1,107,925	32
1804	1,246,502	74
1805	1,409,949	67
Total	13,631,853	00

Mr. D. R. W. renewed his motion to strike out “and other contingent expenses.” He thought the House ought, under existing circumstances, to show a disposition to economize, and to curtail the expenses of the Navy. What is the necessity for this expenditure? Why, the Constitution is in the mud, and the President^[38] on her beam ends! Thirteen millions and a half have been already expended, and it is now proposed to add \$411,000 for contingent expenses. In making this motion I have no object but to confine the Navy Department to proper expenses; but let them first state what they are.

The SPEAKER observed that this motion could not be received until the amendments of the committee had been acted upon.

Mr. D. R. WILLIAMS moved to strike out “for ordnance \$50,000,”^[39] He did not perceive the use of this appropriation. No gentlemen accustomed to travel, but must have seen the unprotected state of the ordnance; look at the Turk’s house, you will there see it lying exposed. To his knowledge it was in many other instances in the same situation.

This motion was lost—ayes 33.

The amendment of the committee to fill the blank with “\$50,000,” was agreed to, without a division.

Mr. EPPES offered a proviso declaring that a larger sum than \$30,000 shall not be expended on the repairs of any one frigate.

Mr. J. RANDOLPH.—I shall vote against this motion on the same principle that I voted to fill the blank relative to contingent expenses, with \$411,000. If we cannot restrain the expenditures of the Navy Department within the sum annually fixed, after giving as much as is asked for, is it not the idlest thing to attempt to restrain them by giving less? The principle on which I voted for filling that blank was this: To give to the Navy Department what it asks, that if, at the end of the year, more shall be expended, the blame may fall on the shoulders of the Secretary, and not on us. The sum appropriated

for contingent expenses amounts to \$411,000; this is not the half, but it is more than a third of the whole sum appropriated, and it may be expended on repairs or any other item of contingent expenditure. It is enormous. But withhold the appropriation, and where are you? The expense may be incurred, and the Government called on to make good the deficiency; and there the business will end.

With regard to the sum requisite for the repair of a frigate, her situation between this and the next year cannot be foreseen. The Secretary may have estimated \$30,000 as sufficient to repair any one frigate as they now stand; but they may be placed in such a condition as to require a much larger sum. But I am against the amendment, said Mr. R., not only for these, but for other reasons. I will never consent to legislate in such a way as to make it appear that we did legislate intelligently, when in fact we do not. If I can be satisfied that \$30,000 will be sufficient for the repair of a frigate, I may be induced to vote for it. But even this would be unnecessary. For, after all, the business must be confided to the Head of the Department; and he will be a better judge of the sum required for the repair of a vessel than we are. If he cannot be trusted, we ought, in my opinion, either to refuse the appropriation altogether, or take a very different step from that now proposed. For these reasons I am unwilling to appear to act understandingly on a subject which I know nothing about.

Mr. EPPES.—When I made this motion, it was under the impression that what is correct in private, is also correct in public conduct. We know that, when a vessel owned by a merchant gets in a certain state, it is more advisable to sell than to repair her. I do not know whether I have fixed the proper sum. All I wish to try is, whether the United States are disposed to repair at all events their frigates, whatever their state may be, or limit the sum, after expending which they shall be abandoned. I confess, however, that I am not anxious on this point. I merely wish to try the sense of the House.

On agreeing to Mr. E.'s motion, the House divided—ayes 38, noes 57.

Mr. D. R. WILLIAMS.—The curtailing Navy expenses may be unpopular, but I conceive it to be right. For that purpose I will renew the motion I offered in committee. I am of opinion that all the expenditures of this department should pass in review before the House. When I first came to

Washington, I went to the navy yard. I there saw an elegant building going on. I inquired under what appropriation this was authorized, and was answered, under the appropriation for contingent expenses. I remarked other expenditures, and received the same information. These expenditures may be all proper; but I think that every gentleman on this floor ought to be enabled to tell his constituents how the public money is expended. Talk to them of contingencies, and they will understand as little of the term as of land in the moon. Mr. W. concluded by moving to strike out “and other contingent expenses,” and calling the yeas and nays.

Mr. SMILIE said that no gentleman would censure him for attachment to the Navy. He never had been, nor was he now attached to a Navy. But the situation in which they were placed was well known. If there was time, he should be glad to have every item of expenditure produced by the proper officer, that they might know how to act. He was fully aware that, in the Navy Department, it was more difficult to anticipate the expenses than in any other. Though, therefore, he was no friend to a Navy, as it had not been thought proper to abandon the establishment, he considered it right to make such grants as were necessary for its support. If it was early in the session, or if he thought it possible to get the information, he should vote for calling for it. But as they were reduced to the necessity of saying at once whether they would, or would not support the Navy, he should be in favor of making this grant.

The yeas and nays having been taken on Mr. D. R. WILLIAMS’s motion, were—yeas 25, nays 86.

Mr. D. R. WILLIAMS moved to recommit the bill to a Committee of the Whole, with the view of obtaining information from the Secretary of the Navy before it was definitively acted on.

The motion was disagreed to—ayes 41, noes 56; when the bill was ordered to be engrossed for a third reading without a division.

The motion to read the bill a third time on Saturday was carried—ayes 55, when the following motion, made by Mr. D. R. WILLIAMS, was agreed to without a division:

Resolved, That the Secretary of the Navy be directed to lay before this House an estimate of the respective sums necessary to be appropriated for

repair of vessels, store rent, pay of armorers, freight, and contingent expenses of the Navy for the year 1806.

FRIDAY, April 11.

Exclusion of Military and Naval Officers from Civil Employment.

The bill to prohibit officers of the Army and Navy of the United States from holding or exercising any civil office, was read a third time.

Mr. GREGG said he never found himself involved in greater difficulty. He was in favor of the principle involved in the bill, and yet he could not vote for its passage. He believed that it was a correct principle that civil and military offices should be kept distinct, and he wished the constitution had prohibited the union. In relation to the individual on whom it was mentioned yesterday this law was to operate, he was satisfied it would be best if he could be removed from one of the offices he held; and if such a course had been pursued, he should have been in favor of destroying the office of brigadier-general to get rid of the officer. The effect of this resolution would be to take from a man an office which he held under the constitution. This power they did not possess. The only constitutional way to effect the object was to destroy the office. He would agree likewise to amend the constitution, so as to declare the union of civil and military office incompatible, or to a law providing that after a certain time no person should hold two such offices; and he should, if practicable, be for doing away the office of Governor of Louisiana, because he believed the person holding that office was, by his course of proceedings, producing a disturbance in the Territory. But although he entertained a favorable opinion of the principle of the bill, and would wish to remove that gentleman from one of the offices he held, yet he must vote against the bill, as it went to the unconstitutional removal of an officer.

Mr. SMILIE thought the passage of this bill involved a principle of a very serious nature. As to the abstract principle involved in the bill, he did not dispute its correctness, or that it ought to have been a part of the constitution. But the question was, whether they had a right by a legislative act, to prejudice any other branch of the Government. They were not in his

opinion warranted in travelling out of their own sphere to remove existing evils. There was but one way in which the constitution provided for the removal of a public officer. It says “the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” Here was the true and only sphere in which the House could move. If the constitution did not give the right of removal in any other way, it did not exist; and if they undertook by a legislative act to remove a man constitutionally appointed, who would pretend to say what mischief might not result from it? For these reasons he should vote against the bill.

Mr. QUINCY said it appeared to him that one of the arguments urged by gentlemen against this bill was fallacious—that which considered it an invasion of the rights of the Executive. This argument went on the assumption that the President would necessarily sign the bill sent to him, which might or might not be the fact. If he accedes to it, the argument of gentlemen falls to the ground; and if it shall be returned, it will then be time enough to discuss the constitutional principle. With regard to the general expediency of passing such a bill, the strongest arguments would be found in favor of it on the page of history. If history proved any thing, it was that the condition of those was most degraded who lived under the colonial governments of Republics. This was amply proved by the annals of the Carthaginian and Roman Republics. The territory under contemplation was a kind of colonial government, and might in the course of time be a powerful engine in the hands of the Executive. He wished, therefore, for a separation of the civil and military powers which might arise under it.

Mr. SMILIE said if the question was what was most convenient or best, he should have no difficulty in agreeing with the gentleman from Massachusetts. But it rested on higher ground—on what was constitutional. If he had a right to make the constitution, he would have no hesitation in separating the civil and military powers. But he could not forget the occurrences which had taken place in the State he had the honor to represent in part. In that State there had been but a single branch of the Legislature without any Executive veto on the passage of the laws. He had seen that Government destroyed by sweeping away the Executive power before the irresistible authority of the Legislature, and he had seen the

people obliged, from this circumstance, to give up that constitution and frame a new one. The measure under consideration was of the same kind. The constitutional powers of the Executive ought not to be encroached upon, unless the object was to produce confusion. He had seen the effects of such measures, and deprecated them. You may, said Mr. S., abolish the office, and the officer falls with it; but in no other way, while the office continues, can you remove the officer except by impeachment. Shall we, then, in order to get rid of a man who may not have done right (and as for myself I am ready to answer I have no affection for the man) go into a new scene, the length of which we cannot foresee? This principle once established may lead to any thing; it may lead to a destruction of the powers of the Executive altogether. I am as tenacious of the powers of the Legislature as any man, but I believe the powers of the Executive to be equally necessary. Indeed, I think there is more danger to be apprehended from the overwhelming power of the Legislature, than from the powers of the Executive. For the Legislature is so powerful that there can be little danger of the Executive encroaching upon it.

Mr. EPPES.—If I took the same view of the operation of this law with the gentleman from Pennsylvania, I should certainly give it my negative. As, however, I voted for the resolution on which it is founded, and consider the law in conformity with the resolution, I will assign, in a few words, the reasons which will govern my vote.

We have been told that all the departments of Government are independent of each other. No man denies the correctness of this principle. Let us not interfere with the constitutional rights of the other departments, nor abandon our own. The Executive has by the constitution the right of nominating for office any citizen of the United States, whether an officer of the Army and Navy, or not. This being a constitutional right, he certainly cannot be deprived of it by law; the right remains, and may be exercised if the law passes; the law merely severs the civil and military offices, and leaves the military officer to decide whether he will vacate his military command by holding or accepting a civil office; the Executive will have the same right to appoint—the individual will have the same right to accept the civil office as heretofore, but the acceptance vacates his command in the Army or Navy. If, then, the Executive right to appoint, and the right of the officer to accept, remains after the passage of this law, how can gentlemen

contend that the constitutional right of appointment is narrowed? All the difficulty on the present occasion arises from the law being made to bear on the constitutional right of appointment. It is intended to operate only on offices in the Army or Navy which are created by law, to the tenure of which we may annex such conditions as the public good may require. Under the constitution we have a right to prescribe rules for the government of the Army or Navy. In passing this law we add a new clause to the articles of war, viz: That an officer of the Army or Navy shall not hold or accept a civil office. Do gentlemen really suppose that we have no right to make this rule? If we can say that an officer shall not get drunk, that he shall have short hair, a coat of a certain form; that he shall not absent himself from his duty; or if we can in fact annex any other condition calculated to ensure to the public his services, why may we not declare by law that he shall not hold or accept a civil office, he shall forfeit his military command? The public welfare is the basis of the rules for the government of the Army and Navy; we have a right to prescribe such rules as the public good requires, and it is our duty to establish such as will ensure to us the services of our military officers in that station to which they are appointed.

But we are told we are about to remove from office a civil officer by law. The gentleman from Pennsylvania has read the clause of the constitution which provides for the removal of civil officers by impeachment. This law is not to operate on civil but on military officers; civil officers, it is true, are removed by impeachment—military officers by such forms as we think proper to prescribe by law; the operation of this law will be precisely the same with any other new rule prescribed for the government of the Army or Navy. Suppose we were to pass a law that any officer found drunk after the 1st of July next shall forfeit his office—his having been drunk before would not subject him to the penalty of the law—but his being drunk after the first of July next would deprive him of his office. Apply this to the case of a civil officer. An officer of the Army or Navy having accepted a civil office, or holding a civil office, does not at present vacate his military office; the reason is obvious—there is no law against it. If, however, after the first of July next, he accepts or continues to hold a civil office, he forfeits his military command under the new article of war which this law establishes. The law severs the two offices, declares them incompatible with each other, and leaves the individual free to make his election. As to the general principle that the civil and military ought to be separate and distinct, I have

no doubt. If the principle is correct, the law ought to extend to all cases, not only such as may hereafter arise, but to those which at present exist.

Mr. STANFORD supported, and Messrs. FINDLAY and SLOAN opposed the bill; when the question was taken by yeas and nays on the passage of the bill—yeas 64, nays 34, as follows:

YEAS.—Willis Alston, Isaac Anderson, Burwell Bassett, George M. Bedinger, Silas Betton, John Blake, jr., Thomas Blount, William Butler, Levi Casey, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Dawson, Elias Earle, Peter Early, James Elliot, Caleb Ellis, William Ely, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, Seth Hastings, David Holmes, John G. Jackson, Walter Jones, Michael Leib, Matthew Lyon, Duncan McFarland, Robert Marion, Josiah Masters, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Thomas Newton, jr., Gideon Olin, Josiah Quincy, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Thomas Sanford, Martin G. Schuneman, John Cotton Smith, John Smith, Samuel Smith, Thomas Spalding, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Philip R. Thompson, Thomas W. Thompson, Uri Tracy, Abram Trigg, Robert Whitehill, David R. Williams, Alexander Wilson, Richard Wynn, and Joseph Winston.

NAYS.—David Bard, Joseph Barker, Barnabas Bidwell, John Chandler, Jacob Crowninshield, Richard Cutts, Ezra Darby, Ebenezer Elmer, William Findlay, John Fowler, Andrew Gregg, Isaiah L. Green, James Kelly, William McCreery, Jeremiah Nelson, Timothy Pitkin, jr., John Pugh, John Rea of Tennessee, John Russell, Peter Saily, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Joseph Stanton, David Thomas, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, John Whitehill, Eliphalet Wickes, Marmaduke Williams, and Nathan Williams.

SATURDAY, April 12.

Naval Appropriations.

The bill making appropriations for the support of the Navy was read the third time.

Mr. J. C. SMITH moved to recommit it, for the purpose of restoring the provision for completing the marine barracks at the city of Washington, the amount of expense attending which, he understood, had been already partly expended.

The motion to recommit the bill having obtained—yeas 54—the House went into a Committee of the Whole, Mr. J. C. SMITH in the Chair.

Mr. J. CLAY observed, that since the House had agreed to strike out the provision for completing the barracks, he had understood that more money had been applied to this purpose than had been appropriated, and that it had been drawn from the private funds of one of the officers, under an understanding with the Head of the Department. He, therefore, moved to restore the item “for completing the marine barracks at the city of Washington, three thousand five hundred dollars.”

Mr. D. R. WILLIAMS said he should not make any objection to this motion. He would only call the attention of the House to the regard they had heretofore manifested to specific appropriations, under the hope that something would be done to circumscribe contingencies. He believed that this particular sum had been expended much to the interest of the country.

Mr. LEIB said, he was not very fond of making appropriations in this way—for particular officers to run into unauthorized expenditures, and then to call on Congress to make good the deficiency. Is this a provision for completing the house for the commandant? Is that the marine barracks? If not, then under what appropriation is it made? Is it under that of contingencies? Look at the buildings at the navy yard; is all this expense incurred out of the contingent fund? If it is not, it is not authorized by law. Mr. L. said, he did not know that he should make any objection to this item; but he thought it full time to check this loose mode of procedure.

The question was then put, and the motion of Mr. J. CLAY was agreed to without a division.

Mr. D. R. WILLIAMS said, he wished so to modify that part of the bill which appropriated four hundred and eleven thousand nine hundred and fifty dollars “for repair of vessels, store rent, pay of armorers, freight, and

other contingent expenses,” as to separate the items; to give the Department all it asked, but fix a particular sum to each item.

Mr. CONRAD opposed the motion, and remarked that the expenditure under one item might fall short of the sum appropriated, which would require that the deficiency should be made up from the surplus of another.

Mr. DANA said this amendment was warranted by the former usage of the House, and the message of the President of the United States. At the first session of the seventh Congress the President had observed that—

“In our care, too, of the public contributions intrusted to our direction, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose susceptible of definition; by disallowing all applications of money, varying from the appropriation in object, or transcending it in amount; by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money.”

This opinion had been given five years ago; and they might now infer that it had been found that it could not be carried into effect, as to the military or naval service. Mr. D. said he considered the gentleman from South Carolina as bringing up this question directly before the House: Will you adhere to specific appropriations, or will you abandon them? Mr. D. said he had never been in favor of them in relation to the Navy or Army.

The question was then taken on the motion of Mr. D. R. WILLIAMS, which was disagreed to—yeas 32, nays 51—when the committee rose, and reported the bill, which was passed without a division.

MONDAY, April 14.

Duty on Salt.

Mr. J. RANDOLPH said he was about to call the attention of the House to a subject which he should not have probably brought into view, but for the change wrought in the state of the revenue, in consequence of the peace with Tripoli. Among the different articles from which moneys were drawn,

there was none so heavily burdened as salt; and it would be recollected that it was one of the necessities of life, and an article, the free use and consumption of which was of material importance to the agriculture of the country. Two acts had been passed laying a duty on this article. It was no new thing to wish—it was, indeed, extremely desirable to diminish, if not to take off this duty, and for that purpose he submitted the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of repealing so much of any act as lays a duty on salt; and to report such provision as may, in their opinion, be calculated to meet the deficiency occasioned by that repeal.

Mr. THOMAS said the Committee of Ways and Means, of which the gentleman from Virginia, (Mr. J. RANDOLPH,) who has made the motion, was and still is Chairman, were instructed by this House in the early part of last session, on a motion which he had the honor then to submit, to inquire into the expediency of reducing the duty on salt, and, if he recollected right, they were directed to report by bill, or otherwise; but, from some cause or other, to him unknown, that committee had never yet made any report on that subject. Courtesy might induce him to impute this neglect to the multiplicity of business put into the hands of the members of that committee.

He, Mr. T., always considered the duty on this article too high, and falling particularly heavy on the agricultural part of the community. It was now, and always had been his wish, to reduce it as soon as our revenue would permit, if consistent with the provisions made for paying off our national debt, and meeting the other exigencies of Government. For his part, he was at a loss, however, to discover that the present situation of our revenue, and the calls on Government for expenditure, together with the present aspect of our foreign relations, warranted this measure more now than last year. It was true that the war with the Barbary Powers up the Mediterranean had ceased, but it was also true, that the two and a half per cent. additional duty on goods paying *ad valorem* duties has likewise ceased with the peace concluded with Tripoli. This duty was laid for the support of, and was more than adequate to the expense of that war.

Mr. J. RANDOLPH said he certainly did not deny the existence of such a resolution. He had only observed that he did not recollect having received it from the Clerk.

The Clerk read the resolution offered last session by Mr. THOMAS, on the 7th of December, 1804, which was such as he had stated, and which appeared to have received the sanction of the House.

Mr. ALSTON then moved that the resolution should be referred to a Committee of the Whole, which, after a few words in opposition by Mr. LEIB, was disagreed to—yeas 22; when the original motion obtained without a division.

WEDNESDAY, April 16.

Duties on Salt.

The House resolved itself into a Committee of the Whole, on the bill repealing the acts laying duties on salt, and continuing in force for a certain time the first section of the act, entitled “An act further to protect the commerce and seamen of the United States against the Barbary Powers,” as follows:

SEC. 1. *Be it enacted, &c.*, That from and after the —— day of —— next, so much of any act, or acts, as lays a duty on imported salt, be, and the same hereby is, repealed, and from and after the day aforesaid, salt shall be imported into the United States free of duty.

SEC. 2. *And be it further enacted*, That, from and after the first day of January next, so much of any act, or acts, as allows a bounty on exported salt provisions, and pickled fish, in lieu of drawback of the duties on the salt employed in curing the same, and so much of any act, or acts, as makes an allowance to the owners and crews of fishing vessels, in lieu of drawback of the duties paid on the salt used by the same, shall be, and the same hereby is, repealed.^[40]

SEC. 3. *And be it further enacted*, That so much of the act, passed on the 25th day of March, 1804, entitled An act further to protect the commerce

and seamen of the United States against the Barbary Powers, as is contained in the first section of the said act, be, and the same hereby is, continued in force until the end of the next session of Congress, and no longer.

Mr. QUINCY moved so to amend the first section as to repeal the act laying a duty on salt, additional to that originally imposed, so as to take off at present the duty of eight cents a bushel. He said he was of the opinion that taking off the whole duty on salt would have an injurious effect. A difference of twenty cents on the bushel would operate very seriously on those who had already made shipments. It was part of the duty of a legislator to avoid making such sudden changes as tended to destroy the confidence of the mercantile world in the stability of the laws. Whenever changes were made, they ought, in his opinion, to be gradual. Although he considered the general effect of this measure most important, yet, by too sudden an operation, it might affect a respectable class of individuals very injuriously. He would state the effect which he apprehended it would have. Suppose the repeal should take effect on the first day of July. A cargo of salt generally averages about four thousand bushels; the prime cost at Liverpool was about eleven cents a bushel. The cost of the cargo would, therefore, be only \$440; the duty would amount to \$800; the freight, &c., to about \$1,000; making an aggregate of \$2,240, which would be the cost in this country, on a mercantile calculation, supposing the present duties to remain in force. The present price of salt in this country was about fifty-three cents a bushel, which would produce something less than \$2,240. The reason of the sum for which it is sold being less than that it costs is, that salt is merely made use of, in most cases, as a return cargo. Taking off the duty of twenty cents, would reduce the price to thirty-three cents a bushel, which would detract \$920 from the value of the cargo, and would be more than double the prime cost of the salt. To so great a reduction, so suddenly made, Mr. QUINCY said he objected. He had, he said, another reason for being against the section as it stood. The duty on salt was among the duties pledged for the payment of the national debt. At the time this pledge was made, the duty was twelve cents. The additional duty of eight cents was afterwards imposed. His object was, to reduce the existing duty eight cents, and to let the original duty of twelve cents stand, at least, until some notice had been given to the mercantile world. He believed that a reduction of the duty was highly desirable, and would be very popular. He might not, perhaps, object

to an entire repeal if time were allowed him to consult his constituents, some of whom might possibly be ruined by it. All things considered, he thought it would be best to reduce the duty at present eight cents. This would leave Congress at liberty, at their next session, to take the entire repeal into consideration, which might be done in case they considered it eligible.

Mr. J. RANDOLPH said he should prefer the taking off eight cents, rather than suffering the duty to remain as it stood at present; but he hoped the whole duty would be taken off. One of the objections of the gentleman to taking off the whole duty was, that the merchants who have imported salt may be injured by it, and will not be able to compete with those who have imported it duty free. But this argument operated two ways. Did it not apply differently when the duty on salt was first laid? At that time, the very man who now loses, gained in a correspondent ratio. To his mind, Mr. R. said, it was the strangest reason on earth, if this nation were in a situation to give up all its taxes, that it should be said by any gentleman, don't repeal the laws imposing them, because my constituents, the merchants, have paid duties on some of them. If so, your taxes, so far from being diminished, may go on increasing *ad infinitum*. But, the truth is, we have the same right now to take off the duty on salt as our predecessors had to lay it on.

But it seems that the original duty of twelve cents was put into pledge for the payment of the national debt. We were told the same thing five years ago when we proposed to repeal the internal taxes. They were, however, repealed without any violation of the public faith, and wherefore? The nation has contracted a debt to the public creditor, and so long as the Government finds funds wherewith to pay it, the public creditor has no right to ask whether we take it from our coat or breeches pocket? whether from a land tax, an excise, or from duties on imported articles? The pledge on our side is, to find money. If, after the repeal of this duty, the ways and means for the payment of this debt are found deficient, I agree that we are bound to make good the deficiency. But what do we propose? The amount of the duty on salt is less than \$600,000, and at the same time that we take this off, we impose a duty which will produce a million. We take off a duty on a necessary of life, which falls peculiarly heavy on the poor, and on agriculture, and lay an *ad valorem* duty on gauze, catgut, and the Lord knows what, which produces from three to five thousand dollars more.

Mr. QUINCY asked whether a duty which produced \$850,000 a year, which was limited to the end of the next session, and which was not pledged to the payment of the national debt, could be considered as equivalent to a permanent duty of half a million, imposed by an act which could not be repealed until the debt was paid? He did not think the new tax was a substitute of equal value, and he considered it one of the objects of this bill to get rid of the pledge to pay the debt.

Mr. J. CLAY felt disposed to give every credit to gentlemen in their professions of regard towards the public debt. The answer to the objection was this: A certain fund, arising from the impost, was pledged to the payment and interest of the debt. An act had passed the last Congress increasing the fund appropriated for this purpose, from \$7,200,000 to \$8,000,000. If the duty on salt was not a component part of this sum, the objection of gentlemen was futile. Now it was a fact, that, so much as this sum was diminished by taking off the \$520,000 arising from the duty on salt, so much was it increased by the other duty proposed to be laid by this act. So long as the taxes pledged exceeded eight millions, the Government sacredly regard their engagements. As an answer to all the sensibility displayed by gentlemen for the public faith, permit me, said Mr. C., to refer them to a resolution proposed in the seventh Congress, on the 25th of January, 1802, instructing the Committee of Ways and Means to inquire into the expediency of taking off, or reducing, the duty on brown sugar, coffee, and bohea tea. Another objection urged by gentlemen is, the effect of this bill on the merchants. There is no doubt that, in consequence of it, the price of salt will fall; but, would not this have been the effect on bohea tea, had their measure been successful? The effect, however, will be gradual, and there will be but little loss sustained by any one individual, as the price will begin to fall immediately on taking off the duty. I believe it is not a material error to say, that the traffic is pretty much in the hands of those men who enjoyed it when the duty was laid; and if so, those who now lose, will only lose as much as they before gained. I hope the blank in the bill will be so filled as to give six months notice of the imposition of the duty.

Mr. DANA said, that if gentlemen were disposed to diminish the revenue, to screw up the Government, and if they were satisfied the Administration could get along without this tax, it would weigh much in his mind in favor

of repeal; and, as they were disposed to grapple with difficulties and gain popularity, he believed he would gratify them by voting for the bill.

Mr. QUINCY said he opposed such an excessive reduction of this duty at once, not only on the grounds he had stated, but on other grounds. In Massachusetts, in the neighborhood of Boston, very extensive manufactories of salt had been established, under the idea that the duty would be continued. The immediate effect of this measure might be to destroy and ruin them.

Mr. QUINCY's motion to amend the section was likewise disagreed to without a division.

On motion of Mr. J. RANDOLPH, the blank, relative to the time when the duty was to take effect, was filled with the first day of October.

The third section was then read, which continued the Mediterranean fund till the next session of Congress.

Mr. ALSTON observed that, from the present appearance of things, he did not think it advisable that this section should remain as it was, as in six or eight months they would have again the same ground to travel over. His object was permanently to substitute the Mediterranean fund for the salt tax. He had no objection to make the exchange; to take off the perpetual tax on salt, and lay it on these articles. He thought there was no danger in trusting to the wisdom of Congress the discontinuance of the act imposing them; and that as long as there was a necessity for taxes, these subjects of taxation were as unexceptionable as any that could be laid. When they were about to strike so deeply at the revenue, they ought to be certain that the substitute offered would justify the measure. For these reasons he submitted a motion to make the Mediterranean fund perpetual. He thought this expedient, as the tax on salt was perpetual, and the substituted tax was not so certain as that on salt. With regard to the one, very little variation could take place; while the other might materially change with the times.

Mr. CROWNINSHIELD then moved to amend the last section, so as to continue the Mediterranean fund for three years.

Mr. J. RANDOLPH hoped the amendment would not be agreed to. It would be remembered that the right of giving the public money was the sole exclusive right of that branch of the Legislature; and that when they made

grants for a long term of years, it would not depend on them alone whether they should be revoked. In his opinion, if the Constitution of the United States was practised on its true principles, that House ought not to give the public money out of its control. There was no existing cause for continuing this fund for three years, or for a longer period than that contemplated by the bill.

The question was then taken on Mr. CROWNINSHIELD's motion, which was disagreed to—ayes 28. When the question was taken on engrossing the bill, which was carried—ayes 83.

THURSDAY, April 17.

Duties on Salt.

The bill repealing the acts laying duties on salt, and continuing in force, for a further time, the first section of the act, entitled “An act further to protect the commerce and seamen of the United States against the Barbary Powers,” was read a third time.

Mr. MASTERS moved to recommit the bill, for the purpose of modifying its details.

Mr. QUINCY supported the motion; which was lost—ayes 37, nays 49.

When the yeas and nays were taken on the passage of the bill—yeas 43, nays 11, as follows:

YEAS.—Evan Alexander, Willis Alston, jun., Isaac Anderson, Burwell Bassett, George M. Bedinger, John Blake, junior, Thomas Blount, Robert Brown, Levi Casey, John Chandler, John Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, junior, John Dawson, Elias Earle, Peter Early, James Elliot, Caleb Ellis, Ebenezer Elmer, William Ely, John W. Eppes, James Fisk, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Silas Halsey, John Hamilton, David Holmes, David Hough, John G. Jackson, John Lambert, Joseph Lewis, junior, Patrick Magruder, Robert Marion, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Jeremiah Nelson,

Roger Nelson, Thomas Newton, junior, Gideon Olin, Timothy Pitkin, junior, John Pugh, Josiah Quincy, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Thomas Sanford, Martin G. Schuneman, James Sloan, John Smilie, John Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Thomas W. Thompson, Abram Trigg, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Robert Whitehill, David R. Williams, Marmaduke Williams, Alexander Wilson, Richard Wynn, and Joseph Winston.

NAYS.—Joseph Barker, John Fowler, Isaiah L. Green, Michael Leib, Matthew Lyon, Josiah Masters, William McCreery, Nicholas R. Moore, John Russell, Peter Saily, and Uri Tracy.

FRIDAY, April 18.

William Eaton.

The House resolved itself into a Committee of the Whole, on the bill authorizing the settlement of accounts between the United States and William Eaton. No amendment having been made to the bill, the House proceeded to consider the said bill at the Clerk's table, and the same being again read, in the words following, to wit:

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the proper accounting officers be, and they hereby are, authorized and directed to liquidate and settle the accounts subsisting between the United States and William Eaton, late Consul at Tunis, upon just and equitable principles, under the direction of the Secretary of State.

A motion was made by Mr. JOHN RANDOLPH, and the question being put, to amend the said bill, by striking out, at the end thereof, the words "under the direction of the Secretary of State;" it passed in the negative—yeas 43, nays 48.

Ordered, That the said bill be engrossed, and read the third time on Monday next.

MONDAY, April 21.

Duties on Salt.

The House took up the amendments of the Senate to the bill repealing the acts laying duties on salt, and continuing in force for a further time, the first section of the act, entitled “An act further to protect the commerce and seamen of the United States against the Barbary Powers.”

These amendments proposed striking out all the provisions of the bill relative to the repeal of the duty on salt.

Mr. J. RANDOLPH.—I understand this House to have sent a bill to the Senate repealing the existing duty on salt, and continuing for a further time the tax imposing a duty of two and a half per cent. on articles previously charged with ad valorem duties. The Senate have returned the bill, retaining the supply we voted, as well as the tax proposed by us to be repealed. I hope we shall not agree to their amendments, and the reasons I shall offer will not be those drawn from expediency, but from my idea of the constitutional powers of this, and the other branch of the legislature—which is, that it is the sole and indisputable prerogative of this House to grant the money of the people of the United States. It is here only that a grant of money can originate. It is true that the Senate have the power of amending money bills, but my idea of the extent to which that power can go, according to the true spirit of the constitution, is this: while the Senate may amend money bills to facilitate the collection of duties, or in other respects, as to their details, they do not possess the constitutional power of varying either the quantum of tax proposed in this House, or the object on which it may be levied. I hope the House will never consent to give up this invaluable privilege of saying what supplies they will grant, and the object on which they shall be levied. But, even supposing this objection nugatory, I hope this House will not suffer itself to be trapped, on the last day of the session, in agreeing to a grant it was never in their contemplation to make. When we sent a bill to the other branch to continue the Mediterranean duty, we sent at the same time, a bill to repeal the duty on salt. The amendment

from the Senate can be viewed in no other light than as originating a money bill in the Senate. It goes to originate a tax on salt. Such, in effect, will be the object and tendency of the measure. Let us suppose, instead of sending to the Senate a bill imposing a new tax, we had sent a simple bill to repeal this same tax upon salt—could the Senate, by an amendment, rivet and continue the Mediterranean fund? And if they could, would not that be originating a money bill? I hope the House will disagree to the amendments of the Senate.

Mr. ALSTON thought it would be advisable to accommodate with the Senate. In order to obtain an accommodation, he should vote, in the first instance, against the amendments of the Senate. On a conference, they may agree to strike off the duty of eight cents on salt, and the next year, when we shall better understand the ground on which we stand, the House may be disposed still further to lessen the burden.

Mr. RHEA, of Tennessee.—I do not consider this bill as in the nature of a bill originating revenue, but as one, on the contrary, detracting from the revenue. I contend that the Senate have the power, at any time, to say they will not consent to the repeal of a revenue law, else they are a trifling, insignificant body. Are they not, as well as we, to judge of the exigency of the country? This is not a question of expediency, but of necessity. Though we are desirous of taking off the duty on salt, such is the situation of the country, menaced with foreign danger, and particularly with a war with Tunis, that the revenue ought not to be diminished. For these reasons I shall concur in the amendment of the Senate.

The yeas and nays were then taken on agreeing to the amendment of the Senate—yeas 24, nays 56.

Mr. J. RANDOLPH.—I hope we shall now adhere to our disagreement to the amendment of the Senate. I hope we shall not concur with the Senate, under the idea of reducing the duty on salt from twenty to twelve cents. Notwithstanding a fear entertained by some gentlemen of a deficiency in the revenue, the House, by a vast majority, passed the bill repealing the duty on salt. The Message of the President was referred to the Committee of Ways and Means, and that committee made a report recommending the taking off the duty on salt, and continuing the two and a half per cent. duty. Every objection to the measure that now exists then existed, and ought then

to have been offered. We then sent to the other House a supply of money—a tax yielding \$900,000, with the probability of its amounting the ensuing year to a million; in this same bill we proposed taking off a tax, which does not yield \$600,000; we therefore made a grant of \$400,000 annually. It is said that the amendment of the Senate does not go to the imposition of a new tax, but that it continues the revenue as it is. There is some plausibility, but no solidity in this remark. If it goes to continue the revenue as it now is, where is the necessity of continuing the duty of two and a half per cent.? It is therefore in fact a new money bill. Let me urge one thing to the House. If we ever mean to strike off the duty on salt, we must cling to the Mediterranean fund as the lever to lift this load from the shoulders of the people. It will be recollected that within five years we have taken off the internal taxes. I am glad of it; for I fear it would not now be done. They produced about \$800,000, inclusive of the taxes which have expired, and \$640,000 exclusive of them. But we have granted a supply of two and a half per cent. duties, which yield, annually, from nine hundred thousand, to a million dollars. This is a complete offset to the repeal of the internal taxes. What we have lost by their repeal we have gained, with the addition of one or two hundred thousand dollars beyond the sum we should have received, had they been suffered to remain, and no addition been made to the duties on imports and tonnage; and yet we hear of the growing demands of the Government. But the growing demands of all Governments are alike. Do gentlemen recollect the growing state of the nation? When this Government was first put in motion, the duties on imports were not more than four or five millions. These resources are daily growing, and a fund accruing from the increasing prosperity of the people, which their guardians are bound to account for. Though we have contracted a debt for New Orleans, we have gained a revenue of not less than \$300,000 a year. From these circumstances I hope we shall adhere to our disagreement to the amendments of the Senate, and that they will, in their justness and graciousness, yield a tax of half a million for a tax which produces a whole million.

It is said the Senate may strike out all but the title of your bills. Indisputably; but will this House submit? Suppose you send a bill to the Senate laying a duty of two per cent. on saltpetre, and they send it back to you, striking out this provision, and giving you a bill in lieu of it, laying a tax of four shillings in the pound on all the lands of the United States. Is

that, under the constitution, a fair exercise of their power? To my mind, if the position be admitted, that it is the sole privilege of this House to grant the public money, it is extremely indecent, to say no more, for that branch of the Legislature to tell the United States they will get all the money they can, whatever may be the disposition of this House. Recollect how the salt tax was laid before—on the last day of an expiring Congress, after a proposition to lay the tax had been rejected, and members had gone home, under the persuasion that no such attempt would be renewed. By some little modification of that proposition, a tax of twenty cents was laid on every fifty-six pounds of salt, and riveted on the people for ever. When I say for ever, I mean the period of its being taken off depends on a branch of the Legislature over which the people have but little control, who are the representatives, not of the people, but of the State sovereignties. Now, if the House do wish, as surely they must, to get rid of this tax, and if they believe, as they must, that the present circumstances of the country admit of its repeal, else the bill would not have passed by so large a majority, I hope they will adhere to their disagreement to the amendments of the Senate, and put it in the power of the other branch to take so much of the public money as it is our pleasure to grant, and not one cent more.

Mr. CONRAD.—I hope we shall not adhere, but try a conference. It will then be time enough to consider whether we will adhere. Anxious as I am to get rid of this odious tax, I will agree to reduce the duty to twelve cents, or keep the Mediterranean fund, and next session judge whether we are able to take off the whole of it.

The motion to adhere was then disagreed to—yeas 36, nays 42. When the House agreed to insist on their disagreement to the amendment of the Senate, and appointed a committee of conference.

And then, on a motion, made and seconded, the House adjourned until half past six o'clock, post meridian.

Eodem Die, half-past 6 o'clock.

Salt Duty.

CONFERENCE.

Mr. GREGG, from the committee of conference on the same bill, observed that the conferees on the part of the Senate did not discover any disposition to recede from their amendments. The conferees on the part of the House stated the danger of losing the bill if the conferees did not relax, and proposed to meet them on the ground of compromise, by taking off the duty of eight cents imposed on salt. To this proposition the conferees on the part of the Senate declined acceding.

Mr. J. RANDOLPH moved that the House adhere to their disagreement to the amendments of the Senate.

Mr. ALSTON.—Having done every thing in our power to repeal the duty on salt or to lessen it, the only question is, whether we shall continue the Mediterranean fund until the next session or not. I call on gentlemen to take a review of the different estimates from the Treasury during the present session, and to consider the expenses they warrant—I allude particularly to the appropriation of two millions towards the purchase of the Floridas, to decide whether we can do without the Mediterranean fund. The great object with me in advocating the repeal of the duty on salt was to obtain the Mediterranean fund. We have done our part to effect this object. I believe with the aid of that fund, though the duty on salt had been taken off, our revenue would have been sufficient; though even the greatest economy would have been requisite in the disbursement of the public money.

Mr. J. RANDOLPH.—I hope we shall adhere to our vote, and I will give my reasons for indulging this hope. I do not profess to be so well acquainted with the subjects of finance as some other gentlemen on this floor. But if the Mediterranean fund is to be continued for so short a time, it is obvious that the revenue to be gleaned from it will be proportionally small. The arguments of gentlemen therefore rebut themselves. They declare that they want a revenue, while they acknowledge that the continuance of this tax will produce but a small one. I hope that we shall keep the Mediterranean fund as a hostage for the salt tax. If between this and the next session a deficiency shall occur in our ways and means, to meet the demands of the Government, it will not be the first time, as I know it will not be the last, in which I shall step forward to vote a supply to meet every honorable demand. If there shall be deficit, as there is no reason to believe there will be, I pledge myself as one of those who will meet it. I wish to adhere to our vote, that the Mediterranean fund may be lost; for we

have been told by those who, I presume, are well acquainted on such points, that such a course will enforce economy, and I wish I could add, in the words of an honorable friend who has no longer a seat here, would ensure economy.

The question was then taken by yeas and nays on adhering—yeas 40, nays 47.

The House then agreed to recede from their disagreement to the amendment of the Senate—ayes 45, noes 36.

Hamet Caramalli.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled “An act for the temporary relief of Hamet Caramalli.” The bill was reported without amendment, read the third time, and passed—yeas 71, nays 6.

Adjournment.

Mr. EARLY, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

A message from the Senate informed the House that the Senate, having finished the legislative business before them, are now ready to adjourn.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn until the first Monday in December next; and that the Clerk of this House do go with the said message.

The Clerk accordingly went with the said message; and, being returned, Mr. Speaker adjourned the House until the first Monday in December next.

NINTH CONGRESS.—SECOND SESSION.

BEGUN AT THE CITY OF WASHINGTON, DECEMBER 1, 1806.

PROCEEDINGS IN THE SENATE.

MONDAY, December 1, 1806.

The second session of the Ninth Congress, conformably to the Constitution of the United States, commenced this day, at the city of Washington, and the Senate assembled, in their Chamber.

PRESENT:

GEORGE CLINTON, Vice President of the United States, and President of the Senate.

WILLIAM PLUMER and NICHOLAS GILMAN, from New Hampshire.

JOHN QUINCY ADAMS and TIMOTHY PICKERING, from Massachusetts.

URIAH TRACY, from Connecticut.

BENJAMIN HOWLAND, from Rhode Island.

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont.

SAMUEL L. MITCHILL, from New York.

JOHN CONDIT and AARON KITCHEL, from New Jersey.

GEORGE LOGAN and SAMUEL MACLAY, from Pennsylvania.

SAMUEL WHITE, from Delaware.

DAVID STONE, from North Carolina.

JOHN GAILLARD, from South Carolina.

ABRAHAM BALDWIN, from Georgia.

THOMAS WORTHINGTON, from Ohio.

WILLIAM B. GILES, appointed a Senator by the Legislature of the Commonwealth of Virginia, for the term of six years, from and after the 4th day of March last, produced his credentials, which were read; and, the oath prescribed by law having been administered to him, he took his seat in the Senate.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and are ready to proceed to business.

Ordered, That the Secretary notify the House of Representatives that a quorum of the Senate is assembled, and ready to proceed to business.

A message from the House of Representatives informed the Senate that the House have appointed a joint committee, on their part, with such committee as the Senate may appoint, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

The Senate took into consideration the resolution of the House of Representatives last mentioned, for the appointment of a joint committee, and

Resolved, That they do concur therein; and

Ordered, That Messrs. MITCHILL and STONE be the committee on the part of the Senate.

Mr. MITCHILL reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of this day, and that the President of the United States had informed the committee that he would make a communication to the two Houses to-morrow, at twelve o'clock.

TUESDAY, December 2.

SAMUEL SMITH, from the State of Maryland, and BUCKNER THRUSTON, from the State of Kentucky, attended.

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby authorized to employ one assistant and two

horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for that purpose, to commence with, and remain during the session, and for twenty days after.

Annual Message.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

It would have given me, fellow-citizens, great satisfaction to announce, in the moment of your meeting, that the difficulties in our foreign relations, existing at the time of your last separation, had been amicably and justly terminated. I lost no time in taking those measures which were most likely to bring them to such a termination, by special missions, charged with such powers and instructions as, in the event of failure, could leave no imputation on either our moderation or forbearance. The delays which have since taken place in our negotiations with the British Government appear to have proceeded from causes which do not forbid the expectation that, during the course of the session, I may be enabled to lay before you their final issue. What will be that of the negotiations for settling our differences with Spain, nothing which had taken place at the date of the last despatches enables us to pronounce. On the western side of the Mississippi she advanced in considerable force, and took post at the settlement of Bayou Pierre, on the Red river. This village was originally settled by France, was held by her as long as she held Louisiana, and was delivered to Spain only as a part of Louisiana. Being small, insulated, and distant, it was not observed, at the moment of redelivery to France and the United States, that she continued a guard of half a dozen men, which had been stationed there. A proposition, however, having been lately made by our Commander-in-chief, to assume the Sabine river as a temporary line of separation between the troops of the two nations until the issue of our negotiations shall be known, this has been referred by the Spanish commandant to his superior, and in the mean time he has withdrawn his force to the western side of the

Sabine river. The correspondence on this subject, now communicated, will exhibit more particularly the present state of things in that quarter.

Having received information that, in another part of the United States, a great number of private individuals were combining together, arming and organizing themselves contrary to law, to carry on a military expedition against the territories of Spain, I thought it necessary, by proclamation, as well as by special orders, to take measures for preventing and suppressing this enterprise, for seizing the vessels, arms, and other means provided for it, and for arresting and bringing to justice its authors and abettors. It was due to that good faith which ought ever to be the rule of action in public as well as in private transactions, it was due to good order and regular government that, while the public force was acting strictly on the defensive, and merely to protect our citizens from aggression, the criminal attempts of private individuals to decide, for their country, the question of peace or war, by commencing active and unauthorized hostilities, should be promptly and efficaciously suppressed.

In a country whose constitution is derived from the will of the people, directly expressed by their free suffrages, where the principal Executive functionaries, and those of the Legislature, are renewed by them at short periods; where, under the character of jurors, they exercise in person the greatest portion of the judiciary powers; where the laws are consequently so formed and administered as to bear with equal weight and favor on all, restraining no man in the pursuits of honest industry, and securing to every one the property which that acquires, it would not be supposed that any safeguards could be needed against insurrection, or enterprise, on the public peace or authority. The laws, however, aware that these should not be trusted to moral restraints only, have wisely provided punishment for these crimes when committed. But would it not be salutary to give also the means of preventing their commission? Where an enterprise is meditated by private individuals against a foreign nation in amity with the United States, powers of prevention, to a certain extent, are given by the laws; would they not be as reasonable and useful where the enterprise preparing is against the United States? While adverting to this branch of law it is proper to observe, that, in enterprises meditated against foreign nations, the ordinary process of binding to the observance of the peace and good behavior, could it be extended to acts to be done out of the jurisdiction of the United States,

would be effectual in some cases where the offender is able to keep out of sight every indication of his purpose which could draw on him the exercise of the powers now given by law.

The expedition of Messrs. Lewis and Clarke, for exploring the river Missouri, and the best communication from that to the Pacific Ocean, has had all the success which could have been expected. They have traced the Missouri nearly to its source, descended the Columbia to the Pacific Ocean, ascertained with accuracy the geography of that interesting communication across our continent, learnt the character of the country, of its commerce, and inhabitants; and it is but justice to say, that Messrs. Lewis and Clarke, and their brave companions, have, by this arduous service, deserved well of their country.

I congratulate you, fellow-citizens, on the approach of the period at which you may interpose your authority, constitutionally, to withdraw the citizens of the United States from all further participation in those violations of human rights which have been so long continued on the unoffending inhabitants of Africa, and which the morality, the reputation, and the best interests of our country, have long been eager to proscribe. Although no law you may pass can take prohibitory effect till the day of the year one thousand eight hundred and eight, yet the intervening period is not too long to prevent, by timely notice, expeditions which cannot be completed before that day.

The receipts at the Treasury, during the year ending on the 30th day of September last, have amounted to nearly fifteen millions of dollars, which have enabled us, after meeting the current demands, to pay two millions seven hundred thousand dollars of the American claims, in part of the price of Louisiana; to pay of the funded debt, upwards of three millions of principal, and nearly four of interest; and, in addition, to reimburse, in the course of the present month, nearly two millions of five and a half per cent. stock. These payments and reimbursements of the funded debt, with those which had been made in the four years and a half preceding, will, at the present year, have extinguished upwards of twenty-three millions of principal.

The duties composing the Mediterranean fund will cease, by law, at the end of the present session. Considering, however, that they are levied

chiefly on luxuries, and that we have an impost on salt, a necessary of life, the free use of which otherwise is so important, I recommend to your consideration the suppression of the duties on salt, and the continuation of the Mediterranean fund instead thereof, for a short time, after which that also will become unnecessary for any purpose now within contemplation.

When both of these branches of revenue shall in this way be relinquished, there will still, ere long, be an accumulation of moneys in the Treasury beyond the instalments of public debt which we are permitted by contract to pay. They cannot, then, without a modification, assented to by the public creditors, be applied to the extinguishment of this debt, and the complete liberation of our revenues, the most desirable of all objects; nor, if our peace continues, will they be wanting for any other existing purpose. The question, therefore, now comes forward: To what other objects shall these surpluses be appropriated, and the whole surplus of impost, after the entire discharge of the public debt, and during those intervals when the purposes of war shall not call for them? Shall we suppress the impost, and give that advantage to foreign over domestic manufactures? On a few articles, of more general and necessary use, the suppression, in due season, will doubtless be right, but the great mass of the articles on which impost is paid are foreign luxuries, purchased by those only who are rich enough to afford themselves the use of them. Their patriotism would certainly prefer its continuance and application to the great purposes of the public education, roads, rivers, canals,^[41] and such other objects of public improvement as it may be thought proper to add to the constitutional enumeration of federal powers. By these operations new channels of communication will be opened between the States; the lines of separation will disappear; their interests will be identified and their Union cemented by new and indissoluble ties. Education is here placed among the articles of public care, not that it would be proposed to take its ordinary branches out of the hands of private enterprise, which manages so much better all the concerns to which it is equal; but a public institution can alone supply those sciences which, though rarely called for, are yet necessary to complete the circle, all the parts of which contribute to the improvement of the country, and some of them to its preservation. The subject is now proposed for the consideration of Congress, because, if approved by the time the State Legislature shall have deliberated on this extension of the federal trusts, and the laws shall be passed and other arrangements made for their execution,

the necessary funds will be on hand, and without employment. I suppose an amendment to the constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the constitution, and to which it permits the public moneys to be applied.

The present consideration of a national establishment, for education particularly, is rendered proper by this circumstance; also that, if Congress, approving the proposition, shall yet think it more eligible to found it on a donation of lands, they have it now in their power to endow it with those which will be among the earliest to produce the necessary income. This foundation would have the advantage of being independent on war, which may suspend other improvements, by requiring for its own purposes the resources destined for them.

TH. JEFFERSON.

DECEMBER 2, 1806.

The Message and documents therein referred to were read, and ordered to lie for consideration, and three hundred copies thereof printed for the use of the Senate.

WEDNESDAY, December 3.

DANIEL SMITH, from the State of Tennessee, attended.

THURSDAY, December 4.

JAMES HILLHOUSE, from the State of Connecticut, attended.

FRIDAY, December 5.

JAMES TURNER, from the State of North Carolina, attended.

TUESDAY, December 9.

ANDREW MOORE, from the State of Virginia, attended.

THURSDAY, December 11.

JOHN MILLEDGE, appointed a Senator by the Legislature of the State of Georgia, in the place of James Jackson, deceased, took his seat, and his credentials were read, and the President administered the oath to him as the law prescribes.

FRIDAY, December 19.

The credentials of STEPHEN R. BRADLEY, appointed a Senator by the Legislature of the State of Vermont, for the term of six years, from and after the third day of March next, were presented and read; also, the credentials of JOHN MILLEDGE, appointed a Senator by the Legislature of the State of Georgia, for the term of six years, from and after the third day of March next.

Ordered, That they lie on file.

MONDAY, December 29.

The PRESIDENT communicated a letter from ROBERT WRIGHT, stating that he had resigned his seat in the Senate.

PHILIP REED, appointed a Senator by the Legislature of the State of Maryland, in place of Robert Wright, resigned, produced his credentials, and took his seat in the Senate.

HENRY CLAY, appointed a Senator by the Legislature of the State of Kentucky, in place of John Adair, resigned, produced his credentials, and took his seat in the Senate.^[42]

The credentials of Mr. CLAY and Mr. REED were severally read, and the oath was administered to them as the law prescribes.

Mr. REED also produced the credentials of his appointment to be a Senator of the United States, from the State of Maryland, from the third day of March next, until the fourth day of March, 1813, and they were read, and ordered to lie on file.

JAMES FENNER, from the State of Rhode Island, attended.

MONDAY, January 12, 1807.

JAMES A. BAYARD, from the State of Delaware, attended.

TUESDAY, January 20.

The credentials of ANDREW GREGG, appointed a Senator of the United States by the Legislature of the Commonwealth of Pennsylvania, for six years, commencing on the 4th March next, were presented and read, and ordered to lie on file.

THURSDAY, January 22.

Burr's Conspiracy.

The following Message was received from the PRESIDENT OF THE UNITED STATES:—

To the Senate and House of Representatives of the United States:

Agreeably to the request of the House of Representatives, communicated in their resolution of the 16th instant, I proceed to state under the reserve therein expressed, information received touching an illegal combination of private individuals against the peace and safety of the Union, and a military expedition planned by them against the territories of a power in amity with the United States, with the measures I have pursued for suppressing the same.

I had for some time been in the constant expectation of receiving such further information as would have enabled me to lay before the Legislature the termination as well as the beginning and progress of this scene of depravity, so far as it has been acted on the Ohio and its waters. From this, the state of safety of the lower country might have been estimated on probable grounds; and the delay was indulged the rather, because no circumstance had yet made it necessary to call in the aid of the legislative functions. Information, now recently communicated, has brought us nearly to the period contemplated. The mass of what I have received in the course

of these transactions, is voluminous; but little has been given under the sanction of an oath, so as to constitute formal and legal evidence. It is chiefly in the form of letters, often containing such a mixture of rumors, conjectures, and suspicions, as renders it difficult to sift out the real facts, and unadvisable to hazard more than general outlines, strengthened by current information, on the particular credibility of the relator. In this state of the evidence, delivered sometimes, too, under the restriction of private confidence, neither safety nor justice will permit the exposing names, except that of the principal actor, whose guilt is placed beyond question.

Some time in the latter part of September, I received intimations that designs were in agitation in the western country unlawful and unfriendly to the peace of the Union; and that the prime mover in these was AARON BURR, heretofore distinguished by the favor of his country. The grounds of these intimations being inconclusive, the objects uncertain, and the fidelity of that country known to be firm, the only measure taken was to urge the informants to use their best endeavors to get further insight into the designs and proceedings of the suspected persons, and to communicate them to me.

It was not till the latter part of October, that the objects of the conspiracy began to be perceived; but still so blended and involved in mystery, that nothing distinct could be singled out for pursuit. In this state of uncertainty as to the crime contemplated, the acts done, and the legal course to be pursued, I thought it best to send to the scene, where these things were principally in transaction, a person in whose integrity, understanding, and discretion, entire confidence could be reposed, with instructions to investigate the plots going on, to enter into conference (for which he had sufficient credentials) with the Governors and all other officers, civil and military, and, with their aid, to do on the spot whatever should be necessary to discover the designs of the conspirators, arrest their means, bring their persons to punishment, and to call out the force of the country to suppress any unlawful enterprise in which it should be found they were engaged. By this time it was known that many boats were under preparation, stores of provisions collecting, and an unusual number of suspicious characters in motion on the Ohio and its waters. Besides despatching the confidential agent to that quarter, orders were at the same time sent to the Governors of the Orleans and Mississippi Territories, and to the commanders of the land and naval forces there, to be on their guard against surprise, and in constant

readiness to resist any enterprise which might be attempted on the vessels, posts, or other objects under their care; and on the 8th of November instructions were forwarded to General Wilkinson, to hasten an accommodation with the Spanish commandant on the Sabine, and as soon as that was effected, to fall back with his principal force to the hither bank of the Mississippi, for the defence of the interesting points on that river. By a letter received from that officer on the 25th of November, but dated October 21st, we learnt that a confidential agent of Aaron Burr had been deputed to him with communications, partly written in cipher and partly oral, explaining his designs, exaggerating his resources, and making such offers of emolument and command, to engage him and the army in his unlawful enterprise, as he had flattered himself would be successful. The General, with the honor of a soldier and fidelity of a good citizen, immediately despatched a trusty officer to me, with information of what had passed, proceeding to establish such an understanding with the Spanish commandant on the Sabine, as permitted him to withdraw his force across the Mississippi, and to enter on measures for opposing the projected enterprise.

The General's letter, which came to hand on the 25th of November, as has been mentioned, and some other information received a few days earlier, when brought together, developed Burr's general designs, different parts of which only had been revealed to different informants. It appeared that he contemplated two distinct objects, which might be carried on either jointly or separately, and either the one or the other first, as circumstances should direct. One of these was the severance of the Union of these States by the Alleghany mountains; the other, an attack on Mexico. A third object was provided, merely ostensible, to wit, the settlement of a pretended purchase of a tract of country on the Washita, claimed by a Baron Bastrop. This was to serve as the pretext for all his preparations, an allurement for such followers as really wished to acquire settlements in that country, and a cover under which to retreat in the event of a final discomfiture of both branches of his real design.

He found at once that the attachment of the western country to the present Union was not to be shaken; that its dissolution could not be effected with the consent of its inhabitants, and that his resources were inadequate, as yet, to effect it by force. He took his course then at once,

determined to seize on New Orleans, plunder the bank there, possess himself of the military and naval stores, and proceed on his expedition to Mexico, and to this object all his means and preparations were now directed. He collected from all the quarters where himself or his agents possessed influence, all the ardent, restless, desperate, and disaffected persons, who were ready for any enterprise analogous to their characters. He seduced good and well-meaning citizens, some by assurances that he possessed the confidence of the Government, and was acting under its secret patronage, a pretence which procured some credit from the state of our differences with Spain; and others by offers of land in Bastrop's claim on the Washita.

This was the state of my information of his proceedings about the last of November, at which time, therefore, it was first possible to take specific measures to meet them. The proclamation of November 27th, two days after the receipt of General Wilkinson's information, was now issued. Orders were despatched to every interesting point on the Ohio and Mississippi, from Pittsburg to New Orleans, for the employment of such force, either of the regulars or of the militia, and of such proceedings also of the civil authorities, as might enable them to seize on all the boats and stores provided for the enterprise, to arrest the persons concerned, and to suppress, effectually, the further progress of enterprise. A little before the receipt of these orders in the State of Ohio, our confidential agent, who had been diligently employed in investigating the conspiracy, had acquired sufficient information to open himself to the Governor of that State, and apply for the immediate exertion of the authority and power of the State to crush the combination. Governor Tiffin and the Legislature, with a promptitude, an energy, and patriotic zeal, which entitle them to a distinguished place in the affection of their sister States, effected the seizure of all the boats, provisions, and other preparations within their reach, and thus gave a first blow, materially disabling the enterprise in its outset.

In Kentucky a premature attempt to bring Burr to justice, without a sufficient evidence for his conviction, had produced a popular impression in his favor, and a general disbelief of his guilt. This gave him an unfortunate opportunity of hastening his equipments. The arrival of the proclamation and orders, and the application and information of our confidential agent, at length awakened the authorities of that State to the truth, and then produced

the same promptitude and energy of which the neighboring State had set the example. Under an act of their Legislature, of December 23d, militia was instantly ordered to different important points, and measures taken for doing whatever could yet be done. Some boats (accounts vary from five to double or treble that number) and persons (differently estimated from one to three hundred) had in the mean time passed the Falls of Ohio, to rendezvous at the mouth of Cumberland, with others expected down that river.

Not apprised, till very late, that boats were building on Cumberland, the effect of the proclamation had been trusted to for some time in the State of Tennessee. But, on the 19th of December, similar communications and instructions, with those to the neighboring States, were despatched by express to the Governor, and a general officer of the western division of the State; and, on the 23d of December, our confidential agent left Frankfort for Nashville, to put into activity the means of that State also. But by information received yesterday, I learn that on the 23d of December, Mr. Burr descended the Cumberland with two boats merely of accommodation, carrying with him from that State no quota towards his unlawful enterprise. Whether after the arrival of the proclamation, of the orders, or of our agent, any exertion which could be made by that State, or the orders of the Governor of Kentucky for calling out the militia at the mouth of Cumberland, would be in time to arrest these boats, and those from the Falls of Ohio, is still doubtful.

On the whole, the fugitives from the Ohio, with their associates from Cumberland, or any other place in that quarter, cannot threaten serious danger to the city of New Orleans.

By the same express of December 19th, orders were sent to the Governors of Orleans and Mississippi, supplementary to those which had been given on the 25th of November, to hold the militia of their Territories in readiness to co-operate, for their defence, with the regular troops and armed vessels then under command of General Wilkinson. Great alarm, indeed, was excited at New Orleans by the exaggerated accounts of Mr. Burr, disseminated through his emissaries, of the armies and navies he was to assemble there. General Wilkinson had arrived there himself on the 24th of November, and had immediately put into activity the resources of the place, for the purpose of its defence; and, on the 10th of December, he was joined by his troops from the Sabine. Great zeal was shown by the

inhabitants generally; the merchants of the place readily agreeing to the most laudable exertions and sacrifices for manning the armed vessels with their seamen; and the other citizens manifesting unequivocal fidelity to the Union, and a spirit of determined resistance to their expected assailants.

Surmises have been hazarded that this enterprise is to receive aid from certain foreign powers. But these surmises are without proof or probability. The wisdom of the measures sanctioned by Congress at its last session, has placed us in the paths of peace and justice with the only powers with whom we had any differences; and nothing has happened since which makes it either their interest or ours to pursue another course. No change of measures has taken place on our part: none ought to take place at this time. With the one, friendly arrangement was then proposed, and the law, deemed necessary on the failure of that, was suspended to give time for a fair trial of the issue. With the same power friendly arrangement is now proceeding, under good expectations, and the same law deemed necessary on failure of that, is still suspended, to give time for a fair trial of the issue. With the other, negotiation was in like manner then preferred, and provisional measures only taken to meet the event of rupture. With the same power negotiation is still preferred, and provisional measures only are necessary to meet the event of rupture. While, therefore, we do not deflect in the slightest degree from the course we then assumed, and are still pursuing, with mutual consent, to restore a good understanding, we are not to impute to them practices as irreconcilable to interest as to good faith, and changing necessarily the relations of peace and justice between us to those of war. These surmises are, therefore, to be imputed to the vauntings of the author of this enterprise, to multiply his partisans by magnifying the belief of his prospects and support.

By letters from General Wilkinson, of the 14th and 18th of December, which came to hand two days after the date of the resolution of the House of Representatives, that is to say, on the morning of the 18th instant, I received the important affidavit, a copy of which I now communicate, with extracts of so much of the letters as comes within the scope of the resolution. By these it will be seen that of three of the principal emissaries of Mr. Burr, whom the General had caused to be apprehended, one had been liberated by *habeas corpus*, and two others, being those particularly employed in the endeavor to corrupt the General and Army of the United

States, have been embarked by him for ports in the Atlantic States, probably on the consideration that an impartial trial could not be expected during the present agitation of New Orleans, and that that city was not as yet a safe place of confinement. As soon as these persons shall arrive, they will be delivered to the custody of the law, and left to such course of trial, both as to place and progress, as its functionaries may direct. The presence of the highest judicial authorities, to be assembled at this place within a few days, the means of pursuing a sounder course of proceedings here than elsewhere, and the aid of the Executive means, should the judges have occasion to use them, render it equally desirable for the criminals as for the public, that, being already removed from the place where they were first apprehended, the first regular arrest should take place here, and the course of proceedings receive here their proper direction.

TH. JEFFERSON.

JANUARY 22, 1807.

Ordered, That the Message, and documents therein referred to, lie for consideration; and that five hundred copies thereof be printed for the use of the Senate.

FRIDAY, January 23.

Suspension of the Writ of Habeas Corpus.

On the motion of Mr. GILES,

Ordered, That Messrs. GILES, ADAMS, and SMITH of Maryland, be a committee to inquire whether it is expedient, in the present state of public affairs, to suspend the privilege of the writ of *habeas corpus*, and that they have leave to report by bill or otherwise.

Ordered, That the Message of the President of the United States, of the 22d instant, together with the documents therein mentioned, be referred to the same committee.

Whereupon, Mr. GILES, from the committee, reported a bill to suspend the privilege of the writ of *habeas corpus* for a limited time, in certain

cases; and the rule was, by unanimous consent, dispensed with, and the bill had three readings, and was amended.

Resolved, That this bill pass as amended, that it be engrossed, and that the title thereof be “An act to suspend the privilege of the writ of *habeas corpus* for a limited time in certain cases.”

The committee also reported the following message to the House of Representatives; which was read and agreed to, to wit:

Gentlemen of the House of Representatives:

The Senate have passed a bill suspending for three months the privilege of the writ of *habeas corpus*, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein, as speedily as the emergency of the case shall, in your judgment, require.

Ordered, That Mr. SMITH of Maryland be the committee to deliver the message to the House of Representatives.

MONDAY, January 26.

Burr's Conspiracy.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the Senate and House of Representatives of the United States:

I received from General Wilkinson, on the 23d instant, his affidavit, charging Samuel Swartwout, Peter V. Ogden, and James Alexander, with the crimes described in the affidavit; a copy of which is now communicated to both Houses of Congress.

It was announced to me at the same time, that Swartwout and Bollman, two of the persons apprehended by him, were arrived in this city, in custody, each, of a military officer. I immediately delivered to the Attorney of the United States, in this district, the evidence received against them, with instructions to lay the same before the Judges, and apply for their process to bring the accused to justice; and put into his hands orders to the officers having them in custody to deliver them to the Marshal, on his application.

TH. JEFFERSON.

JANUARY 26, 1807.

The Message and papers therein mentioned were read and referred to Messrs. GILES, BAYARD, and ADAMS, together with the Message and papers heretofore communicated to the Senate on the same subject, to consider and report thereon; and five hundred copies of the Message of the President of the United States and documents communicated this day, were ordered to be printed for the use of the Senate.

TUESDAY, January 27.

JOHN SMITH, from the State of Ohio, attended.

WEDNESDAY, January 28.

Sundry written Messages were received from the PRESIDENT OF THE UNITED STATES, by Mr. Coles, his Secretary.

The bill to prevent settlements being made on lands ceded to the United States, until authorized by law, was read the second time, and made the order of the day for Friday next.

The Senate resumed the second reading of the bill, entitled "An act authorizing the erection of a bridge over the river Potomac, within the District of Columbia," and the motion that it be postponed to the next session of Congress; and, after debate, the Senate adjourned.

THURSDAY, January 29.

Burr's Conspiracy.

The Message yesterday received from the PRESIDENT OF THE UNITED STATES was read, as follows:

To the Senate and House of Representatives of the United States:

By the letter of Captain Bissel, who commands at Fort Massac, and of Mr. Murrell to General Jackson, of Tennessee, copies of which are now communicated to Congress, it will be seen that Aaron Burr passed Fort Massac on the 31st December, with about ten boats, navigated by about six

hands each, without any military appearance; and that three boats with ammunition were said to have been arrested by the militia at Louisville.

As the guard of militia posted on various points of the Ohio will be able to prevent any further aids passing through that channel, should any be attempted, we may now estimate with tolerable certainty the means derived from the Ohio and its waters, towards the accomplishment of the purposes of Mr. Burr.

TH. JEFFERSON.

JANUARY 28, 1807.

The Message and papers were read, and ordered to lie for consideration.
[\[43\]](#)

MONDAY, February 2.

Death of the Representative Levi Casey, Esq.

A message from the House of Representatives informed the Senate of the death of General Levi Casey, late a member of the House of Representatives, and that his funeral will take place this day at one o'clock.

Whereupon, *Resolved*, That the Senate will attend the funeral of General Casey.

TUESDAY, February 17.

Virginia Military Land Warrants.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to extend the time for locating Virginia military warrants, and for returning the surveys thereon to the office of the Secretary for the Department of War."

WEDNESDAY, February 18.

The credentials of the Honorable JOHN SMITH, appointed a Senator of the United States for the State of New York, for the term of six years, commencing on the 4th day of March next, were presented and read.

THURSDAY, February 19.

Tennessee Lands.

The Senate resumed the consideration of the report of the committee, appointed on the 17th of December last, “to inquire what further proceeding is necessary to carry into effect the provisions of an act, entitled ‘An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same.’”

And the report was agreed to.

WEDNESDAY, February 25.

Salt Duty.

The Senate resumed the third reading of the bill, from the House of Representatives, entitled “An act repealing the acts laying duties on salt, and continuing in force for a further time the first section of the act, entitled ‘An act further to protect the commerce and seamen of the United States against the Barbary Powers;’” and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 12, as follows:

YEAS.—Messrs. Bradley, Condit, Giles, Howland, Kitchel, Logan, Maclay, Milledge, Moore, Reed, Smith of Maryland, Smith of Tennessee, Smith of Vermont, Thruston, and Worthington.

NAYS.—Messrs. Adams, Bayard, Gilman, Hillhouse, Mitchill, Pickering, Plumer, Smith of New York, Sumter, Tracy, Turner, and White.

TUESDAY, March 3.

Adjournment.

Mr. MITCHILL reported, from the joint committee, that they had waited on the President of the United States, who informed them that he had no further communications to make to the two Houses of Congress.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States to acquaint him with the intended recess of the two Houses of Congress, and agreed thereto; and Messrs. MITCHILL and ADAMS were appointed the committee on the part of Senate.

A message from the House of Representatives informed the Senate that the House, having finished the business before them, are about to adjourn. The Secretary was then directed to inform the House of Representatives that the Senate, having finished the business before them, are about to adjourn, whereupon the Senate adjourned without day.

NINTH CONGRESS.—SECOND SESSION.
PROCEEDINGS AND DEBATES IN
THE HOUSE OF REPRESENTATIVES.

MONDAY, December 1, 1806.

This being the day appointed by the constitution for the annual meeting of Congress, the following members of the House of Representatives appeared, and took their seats, to wit:

From New Hampshire—Silas Betton, Caleb Ellis, David Hough, Samuel Tenney, and Thomas W. Thompson.

From Massachusetts—Joseph Barker, Barnabas Bidwell, John Chandler, Orchard Cook, Jacob Crowninshield, Richard Cutts, William Ely, Isaiah L. Green, Seth Hastings, Jeremiah Nelson, Josiah Quincy, Ebenezer Seaver, William Stedman, Samuel Taggart, and Joseph B. Varnum.

From Vermont—Martin Chittenden, James Elliot, James Fisk, and Gideon Olin.

From Rhode Island—Nehemiah Knight, and Joseph Stanton.

From Connecticut—Samuel W. Dana, John Davenport, jr., Jonathan O. Mosely, Timothy Pitkin, jr., Lewis B. Sturges, and Benjamin Tallmadge.

From New York—John Blake, jr., Silas Halsey, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, Philip Van Cortlandt, and Killian K. Van Rensselaer.

From New Jersey—Ezra Darby, Ebenezer Elmer, John Lambert, James Sloan, and Henry Southard.

From Pennsylvania—Isaac Anderson, David Bard, Robert Brown, Joseph Clay, Frederick Conrad, William Findlay, John Hamilton, James Kelly, John Pugh, John Rea, Jacob Richards, John Smilie, Samuel Smith, John Whitehill, and Robert Whitehill.

From Delaware—James M. Broom.

From Maryland—Charles Goldsborough, Patrick Magruder, William McCreery, Nicholas R. Moore, and Roger Nelson.

From Virginia—Burwell Bassett, John Claiborne, John Clopton, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, David Holmes, Walter Jones, Joseph Lewis, jr., Thomas Newton, jr., and John Randolph.

From North Carolina—Willis Alston, jr., Thomas Kenan, Duncan MacFarland, Nathaniel Macon, Speaker, Richard Stanford, Joseph Winston, and Thomas Wynns.

From South Carolina—William Butler, Robert Marion, Thomas Moore, and David R. Williams.

From Georgia—Peter Early, and David Meriwether.

From Ohio—Jeremiah Morrow.

From Kentucky—George M. Bedinger, John Boyle, and Thomas Sanford.

From Tennessee—George W. Campbell, and John Rhea.

Delegate from the Mississippi Territory—William Lattimore.

Two new members, to wit: from Connecticut THEODORE DWIGHT, returned to serve in this House, as a member for the said State, in the room of John Cotton Smith, who has resigned his seat; and, from Virginia, WILLIAM A. BURWELL, returned to serve in this House, as a member for the said State, in the room of Christopher Clark, who has resigned his seat, appeared, produced their credentials, were qualified, and took their seats in the House.

DANIEL CLARK, returned to serve as a delegate from the Orleans Territory of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

And a quorum, consisting of a majority of the whole number, being present, a message was sent to the Senate to inform them that a quorum of the House is assembled, and ready to proceed to business.

A message from the Senate informed the House, that a quorum of the Senate is assembled, and ready to proceed to business.

Mr. DAWSON and Mr. GEORGE W. CAMPBELL were appointed a committee, on the part of the House, jointly with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

A message from the Senate informed the House that the Senate have appointed a committee on their part for the same purpose.

TUESDAY, December 2.

Several other members, to wit: from New York, HENRY W. LIVINGSTON, and URI TRACY; from Maryland, JOHN CAMPBELL; from Virginia, JOHN MORROW, THOMAS M. RANDOLPH, JOHN SMITH, PHILIP R. THOMPSON, and ALEXANDER WILSON; from North Carolina, JAMES HOLLAND; and from South Carolina, ELIAS EARLE, appeared, and took their seats in the House.

A Message was received from the PRESIDENT OF THE UNITED STATES. [For which, see Senate proceedings of this date, *ante*, [page 485](#).]

WEDNESDAY, December 3.

Several other members, to wit: from New York, JOSIAH MASTERS and DAVID THOMAS; from Maryland, LEONARD COVINGTON; and from South Carolina, LEVI CASEY, appeared and took their seats in the House.

Another new member, to wit, EDWARD LLOYD, from Maryland, returned to serve in this House as a member for the said State, in the room of Joseph H. Nicholson, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, December 15.

Two other members, to wit: GEORGE CLINTON, junior, from New York, and WILLIAM DICKSON, from Tennessee, appeared, and took their seats in the House.

Coast Survey.

Mr. DANA, of Connecticut.—In 1802, an act was passed, authorizing a survey of Long Island Sound. In pursuance of that act, the Secretary of the Treasury caused a survey to be taken by two men, who appear to have been, what the act intended, intelligent and proper persons. And there has since been published a chart of the Sound, handsomely executed, on a large scale, which must, I presume, be regarded as convenient and valuable by those concerned in that branch of navigation.

At the last session of Congress, an act was passed for another survey. It made provision for surveying the coast of North Carolina between Cape Hatteras and Cape Fear, with the shoals lying off or between those capes. I understand that measures have been taken for executing this act, but that the vessel employed in the service, and all the papers respecting the survey which had been made, had been lost near Ocracoke Inlet, in one of the desolating storms experienced on the coast in the course of the present year.

The surveys, which have thus been authorized, were perhaps of the most urgent necessity; but other surveys of the coast are desirable. What has already been done may be regarded as introductory to a general survey of the coasts of the United States under authority of the Government. With a correct chart of every part of the coast, our seamen would no longer be under the necessity of relying on the imperfect or erroneous accounts given of our coasts by foreign navigators. I hope the lives of our seamen, the interest of our merchants, and the benefits to the revenue, will be regarded as affording ample compensation for making a complete survey of the coasts of the United States at the public expense.

The information which may be obtained will also be useful in designating portions of territorial sea to be regarded as the maritime precincts of the United States, within which, of course, the navigation ought to be free from the belligerent searches and seizures.

It is proposed to extend the survey to the distance of twenty leagues from the shore. This distance is mentioned with a view to the second article of the treaty with Great Britain in 1783, which describes our boundaries as “comprehending all islands within twenty leagues of any part of the shores of the United States.”

The resolution, which I propose for the consideration of the House, is expressed in these words:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of making provision for a survey of the coasts of the United States, designating the several islands, with the shoals and roads or places of anchorage within twenty leagues of any part of the shores of the United States.

WEDNESDAY, December 17.

Two other members, to wit: PELEG WADSWORTH, from Massachusetts, and DANIEL C. VERPLANCK, from New York, appeared, and took their seats in the House.

THURSDAY, December 18.

Another member, to wit, ANDREW GREGG, from Pennsylvania, appeared, and took his seat in the House.

Importation of Slaves.

The House again resolved itself into a Committee of the Whole, on the bill prohibiting the importation of slaves.

Mr. BIDWELL observed, that there were strong objections against the forfeiture of persons of color imported into the United States. As the bill stood, the forfeiture was to be followed by a sale of these persons, as property, as slaves. On this point there was a great diversity in the laws and habits of the respective States; to avoid an interference with which, it appeared to him most advisable to do away the forfeiture, leaving their disposition to the provisions of the laws of the several States. If this part of the section should be struck out, those laws would operate on this point.

There would, he said, be a serious difficulty in adopting the principle of forfeiture accompanied with a sale. In some of the States, the idea of such a species of property was excluded by their constitutions; in those States there

could be no such thing as a slave. It was true, that the constitutions and laws of such States did not go the length of interfering with the laws of other States, where slavery was permitted. If fugitives from them sought an asylum in the State of Massachusetts, for instance, they were faithfully restored, under the provisions of the Constitution of the United States. Neither did the laws of Massachusetts interfere with travellers passing through it with slaves; but so far as it respected persons coming to reside in the State, they were manumitted, as a matter of course.^[44] He believed that no contract for their sale within the State would be of any validity; nor did he believe any power had been given to the United States to render such sale valid. If there were such a power, its tendency would be to introduce into that State persons contrary to its laws. If such a sale were valid, it would interfere with those laws; and if not valid, it would be a perfect nullity, and the provision be thus altogether inoperative. It was admitted that there was no probability of such an importation into States where slavery was not allowed; yet such a thing might take place, and Congress ought not to legislate under the idea that it would not take place.

Mr. EARLY observed, that this motion could only be viewed as an old thing offered in a new shape, intended to have the same effect as the motion offered the preceding day declaring persons of color imported into the United States free. He thought it betrayed great inconsistency. Those who advocated it had yesterday supported an amendment which, by declaring all such persons free, went directly to interfere with the laws of States where slavery was permitted; to-day they gravely maintained the inexpediency of any such interference whatever. The great difficulty insisted upon was, that the operation of this law in States where slavery was not permitted, would contravene the existing laws by forfeiting the imported slaves. But this difficulty had no solidity in it—it was altogether ideal, as from the nature of things the case of an importation in such States could not occur; at all events, it was among the most improbable events in nature.

Mr. BIDWELL moved to strike out all that part of the fourth section which related to the forfeiture of negroes.

Mr. EARLY asked, what substitute was intended.

Mr. BIDWELL replied, that he should move that the committee rise, and that the bill be recommitted.

Mr. QUINCY, of Massachusetts.—I am opposed to the motion of my colleague, (Mr. BIDWELL,) to strike out the forfeiture. The United States ought to retain the control of them. What is to be done with them, is another question. But for the United States to divest the old owners of their right, and provide no means for their protection afterwards, appears to me cruel and dangerous. They are helpless, ignorant of our laws, and of our language and manners. How are they to be supported? If imported into the South, they will be slaves; if into the North, vagabonds. My colleague ought to show what is to be done with them. I am not prepared with a plan, but I should suppose that they might be disposed of in service, in such States as would admit them, at the discretion of the Secretary of the Treasury. If forfeited to the United States, we can, by a general provision, do what we please with them. And I have no doubt that what we do will be both prudent and humane.

Mr. D. R. WILLIAMS.—I agree with the gentleman from Massachusetts, who spoke last, that the amendment ought not to be adopted. It is incumbent on the gentleman who introduced it, (Mr. BIDWELL,) to tell us what is to be done with these negroes, if they are not to be forfeited. I say, it is his duty to inform us how they are to be disposed of. Give up the idea of forfeiture, and I challenge the gentleman to invent fines, penalties, or punishments of any sort, sufficient to restrain the slave trade. The same identical persons will break this law who have broken the act of 1794. And who are these persons? They are the gentleman's own countrymen; they are the people of Rhode Island, who are concerned in this business. You cannot stop the trade by penalties. I have myself seen a ship of more than three hundred tons, the *George Washington*, sold for five dollars. Nobody would bid. The gentleman over the way shakes his head; he acknowledges the truth of my remarks on his countrymen.

Mr. BIDWELL knew nothing of the New England men being concerned in this trade. He lived in the interior of the country, and had little acquaintance with mercantile men. If they were concerned, he was willing that they should be punished by fine and penalties, and to any extent; but he was still opposed to a forfeiture of the negroes generally by a law of Congress. The States may determine, perhaps, whether it shall be done.

Mr. QUINCY, of Massachusetts.—I think I now understand the plan of my colleague, (Mr. BIDWELL,) and I like it less than before. It is "to leave them

to the operation of the laws of the respective States.” This is only another form of expression of leaving them to be slaves. It is leaving the title of these persons according to the laws of the State into which they are imported. Is the gentleman sure this will not be an encouragement? It certainly will be, if the importer can find means to evade the penalty of the act; for there he has all the advantage of a market enhanced by our ineffectual attempt to prohibit. If he relies upon the penalty, I have no doubt it will be evaded. Persons without responsibility will be made captains of these ships, or other means devised to escape the penalty, and as his property is, by this amendment, secured to the owner, great profits will result from the traffic.

Mr. EARLY.—I did suppose that the United States would pass a law themselves, as soon as they had the power, to prohibit the slave trade effectually. But the gentleman from Massachusetts (Mr. BIDWELL) proposes that Congress shall relinquish all the credit of this measure, and resign it up to the States. This, I hope and trust, Congress will never agree to.

If the amendment prevails, I tell you that slaves will continue to be imported as heretofore. I tell the gentleman from Massachusetts, what every man in the Southern States knows already, that slaves will continue to be imported, unless you forfeit them. You cannot get hold of the ships employed in this traffic. Besides, slaves will be brought into Georgia from East Florida. They will be brought into the Mississippi Territory from the bay of Mobile. You cannot inflict any other penalty, or devise any other adequate means of prevention, than a forfeiture of the Africans in whose possession they may be found after importation. I tell you this is the only effectual method. I implore Congress to look seriously on this subject. I implore them, if they do any thing, to pass a law which will not disgrace themselves.

Mr. PITKIN, of Connecticut.—Mr. Chairman, I rise, sir, for the purpose of making a motion, which, I trust, will supersede the one now before the committee. It is, that the committee should rise, and that the bill before them be referred to a select committee. Under this motion, I presume it will be in order to state my reasons, generally, without being confined to the question of amending the fourth section of the bill, which is now before the committee.

As the persons thus brought into the country contrary to law, are to be “forfeited,” they are to be proceeded with, as appears by a subsequent section of the bill, “in the manner prescribed by the act, entitled, ‘An act to regulate the collection of duties on imposts and tonnage.’”

What, sir, is this process? They are to be seized by the revenue officers as goods, wares, and merchandise, imported contrary to law. They are to be libelled in the federal courts, are to be condemned, and then sold to the highest bidder by an officer of the court at public auction, and one-half of the avails, at least, is to be paid into the Treasury of the United States. This, sir, is a proposition, this is a mode of proceeding against those persons, to which I cannot bring my mind to consent, unless *absolute necessity* should require it. What, sir, shall we, in a law made for the express purpose of preventing the slave trade, declare that these unfortunate blacks, brought into this country, not only against their own will, but against the express provisions of the law itself, shall be sold as slaves for the benefit of the United States, and the price of their slavery be lodged in the public coffers? I trust not, sir; I believe some other mode may be devised to prevent the slave trade. While I am unwilling to give my assent to this mode of disposing of them, I am free to confess that I feel the force of the remarks made by the Southern gentleman, that, unless some care should be taken of them after they are landed, the property, and perhaps the lives of those who live in States where slavery is permitted, would be insecure. And here, sir, I would suggest, whether, instead of selling those unfortunate beings as slaves, provision might not be made, that they should be disposed of for a term of years; say seven, eight, or ten years, until they should be able to support themselves, and at the end of the term they should be free. If Congress have power to prohibit their importation, they certainly have power to say, that the imported shall have no right or claim whatever in them; and also to declare what shall be their state and condition when imported. Indeed, sir, Congress have already determined this principle in May, 1800. They passed an act, in addition to an act, entitled “An act to prohibit the carrying on the slave trade from the United States, with any foreign place or country.”

Mr. EARLY.—In answer to the gentleman from Connecticut, I will acknowledge that there is an inconsistency in this bill. But it seems very wonderful that the gentleman has at last found it out. I offered an

amendment, a short time since, in order to obviate this inconsistency; but, unless I am much mistaken, that very gentleman voted against it.

In the name of all the friends of this bill, I offer my most grateful acknowledgments to the gentleman for proving, in the most incontestable manner, the absolute necessity of that very provision in the bill which he opposes. He has shown, most undeniably, that you must forfeit the negroes, that you cannot possibly get at the vessel or the captain, to operate on them. In the name of common sense, I ask you, then, what can you find to operate on, but the negroes imported? and yet, with these truths staring them in the face, gentlemen are opposed to the measure. I wish the gentleman from Connecticut, from the immensity of the resources which he has displayed on this subject, would tell us what, beside the negroes, can be found for the law to operate upon.

I am willing that the committee rise, but not for the purpose mentioned. The gentleman moves you to rise, and refer the bill to a select committee; and for what? To determine the principle of the bill; not to specify the detail. What can the select committee report? Unless instructions are given them, they must report the same bill, and then you will be just where you are now.

The question being taken on the committee's rising, it was carried—ayes 72.

Mr. PITKIN hoped they would not have leave to sit again.

Mr. SLOAN.—Notwithstanding the very high respect I entertain for the gentleman who reported this bill, I think it is easier to make an entire new one, than to undertake to amend this, so that it will answer.

The question being taken on the committee having leave to sit again, it was lost—ayes 45, noes 57.

The bill was then recommitted to a committee of seven, consisting of Messrs. EARLY, T. M. RANDOLPH, KELLY, J. CAMPBELL, KENAN, COCKE, and VAN RENSSELAER.

FRIDAY, December 19.

Another member, to wit, ABRAM TRIGG, from Virginia, appeared, and took his seat in the House.

MONDAY, December 22.

Manhattan Company.

Mr. CLINTON presented a petition from the President and Directors of the Manhattan Company in New York. The petition states that the law which directs that custom-house bonds shall be exclusively deposited in the United States Bank, affects their interests very injuriously; that the monthly deposits at New York amount, on an average, to \$250,000. That the merchants dealing at the Manhattan Bank, make in Manhattan notes large payments on account of custom-house bonds into the United States Bank, which, by means of their notes; draws largely on the Manhattan Bank for specie; that, by these and similar means, the United States Bank regulates the discount, and contracts the business of all the other banking institutions in the city. That the reasons which once existed for giving the United States Bank a preference, have since ceased, by the sale of the public stock. But the stockholders in the United States Bank are now almost entirely foreigners, which circumstance is favorable to the erection of foreign influence in this country, and ought to excite alarm.

Mr. QUINCY was personally indifferent whether the petition was referred to the Committee of Ways and Means, but, as the subject manifestly affected the revenue, it was proper to refer it to that committee. It was a question very material to the revenue, whether the custom-house bonds should be deposited in the United States Bank. The contrary supposition implies that all banks are solid and secure.

Mr. CROWNINSHIELD conceived that the subject of the petition had no more relation to the Committee of Ways and Means than to that of Commerce and Manufactures, or any other standing committee of the House. Its object was, to procure relief against an injurious monopoly, possessed by a particular banking company. It neither proposed to give or take away one shilling of the public money. The Committee of Ways and Means were already pressed with a great deal of matter. Mr. C. did not wish to trouble the House with the United States Bank, but more than sixteen

years they had enjoyed an exclusive monopoly, which has been very injurious to all other banking institutions, as has been very properly detailed in the petition. He meant to propose a plan for equalizing the benefits of the deposits. This is a subject which deeply interested the constituents of his colleague, (Mr. QUINCY.) The merchants of Boston cannot procure any large sums except from the United States Bank, which controls all the other banks in that town.

The SPEAKER informed Mr. CROWNINSHIELD that it was improper to speak of any gentleman's district.

Mr. QUINCY observed, that all subjects relating to the revenue properly belonged to the Committee of Ways and Means. The present subject deeply implicates the revenue, because it all depends upon being safely deposited. His colleagues seemed to have a great fellow-feeling for the Committee of Ways and Means, and appeared to be anxious lest they should be pressed with too much business; but that committee had sufficient time to consider all the business referred to them.

The question being taken on referring the petition to the Committee of Ways and Means, it was lost—ayes 32. It was then referred to a select committee of nine.

TUESDAY, December 23.

Another member, to wit, EDWIN GRAY, from Virginia, appeared, and took his seat in the House.

FRIDAY, December 26.

Another member, to wit, MATTHEW CLAY, from Virginia, appeared and took his seat in the House; and another new member, to wit, DENNIS SMELT, from Georgia, returned to serve in this House, as a member for the said State, in the room of Joseph Bryan, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, December 29.

Several other members, to wit, from Massachusetts, PHANUEL BISHOP; from New York, GURDON S. MUMFORD and NATHAN WILLIAMS, from New Jersey, WILLIAM HELMS; from Kentucky, JOHN FOWLER; and the Delegate from the Indiana Territory, BENJAMIN PARKE, appeared, and took their seats in the House.

Importation of Slaves.

On motion of Mr. EARLY, the House resolved itself into a Committee of the Whole on the bill for the prohibition of the slave trade.

Mr. BIDWELL.—It appears to me that all the objections which have been urged against the amendment under consideration, may be reduced to two. 1. That a forfeiture is necessary to deprive the importers of every motive to introduce any slaves into the country, and thus render the prohibition completely effectual. 2. That if the slaves are emancipated and turned loose in the Southern States, they will be a destructive nuisance to the people of those States. Neither of these objections is, in my apprehension, well founded. If the motion to strike out prevails, another amendment may be made, declaring that the importer has no right to the slaves, which he introduces. This will be a declaration conformable to the state of things, and in exact accordance with the laws of nature and of nations. It is not in order to offer an amendment now, but if the present motion prevails, I design to propose an amendment to this effect. This will answer the purpose completely, and remove from the importer every temptation to engage in this traffic. The idea of forfeiture proceeds wholly on a false principle. It implies that the importer has a right to the slaves. But an amendment like that which I have suggested will declare the fact as it is; it will be conformable to truth. But if the section passes as it now is, with the clause of forfeiture retained, we recognize in our statute book a false principle, which neither the constitution nor the laws of the United States have ever authorized, to wit: that a property may be had in human beings. The constitution and laws have always left the disposition of slaves to the States, and hitherto have never recognized the principle of slavery.

But if we do not forfeit the negroes, the question is asked again and again, with an air of triumph, what is to be done with them? For my part I had rather strike out the section, and do nothing at all, than retain the

forfeiture. If we do nothing we shall not increase the evil. They will then be left to the States to dispose of according to the State laws. This will not increase the evil. I am, however, willing to agree to any practicable mode of disposing of them. But at any rate, I am for striking out the forfeiture, and opposed to disgracing our statute book with a recognition of the principle of slavery.

Mr. QUINCY.—Since there is so general an agreement as to the end, I wish it were possible we could unite more perfectly as to the means. Those in favor of forfeiture are anxious for nothing so much as to prohibit totally the importation of slaves. Indeed, it is for this very reason they are in favor of it, because they assert, and to my mind on unquestionable ground, that this is your only effectual means of prohibition. They are also anxious that if they are brought they should not be made slaves in their part of the country. As to their being made free in the Southern States, that is out of the question. The policy of those States, the first duty of self-preservation, forbid it.

The argument of my colleague is, “forfeiture implies a right, vested in importers. Now it is disgraceful to the United States to admit such an implication. The importer has no right. He could acquire none. These persons are free by the law of nature—as free as any of us. The African prince who sold them was a usurper. The purchasers in Africa were trespassers against the law of nature. They cannot acquire any right of property in these persons, and it is shameful for the United States, by forfeiture, to admit it.” Sir, the conclusions of the gentleman are perfectly correct—his principles are solid. No man in this House denies either. Refer this question between the African prince and his subjects, and between the African and his importer, to five hundred juries in New England, and five hundred times a verdict would coincide with the principles and reasonings of my colleague. But the misfortune is, that, notwithstanding all these true and unquestionable principles, the African prince, at this day, does, and, after our law passes, will sell his subjects. To all practical purposes, a title is acquired in them, and they are passed, like other property, from one to another, in their native country. But this is not the worst. A title in this description of persons is not only allowed in Africa, but is, and must be, after your law passes, in a large section of your own country. The gentlemen

from that part of the United States tell you that they cannot be allowed to be free among them. The first law, self-preservation, forbids it.

Now this is that real, practical state of things to which I invite gentlemen to look, and on which they ought to legislate.

I ask concerning it, how ought we to reason? What is our duty?

First. Do all you can to prohibit. Next, if you fail in this—if, in spite of your laws and their penalties, this description of persons be brought into the United States, then place yourselves in such a situation as may enable you best to meliorate the condition of this unhappy class of men, consistent with self-preservation, and with the deep stake which an important section of the country has in the policy which you adopt.

On both accounts forfeit. First, because it is the best means of prohibition. The gentleman from Georgia (Mr. EARLY) declares it is the only means by which you can do it effectually. The argument he used on this point, on a former day, is to my mind conclusive. From the situation of the Southern States, particularly Georgia, you can only prevent the traffic by taking away the inducement to purchase. And this can only be done by making the right of every purchaser be forfeited as a penalty. Next, if contrary to your laws they be imported, they are thrown on the humanity of the United States. They are brought here by our citizens, and it is the duty of the National Government to reserve the control of them, so as to be certain that the best is done for the amelioration of their condition that our own safety permits. On this account, forfeit. It is only as a commercial regulation that the National Government can get this control. If we do not take that title in these persons into the United States, which the laws of some States recognize, in those States they are slaves—they must be slaves. Those States can never permit them to be any thing else. This can only be done by forfeiture. The character of your policy will depend upon what you do with them after the forfeiture. Gentlemen reason as if those persons were inevitably to be sold under the hammer. Certainly this is not the necessary consequence. Are they not after forfeiture at your control? May you not do with them what is best for human beings in that condition in which these miserable creatures are, when they first arrive in this country, naked, helpless, ignorant of our language, our climate, our laws, our character, and our manners? Are you afraid to trust the National Government, and yet, by

refusing to forfeit, will you throw them under the control of the States, all of whom may, and some of them will, and must, make them slaves?

But the great objection to forfeiture is, “it admits a title.” I answer, first, this does not necessarily follow. All the effect of forfeiture is, that whatever title can be acquired in the cargo shall be vested in the United States. If the argument of the gentleman be correct, and the species of cargo be such as that, from the nature of the thing, no title can be acquired in it, then nothing can vest in the United States; and the only operation of forfeiture is to divest the importer’s color of title by the appropriate commercial term—perhaps the only term we can use effectual to this purpose, and which does not interfere with the rights of the States. Grant that these persons have all the rights of man; will not these rights be as valid against the United States as against the importer; and by taking all color of title out of the importer, do we not place the United States in the best possible situation to give efficiency to the rights of man, in respect to the persons so imported?

But, next, let us agree that forfeiture does admit a species of title, lost on one side and acquired on the other; such as we cannot prevent being recognized in those States where these importations will most frequently take place; I ask, which is best, and which most humane? Admit a title, gain it for the United States, and then make these miserable creatures free, under such circumstances, and in such time, as their condition into which they are forced permits, or deny the possibility of acquiring a title, and leave them to be slaves? But my colleague (Mr. BIDWELL) has a sovereign specific for this. He says, “We do not make them slaves, we only leave them to the laws of the respective States.” But I ask, if the laws of all the States may, and those of some of the States do, and necessarily will make them slaves, “by leaving them to the operation of the laws of these States,” do we not as absolutely make them slaves as though we voted them to be such in this House? To my mind, when we have the power, if we fail to secure to ourselves the means of giving them their freedom, under proper modifications, we have an agency in making them slaves. To me it seems that the amendment proposed, striking out the forfeiture, will defeat the very end its advocates have in view. Really, sir, I fear it will happen to the honorable mover of the amendment (Mr. BIDWELL) as it happened to another celebrated assertor of African rights—I mean the renowned Knight of La Mancha. We all recollect that while that worthy knight was, with all

the real honesty in the world, descanting on the moral fitness of things on the eternal, unalienable, imprescriptible rights of man!—that during all that time he was exercising himself and instructing others on these themes—the very persons he had undertaken to deliver—the great African Princess Micomicona, Queen of the great African Kingdom Micomicon, with her father, her mother, her brothers, her sisters, in short her whole family, were left in absolute and irretrievable slavery; their fetters not knocked off, nor their shackles lightened, nor one ray of light thrown in upon their prison. And yet the good knight, with all possible self-complacency, astride of his theories, was couching his lance, scouring the plain, the mirror of philanthropic chivalry, the very cream of the milk of human kindness!

Now, I say, sir, a little more practicable good, and a little less theoretic impulse. Reason and legislate according to the actual state of this description of persons. Place yourselves so as to do the best possible for their good. They are thrown on your mercy. Do not trust to others. You can be most certain this power will not be abused in your own hands. Forfeit—because this is the technical word for getting the control of them, and the only certain way of making them secure of your humanity. But what shall be done with them? That is a subsequent consideration. It is enough for me to know that this House can never do any thing with them which humanity and self-preservation do not dictate. Gentlemen will not pretend that these Africans have more rights by nature than our children. And yet, in every parish, poor children are bound out, without their consent, until they are of age, and of capacity to take care of themselves. These Africans are as helpless, ignorant, and incompetent as such children, and the wisdom of the National Legislature certainly can, and I have no doubt will, devise means to make them useful members of society, without any infringement of the rights of man.

Mr. MACON, (the Speaker.)—I still consider this a commercial question. The laws of nations have nothing more to do with it than the laws of the Turks or the Hindoos. We derive our powers of legislation not from the laws of nations, but from the constitution. If this is not a commercial question, I would thank the gentleman to show what part of the constitution gives us any right to legislate on this subject. It is in vain to talk of turning these creatures loose to cut our throats.

Suppose we leave them as the gentleman from Massachusetts (Mr. BIDWELL) has suggested, what will become of them? They will be smuggled in and made slaves. All the arguments which I have yet heard have served to confirm the opinion that a forfeiture is the only effectual mode of prohibition; and though our sincerity has been doubted with an if, yet I believe every member in this House is solicitous to put a complete stop to this nefarious traffic.

WEDNESDAY, December 31.

Importation of Slaves.

The House proceeded to consider the amendments reported by the Committee of the Whole on the twenty-ninth instant, to the bill to prohibit the importation or bringing of slaves into the United States, or the territories thereof, after the 31st of December.

Mr. SLOAN was decidedly opposed to the amendment. He was aware that some might charge him with departing from his well-known peaceable principles, in contending for so sanguinary a punishment as death. But many crimes inferior to this were punished with death, and he thought that there ought to be a proportion in these things. Mr. S. stated the hardships of the Africans, and the cruel circumstances attending their importation, and insisted on the magnitude of the crime at considerable length.

After some conversation between Mr. SMILIE and the SPEAKER, on a point of order, Mr. DANA called for a division of the question. The question was accordingly divided, the first being on striking out of the bill so much as inflicts the punishment of death.

Mr. ELY was against striking out. He deemed the crime in question as one of the most heinous kind, and one which ought to be punished capitally. But his principal reason for advocating so severe a punishment was, that he thought it the most effectual method of putting a stop to the trade. The other provisions of the bill were, in his opinion, not sufficient. If the punishment of death was inflicted, he presumed no persons would venture to engage in the trade, and run the risk of being punished, especially, as the traffic is one of the most uncertain and perilous kinds. It is said, if you punish with such

severity, none will inform; but will any one venture to run the risk under this impression? Mr. E. thought not. Besides, this is the most humane punishment, because it will most effectually prevent the accumulation of miseries that result from the trade. It will, also, remove all the difficulties on the subject of forfeiture, by preventing the introduction of slaves.

Mr. TALLMADGE said he considered the question before the House to be, whether we should strike out that part of the section which attaches the crime of felony to this nefarious traffic, and, of course, annexes to it the punishment of death. He trusted the House would not consent to strike out that clause of the bill, the retention of which should receive his hearty support.

Since I have had the honor of a seat in this House, I can scarcely recollect an instance in which the members seem so generally to agree in the principles of a bill, and yet differ so widely as to its details. There seems to be great unanimity respecting the atrocity of the crime, but a wide difference of opinion as to the measures necessary to prevent it. To me, it is matter of surprise as well as of regret, that gentlemen, who appear so ardently engaged to prevent the introduction of slaves into our country, should not be willing to unite with us in providing for it an adequate punishment. The evils which may be expected to result from this commerce, if persisted in, will fall on the Southern States; and the Eastern and Middle States are accused of carrying it on. If this be the fact, and gentlemen are sincere in their declarations, why will they not unite with us to mete out that punishment which, on their own statements, will fall exclusively on those who are concerned in this execrable traffic from the Northern States?

Mr. MOSELY.—The only objection which has been made against this section of the bill, as it was originally introduced, is, that the severity of the penalty as there prescribed, would probably prevent the law from being carried into execution.

I entirely agree in the justice of the general remark, that it is the certainty, more than the severity, of the punishment, which tends to prevent the commission of crimes; that when the penalty is excessive or disproportioned to the offence, it will naturally create a repugnance to the law, and render its execution odious.

But I would ask, in the first place, what punishment can be considered as too severe to be inflicted on this inhuman and murderous traffic? Viewed in all its consequences, there is hardly to be found, I apprehend, in the whole catalogue of crimes, one attended with more accumulated guilt. I have, indeed, sir, heard no gentleman suggest any thing in palliation of this offence, or deny that it is justly deserving of death. Why, then, are we to presume that the law would not be enforced? The gentlemen from the South assure us that they, and the people whom they represent, are sincerely solicitous to prevent the further importation of slaves into this country, and they will cheerfully and cordially co-operate in the most effectual measures for that purpose. Will they, then, from motives of tenderness to the persons employed in importing them, be unwilling to subject those persons to the punishment they justly merit?

Sir, there is one circumstance worthy of attention, which I think must obviate every objection of this sort. Who are the people engaged in this business? We have been repeatedly told, and told with an air of some triumph, by gentlemen from the South, that it is not their citizens; that they have no concern in this nefarious traffic; that it is the people from the Northern States who import these negroes into the Southern States, and thereby seduce their citizens to become their purchasers. If this be the fact, are we to believe that they will entertain any particular feelings of partiality or passion towards this class of people, or that they will not feel a just degree of indignation towards them, and be disposed to subject them to the most exemplary punishment? And as it respects the great body of the people in the Northern States, at least, I will presume to say, of the State which I have the honor to represent, should any of their citizens be convicted upon this law, so far from charging their Southern brethren with cruelty or severity in hanging them, they would acknowledge the favor with gratitude. When we consider the character of the persons engaged in this traffic, that they are the most hardened and abandoned of the human species, and that it is extremely lucrative, can we suppose that any penalty short of death will deter them from it? I shall be very glad if even this will have the effect.

Mr. LLOYD.—Though this traffic is sanctioned by the Constitution and laws of the United States, I regard it with hatred and abhorrence, and conceive it to be of the highest importance that we take means to put a complete stop to its further continuance. But, in my opinion, the

punishment of death is not best calculated to accomplish this object. Besides, it is not proportional to the crime. This subject has not, I conceive, been fairly argued. Very few of the negroes brought into this country are kidnapped and stolen away. Look at the condition of the people of Africa. Three-fourths of those brought into this country are slaves originally, either by descent or conquest. It is a fact that slavery prevails extensively in Africa. Those taken in conquest are disposed of and sent abroad on account of the vindictive spirit of those people. Such is their thirst for revenge, that this is absolutely necessary for the safety of the conqueror. Of course, all the arguments urged on the ground of the slaves being kidnapped and carried away from a state of freedom, are fallacious.

Mr. OLIN.—I would ask gentlemen if they would not as soon be willing to be brought to the halter as to be made slaves for life? If they would, and I trust they would, man-stealing is a crime as bad as murder, and ought to be punished as heavy. I was at first against the punishment of death; but I own that gentlemen have convinced me by their arguments, and I am now the other way. I am persuaded that gentlemen will think there is nothing dishonorable in this changing one's mind.

Mr. EARLY.—I formerly thought that the decision on this question was not a matter of any great importance; but as it seems now to be considered as a prelude to an attack on subsequent parts of the bill, it appears to me now important that the subject be well understood and rightly decided.

What are you told? You are now told that a forfeiture is unnecessary, and that to inflict the punishment of death is the only way to stop this trade. I consider this as an old attack revived in a new form. I hope the House will pardon me for undertaking to assign reasons for the bill as reported.

I should like to know how the fear of death will operate on a man who is bound with his slaves to a country where he knows the punishment will not be enforced. He will be bound to a country where the people see slaves every hour of their lives; where there is no such abhorrence of the crime of importing them, and where no man dare inform. My word for it, I pledge it to-day, and I wish it may be recollected; no man in the Southern section of the Union will dare inform. It would cost him more than his life is worth. No man would risk it when it led to the punishment of death, when it was

not for an offence which nature revolts at. They do not consider it as a crime.

The gentleman (Mr. SMILIE) has said that, in the Southern States, slavery is felt and acknowledged to be a great evil, and that therefore we will execute a severe law to prevent an increase of this evil. Permit me to tell the gentleman of a small distinction in this case. A large majority of the people in the Southern States do not consider slavery as a crime. They do not believe it immoral to hold human flesh in bondage. Many deprecate slavery as an evil; as a political evil; but not as a crime. Reflecting men apprehend, at some future day, evils, incalculable evils, from it; but it is a fact that few, very few, consider it as a crime.

It is best to be candid on this subject. If they considered the holding of men in slavery as a crime, they would necessarily accuse themselves, a thing which human nature revolts at. I will tell the truth. A large majority of people in the Southern States do not consider slavery as even an evil. Let the gentleman go and travel in that quarter of the Union; let him go from neighborhood to neighborhood, and he will find that this is the fact.

Mr. HOLLAND.—In the Southern States slavery is generally considered as a political evil, and in that point of view nearly all are disposed to stop the trade for the future. But have capital punishments been usually inflicted on offences merely political? I believe not. Fine and imprisonment are the common punishments in such cases. The people of the South do not generally consider slavery as a moral offence. The importer might say to the informer that he had done no worse, nor even so bad as he. It is true that I have these slaves from Africa; but I have transported them from one master to another. I am not guilty of holding human beings in bondage. But you are. You have hundreds on your plantations in this miserable condition. By your purchases you tempt traders to increase the evil. You and your ancestors have introduced this calamity into the country, and you are continuing, you are augmenting it. The importer might hold the same language to the jury and the judge who try him. He might tell them that they were even more guilty than he. Under such circumstances the law inflicting death would not be executed. But if you punish by fine and imprisonment only, you will find the people of the South willing and ready to execute the law.

Mr. DWIGHT.—We are all happily agreed in the great object of the bill—the prevention of the importation of slaves into the United States. Unfortunately, we are not so well agreed in the means to effect this object. It is not, however, at all strange that men should differ about the best mode to accomplish so important a purpose; and especially men in the circumstances in which we are placed. Those of us who come from the Northern and Eastern States, where slavery exists not at all, or but in a slight degree, would naturally view this subject in a very different light from gentlemen who represent the Southern States, where slavery always has existed, and that to a great extent. As great a degree of unanimity as is possible is of much importance, both for the purpose of effectually preventing this inhuman traffic, and for the honor and reputation of our country.

The gentleman from Georgia (Mr. EARLY) has informed us repeatedly that a law making this a capital offence cannot be executed in the Southern States; that the importation of slaves has so long been familiar to them, that a great majority of the people consider it not as an aggravated crime, and a large portion of them as no crime at all; that if we make such an offence capital; if we make the consequence of importing a cargo of slaves to be the loss of life, no man will ever be prosecuted for it, because no man will dare inform. All the gentlemen, sir, from the Southern States, who have spoken on this subject, have told us that they earnestly wish effectually to prevent the slave trade in future. I am disposed to credit them fully. Indeed, I cannot conceive that they should not sincerely and fervently wish to prevent a traffic, which, if persisted in, must in all human probability, first or last, bring upon them and their families the most tremendous calamities. If, then, they view the subject in this light, if they are sincere in making these declarations, there is not only no danger that the law will not be executed, but they will unite to a man to execute the law; the whole community will inform; a regard to their own lives, and the lives of their posterity, will drive them to it. And if, sir, in the rigid execution of this statute, its penalties fall upon men from the Eastern States, who are profligate enough to engage in this inhuman trade, I most heartily concur with my colleague in saying, let the law have its full force, let it fall with all its force upon the offender; let him die.

The question being taken by yeas and nays, on striking out so much of the first section as inflicts the punishment of death on owners and masters of vessels employed in the slave trade, it was carried—yeas 63, nays 53, as follows:

YEAS.—Willis Alston, jun., John Archer, Joseph Barker, Burwell Bassett, Silas Betton, John Boyle, William A. Burwell, William Butler, George W. Campbell, Martin Chittenden, John Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Orchard Cook, Ezra Darby, John Dawson, William Dickson, Peter Early, James Elliot, Caleb Ellis, Ebenezer Elmer, James Fisk, Isaiah L. Green, William Helms, James Holland, David Holmes, John G. Jackson, Walter Jones, Thomas Kenan, Nehemiah Knight, Edward Lloyd, Patrick Magruder, Robert Marion, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Gurdon S. Mumford, Thomas Newton, jun., John Randolph, John Rhea of Tennessee, Jacob Richards, Peter Saily, Thomas Sanford, Martin G. Schuneman, Dennis Smelt, John Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, Samuel Taggart, Samuel Tenney, Uri Tracy, Abram Trigg, Daniel C. Verplanck, Robert Whitehill, Eliphalet Wickes, Nathan Williams, Joseph Winston, and Thomas Wynns.

NAYS.—Evan Alexander, Isaac Anderson, David Bard, George M. Bedinger, Barnabas Bidwell, John Blake, jun., Thomas Blount, James M. Broom, Robert Brown, Levi Casey, John Chandler, Matthew Clay, Frederick Conrad, Leonard Covington, Richard Cutts, Samuel W. Dana, John Davenport, junior, Theodore Dwight, Elias Earle, William Ely, John W. Eppes, William Findlay, John Fowler, Edwin Gray, Andrew Gregg, Silas Halsey, Seth Hastings, David Hough, John Lambert, Duncan McFarland, Josiah Masters, John Morrow, Jonathan O. Mosely, Jeremiah Nelson, Gideon Olin, John Porter, John Pugh, John Rea of Pennsylvania, John Russell, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Benjamin Tallmadge, David Thomas, Thomas W. Thompson, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, John Whitehill, David R. Williams, Marmaduke Williams, and Alexander Wilson.

The question on inserting, in lieu of what was stricken out, a clause prescribing imprisonment for not more than ten, nor less than five years,

was carried without a division.

The amendments to the second and third sections were read and agreed to, when, after several unsuccessful attempts to adjourn, the further consideration of the subject was postponed till Friday—ayes 71—to which day the House adjourned.

MONDAY, January 5, 1807.

Another member, to wit, MATTHEW WALTON, from Kentucky, appeared, and took his seat in the House.

WEDNESDAY, January 7.

Salt Duty.

Mr. J. RANDOLPH, from the Committee of Ways and Means, to whom was referred, on the third ultimo, so much of the President's Message as relates "to a suppression of the duties on salt, to a continuation of the Mediterranean fund, and to the state of our revenues," presented a bill repealing the acts laying duties on salt, and continuing in force, for a further time, the first section of the act, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers;" which was read twice, and committed to a Committee of the Whole on Friday next.

FRIDAY, January 9.

Another member, to wit, MATTHEW LYON, from Kentucky, appeared, and took his seat in the House.

MONDAY, January 12.

Duties on Salt.

Mr. J. RANDOLPH moved that the House resolve itself into a Committee of the Whole on the bill for “repealing the acts laying duties on salt, and continuing in force the first section of an act, entitled an act further to protect the commerce and seamen of the United States against the Barbary Powers.”^[45]

TUESDAY, January 20.

Suspension of the Anti-slavery of the Ordinance of '87 in Indiana.

The SPEAKER laid before the House a letter from William Henry Harrison, Governor of the Indiana Territory, enclosing certain resolutions passed by the Legislative Council and House of Representatives of the said Territory, relative to a suspension, for a certain period, of the sixth article of compact between the United States and the Territories and States north-west of the river Ohio, made on the thirteenth of July, one thousand seven hundred and eighty-seven; which were read, as follows:

Resolved, unanimously, by the Legislative Council and House of Representatives of the Indiana Territory, That a suspension of the sixth article of compact between the United States and the Territories and States north-west of the river Ohio, passed the 13th day of July, 1787, for the term of ten years, would be highly advantageous to the said Territory, and meet the approbation of at least nine-tenths of the good citizens of the same.

Resolved, unanimously, That the abstract question of liberty and slavery is not considered as involved in a suspension of the said article, inasmuch as the number of slaves in the United States would not be augmented by the measure.

Resolved, unanimously, That the suspension of the said article would be equally advantageous to the Territory, to the States from whence the negroes would be brought, and to the negroes themselves.

To the Territory, because of its situation with regard to the other States; it must be settled by emigrants from those in which slavery is tolerated, or for many years remain in its present situation, its citizens deprived of the greater part of their political rights, and, indeed, of all those which

distinguish the American from the citizens and subjects of other governments.

The States which are overburdened with negroes would be benefited by their citizens having an opportunity of disposing of the negroes which they cannot comfortably support, or of removing with them to a country abounding with all the necessaries of life; and the negro himself would exchange a scanty pittance of the coarsest food for a plentiful and nourishing diet, and a situation which admits not the most distant prospect of emancipation, for one which presents no considerable obstacle to his wishes.

Resolved, unanimously, That the citizens of this part of the former Northwestern Territory consider themselves as having claims upon the indulgence of Congress in regard to a suspension of the said article, because at the time of the adoption of the ordinance of 1787 slavery was tolerated, and slaves generally possessed by the citizens then inhabiting the country, amounting to at least one-half the present population of Indiana, and because the said ordinance was passed in Congress when the said citizens were not represented in that body, without their being consulted, and without their knowledge and approbation.

Resolved, unanimously, That, from the situation, soil, climate, and productions of the Territory, it is not believed that the number of slaves would ever bear such proportion to the white population, as to endanger the internal peace and prosperity of the country.

Resolved, unanimously, That copies of these resolutions be delivered to the Governor of this Territory, to be by him forwarded to the President of the Senate and to the Speaker of the House of Representatives of the United States, with a request that they will lay the same before the Senate and House of Representatives, over which they respectively preside.

Resolved, unanimously, That a copy of these resolutions be delivered to the delegate to Congress from this Territory, and that he be, and he hereby is, instructed to use his best endeavors to obtain a suspension of the said article.

The resolutions were referred to Mr. PARKE, Mr. MASTERS, Mr. RHEA of Tennessee, Mr. SANFORD, Mr. ALSTON, Mr. JEREMIAH MORROW, and Mr.

TRIGG, to examine and report their opinion thereupon to the House.

MONDAY, January 26.

Another new member, to wit, WILLIAM W. BIBB, from Georgia, returned to serve as a member for the said State, in the place of Thomas Spalding, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

Suspension of the Habeas Corpus.

A message was received from the Senate, by Mr. SAMUEL SMITH, as follows:

Mr. SPEAKER: I am directed by the Senate of the United States to deliver to this House a confidential message, in writing.

The House being cleared of all persons except the members and the Clerk, Mr. SMITH delivered to the SPEAKER the following communication in writing:

Gentlemen of the House of Representatives:

The Senate have passed a bill suspending for three months the privilege of the writ of habeas corpus, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein, as speedily as the emergency of the case shall in your judgment require.

Mr. SMITH, also, delivered in the bill referred to in the said communication, and then withdrew.

The bill was read as follows:

A Bill suspending the writ of Habeas Corpus for three months, in certain cases.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases, where any person or persons, charged on oath with treason, misprision of treason, or other high crime or misdemeanor, endangering the peace, safety, or neutrality of the United States, have been or shall be arrested or imprisoned, by virtue of any warrant or authority of the President of the United States, or from the Chief Executive Magistrate of any State or Territorial Government, or from any person acting under the direction or authority of the President of the United States, the privilege of the writ of *habeas corpus* shall be, and the same hereby is suspended, for and during the term of three months from and after the passage of this act, and no longer.

Mr. P. R. THOMPSON moved that the message and the bill received from the Senate ought not to be kept secret, and that the doors be opened.

Mr. BURWELL and Mr. SMILIE spoke in support of the motion.

Mr. EARLY thought that a previous order should be taken to remove the injunction of secrecy. To open the doors and admit strangers to hear the debate, and yet continue the injunction of secrecy on members, would present a singular spectacle.

Mr. J. RANDOLPH said they could not be bound to secrecy except by their own vote. If there was any charm by which they could be bound, except their own act, he wished it might be dissolved.

Mr. G. W. CAMPBELL hoped the usual course would be pursued; read the bill a second time, and then refer it to a Committee of the Whole.

Mr. ALSTON thought the question, whether the bill should pass to a second reading, first in order.

The SPEAKER decided that the motion to open the doors was in order, and the question on that motion must first be taken.

The yeas and nays being demanded by one-fifth of the members present, they were ordered to be taken.

The question then was put on the motion, *That the message and bill received from the Senate ought not to be kept secret, and that the doors be now opened*; and resolved in the affirmative—yeas 123, nays 3.

Mr. EPPES moved that the bill be rejected.^[46] This motion was afterwards withdrawn to give place to another motion, but with the idea of renewing it again.

Mr. BURWELL said he was unacquainted with the particular reasons which had induced the Senate to pass this bill. None had been assigned when the bill was communicated, and no additional documents presented. He could, therefore, only be governed by that information which the House had received; and he believed that it would justify the motion before the House. The President, in his Message of the 22d, says, “on the whole, the fugitives from Ohio and their associates from Cumberland, or other places in that quarter, cannot threaten serious danger to the city of New Orleans.” If that be the case, upon what ground shall we suspend the writ of habeas corpus? Can any person imagine the United States are in danger, after this declaration of the President, who unquestionably possesses more correct information than any other person can be supposed to have. In another part of the Message, we are informed—

“That the persons arrested at New Orleans have been embarked for some of the Atlantic ports, probably on the consideration that an impartial trial could not be expected during the present agitations of New Orleans, and that that city was not as yet a safe place of confinement. As soon as these persons shall arrive, they will be delivered to the custody of the law, and left to such course of trial, both as to place and process, as its functionaries may direct; the presence of the highest judicial authorities to be assembled at this place within a few days, the means of pursuing a sounder course of proceedings here than elsewhere, and the Executive means, should the judges have occasion to use them, render it equally desirable, for the criminals as for the public, that being already removed from the place where they were apprehended, the first regular arrest should take place here, and the course of proceedings receive here its proper direction.”

The President evidently holds out the idea, that the correct and proper mode of proceeding can be had under the existing laws of the United States. These persons may be transferred from the military to the civil authority, and be proceeded against according to law. Those, therefore, who fear the escape of the traitors already apprehended, and would, by this measure,

obviate the difficulty, must perceive that consequence would not ensue. Mr. B. said he should consider the suspension of the habeas corpus as holding out an idea of danger and alarm, which was highly improper, inasmuch as it did not exist. It is true, this conspiracy was once formidable, extensive, and threatening; but it has been dissipated by the vigilance of Government. He would ask gentlemen, if they seriously believed the danger sufficiently great to justify the suspension of this most important right of the citizen, to proclaim the country in peril, and to adopt a measure so pregnant with mischief, by which the innocent and guilty will be involved in one common destruction? He said this was not the first instance of the kind since the formation of the Federal Government; there had been already two insurrections in the United States, both of which had defied the authority of Congress, and menaced the Union with dissolution. Notwithstanding one of them justified the calling out of fifteen thousand men, and the expenditure of one million of dollars, he had not heard of a proposition to suspend the writ of habeas corpus. What, then, will be said of us, if now, when the danger is over, firm in the attachment of the people to the Union, with ample resources to encounter any difficulties which may occur, we resort to a measure so harsh in its nature, oppressive in its operation, and ruinous as a precedent? While, in former times, it was thought unsafe to suspend this most important and valuable part of the constitution, he would ask, whether the necessity at the present time could be considered greater? With regard to those persons who may be implicated in the conspiracy, if the writ of habeas corpus be not suspended, what will be the consequence? When apprehended, they will be brought before a court of justice, who will decide whether there is any evidence that will justify their commitment for further prosecution. From the communication of the Executive, it appeared there was sufficient evidence to authorize their commitment. Several months would elapse before their final trial, which would give time to collect evidence, and if this shall be sufficient, they would not fail to receive the punishment merited by their crimes and inflicted by the laws of their country.

Mr. B. said he could conceive no injury that would result on this score; and, indeed, if some persons should elude justice, it would not endanger society so materially as to come within the terms of the constitution. He observed, it appeared to him the commencement of an insurrection was the only time when the writ of habeas corpus ought to be suspended; when the

seizure of the ringleaders, by dismaying the inferior agents, would enable the Government, without the effusion of blood, to suppress it. But it was manifest that, at this moment, every thing intended by the conspirators was effected, or they were in the hands of the civil authority; there was, therefore, no good reason to take this precautionary step with that view; while on the one hand, it would unavoidably produce unnecessary alarm, and much inconvenience to the citizens of the United States. Nothing but the most imperious necessity would excuse us in confining to the Executive, or any person under him, the power of seizing and confining a citizen, upon bare suspicion, for three months, without responsibility, for the abuse of such unlimited discretion. Mr. B. said he could judge from what he had already seen, that men, who are perfectly innocent, would be doomed to feel the severity of confinement, and undergo the infamy of the dungeon. What reparation can be made to those who shall thus suffer? The people of the United States would have just reason to reproach their representatives with wantonly sacrificing their dearest interests, when, from the facts presented to this House, it seems the country was perfectly safe, and the conspiracy nearly annihilated. Under these circumstances, there can be no apology for suspending the privilege of the writ of habeas corpus, and violating the constitution, which declares "the writ of habeas corpus shall not be suspended, unless when, in cases of invasion or rebellion, the public safety may require it."

Mr. B. said he hoped he had shown that, admitting the two cases specified in the constitution existed, they were not accompanied with such symptoms of calamity as rendered the passage of the bill expedient.

What, in another point of light, would be the effect of passing such a law? Would it not establish a dangerous precedent? A corrupt and vicious Administration, under the sanction and example of this law, might harass and destroy the best men of the country. It would only be necessary to excite artificial commotions, circulate exaggerated rumors of danger, and then follows the repetition of this law, by which every obnoxious person, however honest, is surrendered to the vindictive resentment of the Government. It will not be a sufficient answer, that this power will not be abused by the President of the United States. He, Mr. B. believed, would not abuse it, but it would be impossible to restrain all those who are under him. Besides, he would not consent to advocate a principle bad, in itself,

because it will not, probably, be abused. For these reasons, Mr. B. said, he should vote to reject the bill.

Mr. ELLIOT said that he regretted the motion to reject the bill had been made, because, considering the subject of very great importance, he thought it most proper that it should take the usual course of business, that the bill should be read a second time, and referred to a Committee of the Whole, for the purposes of deliberation and discussion.

Called upon, however, said Mr. E., to answer to the question, Shall the bill be rejected? I must answer that question in the affirmative, as I should deem it my duty to advocate its rejection in any form which it might assume, and in any stage of its progress; and I deem it equally my duty, on the present occasion, to express my sentiments upon the subject. It is, indeed, difficult for me, consistently with the sincere and high respect which I entertain for the source from whence this measure originated, to express, in decorous terms, the hostility which I feel to the proposition. I am therefore disposed to consider it as an original proposition here; as a motion in this body to suspend, for a limited time, the privileges attached to the writ of habeas corpus. And, in this point of view, I am prepared to say that it is the most extraordinary proposition that has ever been presented for our consideration and adoption. Sir, what is the language of our constitution upon this subject? "The privilege of the writ of habeas corpus shall not be suspended, except when, in cases of invasion or rebellion, the public safety shall require it." Have we a right to suspend it in any and every case of invasion and rebellion? So far from it, that we are under a constitutional interdiction to act, unless the existing invasion or rebellion, in our sober judgment, threatens the first principles of the national compact, and the constitution itself. In other words, we can only act in this case with a view to national self-preservation. We can suspend the writ of habeas corpus only in a case of extreme emergency; that alone is *salus populi* which will justify this *lex suprema*. And is this a crisis of such awful moment? Is it necessary, at this time, to constitute a dictatorship, to save the people from themselves, and to take care that the Republic shall receive no detriment? What is the proposition? To create a single Dictator, as in ancient Rome, in whom all power shall be vested for a time? No; to create one great Dictator, and a multitude, an army of subaltern and petty despots; to invest, not only the President of the United States, but the Governors of States and Territories,

and, indeed, all persons deriving civil or military authority from the supreme Executive, with unlimited and irresponsible power over the personal liberty of your citizens. Is this one of those great crises that require a suspension, a temporary prostration of the constitution itself? Does the stately superstructure of our Republic thus tremble to its centre, and totter towards its fall? Common sense must give a negative answer to these questions. What are the facts? Is it, indeed, a case of rebellion? We are officially informed that rebellion has reared its hydra front in the peaceful valleys of the West. But we are also informed by the Executive that treason has no prospect of success; that “the fugitives from the Ohio, and their associates from Cumberland, cannot threaten serious danger even to the city of New Orleans.” Not a single city, still less a Territory or a State, is considered in danger; and the Executive, not only possesses all the information which has been communicated to us, but much more, for we are informed that the communication has been made under the reservation contained in the resolution requesting it, and of course all the facts in the knowledge of the Executive, which are decided to be improper for disclosure at this time, have been kept back. And the Executive, possessing all this information, assures us that the public safety is not endangered. Can we, under these circumstances, consent to the investiture of dictatorial powers in that department of the Government which thus assures us that all is safe? It would be contrary to the spirit of the constitution.

But we shall be told that the constitution has contemplated cases of this kind, and, in reference to them, invested us with unlimited discretion. When any gentleman shall advance such a position, we, who advocate the rejection of the bill, will meet him upon that ground, and put the point at issue. We contend that the framers of the constitution never contemplated the exercise of such a power, under circumstances like the present; and that the constitution itself, instead of authorizing, has prohibited such discretion, unless in an extreme case. And can any member lay his hand upon his heart and say, that the present is a case of that description? He who cannot do this must, with us, consider the proposed measure as unconstitutional.

Let us pay a little attention to the nature and character of the writ of habeas corpus. It has its origin in Great Britain, and is there considered in two great points of view, as it respects the monarch, and as it respects the subject. As it respects the monarch, it is one of the *jura prerogativa*, a writ

of prerogative; but it is not considered as calculated to increase the power of the king, or the splendor of the throne; in its origin and true character it is viewed as a prerogative, exercised by the king, or those authorities to whom his judicial powers are supposed to be delegated, only for the purpose of securing the constitutional rights of the subject, and restraining the invasion of those rights. As it respects the subject, it is a writ of right, and is emphatically called, by English writers, a writ of liberty.

By the provisions of the famous statute of Charles II., which has even been called a second *magna charta*, its privileges are guarantied to all British subjects at all times. An eminent English author, and the most popular writer upon subjects of legal science, considers its suspension as the suspension of liberty itself; declares that the measure ought never to be resorted to but in cases of extreme emergency; and says that the nation then parts with its freedom for a short and limited time, only to resume and secure it for ever. Hence, he compares the suspension of the habeas corpus act in Great Britain to the dictatorship of the Roman Republic.

But objectionable as the bill upon the table is in point of principle, it is, if possible, still more objectionable in point of detail. It invests with the power of violating the first principles of civil and political liberty, not only the supreme Executive, and the Executives of individual States and Territories, but all civil and military officers who may derive any authority whatever from the Chief Magistrate. And it extends the operation of the suspension of the privileges of the habeas corpus, not only to persons guilty or suspected of treason, or misprision of treason, but, to those who may be accused of any other crime or misdemeanor, tending to endanger the “peace, safety, or neutrality,” of the United States! What a vast and almost illimitable field of power is here opened, in which Executive discretion may wander at large and uncontrolled! A vast and dangerous scene of power, indeed! It gives the power of dispensing with the ordinary operation of the laws to a host of those *little great men*, who are attached to every Government under heaven. I wish not to reflect upon any of those subordinate officers who may be employed by the Government of my country.

But no one will doubt that, in times of alarm and danger, many men will be clothed with the functions of office, who are incompetent to the discreet exercise of such boundless discretion. I can never wish to see such persons invested with the means of aiming at the heads of their private enemies, or

other innocent and unoffending citizens, the thunderbolts of public indignation, or scorching them with the lightning of public suspicion. Says the poet:

“Could great men thunder, Jove would ne’er be quiet,
For every petty pelting officer
Would use his heaven for thunder.”

Let us again ask for evidence of the necessity of this measure? Certainly none can be produced, for we are informed, from the first authority, that if the present be not a time of profound peace, it is far from being a period of public danger. The leader of this petty rebellion has been called the modern Catiline. Undoubtedly, he possesses many of the qualities which a celebrated ancient historian ascribes to the Catiline of Rome: his genius, his address, his activity, his profligacy; but he is destitute of his means and resources. He wants that power of doing mischief which the Roman conspirator possessed. So far is he from being able to make war upon his country, that he cannot take possession of a single city. He is rapidly hastening to the same fate, although he may not meet it in the same manner. Already is he “damn’d to everlasting fame,” or rather, damned to everlasting infamy. Already is he a fugitive. Already a price is set upon his head. In the papers of this morning, we see that the Governor of Orleans has offered a reward for his apprehension. We cannot but detest the traitor, but we can have no fears of the consequences of the treason.

Mr. E. concluded, by expressing a hope that the bill would meet a decided vote of rejection.

Mr. EPPES.—When I feel a decided hostility to a principle, it is not material to me in what form I meet it. Decidedly opposed to the principle of this bill, I shall vote against it in all its stages, and cannot but hope that the motion of my colleague to reject it will prevail. By this bill, we are called upon to exercise one of the most important powers vested in Congress by the Constitution of the United States. A power which suspends the personal rights of your citizens, which places their liberty wholly under the will, not of the Executive Magistrate only, but of his inferior officers. Of the importance of this power, of the caution which ought to be employed in its exercise, the words of the constitution afford irresistible evidence. The

words of the constitution are: "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." The wording of this clause of the constitution deserves peculiar attention. It is not in every case of invasion, nor in every case of rebellion, that the exercise of this power by Congress can be justified under the words of the constitution. The words of the constitution confine the exercise of this power exclusively to cases of rebellion or invasion, where the public safety requires it. In carrying into effect most of the important powers of Congress, something is left for the exercise of its discretion. We raise armies when, in our opinion, armies are necessary. We may call forth the militia to suppress insurrection or repel invasion, when we consider this measure necessary. But we can only suspend the privilege of the habeas corpus, "when, in cases of rebellion or invasion, the public safety requires it." Well, indeed, may this caution have been used as to the exercise of this important power. It is in a free country the most tremendous power which can be placed in the hands of a legislative body. It suspends, at once, the chartered rights of the community, and places even those who pass the act under military despotism. The constitution, however, having vested this power in Congress, and a branch of the Legislature having thought its exercise necessary, it remains for us to inquire whether the present situation of our country authorizes, on our part, a resort to this extraordinary measure.

The inquiry is confined within very narrow limits. The power can only be exercised under the constitution, "when, in cases of rebellion or invasion, the public safety may require it." Our country is not invaded. We have only, therefore, to inquire whether there exists in this country a rebellion, and whether the public safety requires a suspension of the habeas corpus. Of the existence of the rebellion or combination against the authority of the United States there can be no doubt, as we have on our table a detailed account of its origin and progress. I shall confine my observations solely to the latter part; whether the public safety requires a suspension of the habeas corpus for its suppression. In the communication now on our table, from the Executive, we have been informed that the militia of Ohio, Kentucky, and Tennessee, and of the Mississippi and Orleans Territories, have been ordered out. That General Wilkinson was at Orleans, on the 10th of December, with his troops from the Sabine, which from other information we know to consist of one thousand effective men. These are resources of

the nation now in active operation. What is the force of the conspirators? By the same documents, we are informed that “some boats, accounts vary from five to double or treble that number, and persons, differently estimated from one to three hundred, had passed the falls of the Ohio to rendezvous at the mouth of Cumberland river, with others expected down that river.” From the same document it appears that the force which comes down Cumberland river amounts to two boats, in one of which is Aaron Burr. From this statement, it appears that the largest calculation as to the actual force of the conspirators, is three hundred. But when we know the propensity of human nature to magnify accounts of this kind, we may fairly infer that the whole force does not exceed one hundred and fifty men. To oppose which, we have one thousand regular troops, and the militia of Ohio, Kentucky, and Tennessee, and of the Mississippi and Orleans Territories. Is there a man present who believes, on this statement, that the public safety requires a suspension of the habeas corpus? This Government has now been in operation thirty years; during this whole period, our political charter, whatever it may have sustained, has never been suspended. Never, under this Government, has personal liberty been held at the will of a single individual. Shall we, in the full tide of prosperity, possessed of the confidence of the nation, with a revenue of fifteen millions of dollars, and six hundred thousand freemen, able and ready to bear arms in defence of their country, believe its safety endangered by a collection of men which the militia of any one county in our country would be amply sufficient to subdue? Shall we, sir, suspend the chartered rights of the community for the suppression of a few desperadoes; of a small banditti already surrounded by your troops; pressed from above by your militia; met below by your regulars, and without a chance of escape, but by abandoning their boats, and seeking safety in the woods? I consider the means at present in operation amply sufficient for the suppression of this combination. If additional means were necessary, I should be willing to vote as many additional bayonets as shall be necessary for every traitor. I cannot, however, bring myself to believe that this country is placed in such a dreadful situation as to authorize me to suspend the personal rights of the citizen, and to give him, in lieu of a free constitution, the Executive will for his charter. I consider the provision in the constitution for suspending the habeas corpus as designed only for occasions of great national danger. Like the power of creating a Dictator in ancient Rome, it prostrates the rights of your citizens

and endangers public liberty. Like that it may, on some very extraordinary occasions, prove salutary, but like that, it ought never to be resorted to but in cases of absolute necessity; or, to use the emphatic language of the constitution, “when the public safety requires it.” Believing that the public safety is not endangered, and that the discussion of this question is calculated to alarm the public mind at a time when no real danger exists, I shall vote for the rejection of the bill in its present stage.

Mr. VARNUM said if he was of opinion with the gentlemen from Vermont and Virginia, he should vote for the rejection of this bill; but he entertained a different opinion, and, unless he heard something to change it, he should vote differently from them. He did not believe the constitution restricted the power of the Government to suspend the privilege of the habeas corpus in cases where the country was shaken to its centre. There were no expressions in it to justify this inference. Its terms are: “The privilege of the writ of habeas corpus shall not be suspended, except when, in cases of invasion or rebellion, the public safety shall require it.” Will gentlemen deny that there exists in the United States at present a rebellion? I presume not, said Mr. V., it is too notorious to admit of doubt. Will they deny that the conspiracy has been formed with deliberation, and has existed for a long time? Is it not evident that it has become very extensive? If, then, this is the case, and the head of the conspiracy has said that he is aided by a foreign power; if this is true, are we justified in considering the country in a perfect state of safety, until it is brought to a close? I conceive not. I consider the country, in a degree, in a state of insecurity; and if so, the power is vested in the Congress of the United States, under the constitution, to suspend the writ of habeas corpus. I am also apprehensive that we shall not be able to trace the conspiracy to its source without such a suspension. We have had an instance in which the head of the conspiracy has been brought before a court of justice, and where nothing has been brought against him. It is not my wish to insinuate that any court or public functionary is contemplated by this conspiracy; yet it is possible that this may be the case, and the very existence of the country may depend on tracing it to its source. I am not disposed to advocate sanguinary punishments, but I think they ought to be exemplary in regard to the chiefs of the conspiracy; for which purpose we ought to adopt those measures which will lead to a full discovery of those concerned in it. I am sensible that the Government of the United States has not hitherto resorted to this measure; but I know a particular State of the

Union who did consider the measure necessary, in the case of an insurrection which occurred within her limits; and I think it very doubtful whether that insurrection would have so happily closed, if it had not been for her suspension of the writ of habeas corpus. Have we had any insurrection or rebellion in the United States like this? We have had one insurrection in Massachusetts, but whence did it arise? Not from a design to subvert the Government, but from the burden of taxes; taxes which, perhaps, exceeded those laid in any country since the formation of society. I do not mean, by these observations, by any means to justify that insurrection, and, I believe, from the circumstances with which I am acquainted, that the insurrection which took place in Pennsylvania did not go to the subversion of the Government. But let us look at this conspiracy. While the nation, from one extreme to the other, enjoys a degree of prosperity and happiness unparalleled in any other nation, and not a single individual within our limits has any reason to complain of oppression, an insurrection is fomented, subversive of the Government and destructive of the rights of the people. It appears to me that this insurrection is the most aggravating of all insurrections which history gives us an account of. There is not the least oppression or the least pressure of circumstances, to induce any individual to rise up against the Government of this country; and it consequently betrays the greatest turpitude of mind in those who either lead or unite in it. For these reasons, I think it ought to be traced to its source, and I think it very doubtful whether this can be effected without, in the first instance, suspending the habeas corpus. Will gentlemen say that any innocent man will have a finger laid upon him, should this law pass? No; there is no probability of it; it is scarcely possible. But, even if it be possible, if the public good requires the suspension of the privilege, every man attached to the Government and to the liberty he enjoys, will be surely willing to submit to this inconvenience for a time, in order to secure the public happiness. The suspension only applies to particular crimes, the liberties of the people will not therefore be touched. I do think a great responsibility will rest on this branch of the Legislature, in case they refuse to pass this act. Suppose the head of this conspiracy shall be taken in a district of country where no evidence exists of the crime charged to him, and he shall consequently be set at liberty by the tribunals of justice; where will the responsibility rest, but upon this branch of the Legislature? It is too great for me, as an individual member, to bear. I shall, therefore, vote for

this bill, under the impression that it will not have the injurious effects that some gentlemen seem to apprehend; and that it will only more effectually consign the guilty into the hands of justice.

Mr. R. NELSON.—As the motion to reject the bill meets my most hearty approbation, and as I consider it involving a great national question, I cannot reconcile it to my duty to give a silent vote on it. I shall, however, in order to avoid an unnecessary consumption of the time of the House, offer my remarks in as concise a compass as possible. I shall first consider the nature of the writ of habeas corpus; afterwards examine its effects, not only on the individual, but on the community at large; taking into view the mode of proceeding under it, to show, as I conceive, that no danger can ensue, on the refusal to pass this bill.

What is a writ of habeas corpus? It is a writ directing a certain person in custody to be brought before a tribunal of justice, to inquire into the legality of his confinement. If the judge is of opinion that the confinement is illegal, the person will of course be discharged; if, on the contrary, from the evidence, he shall be of opinion that there is sufficient grounds to suspect that he is guilty of offence, he will not be discharged. Now, to me, it appears that this is a proper and necessary power to be vested in our judges, and that a suspension of the writ of habeas corpus is, in all cases, improper. If a man is taken up, and is denied an examination before a judge or a court, he may, although innocent in this case, continue to suffer confinement. This, in my opinion, is dangerous to the liberty of the citizen. He may be taken up on vague suspicion, and may not have his case examined for months, or even for years. Would not this bear hard upon the rights of the citizen?

Let us turn over a leaf, and see how the Government stands. If the person accused is legally committed, or if it shall be proved that he has committed any offence, the judge will say that he shall not be released. If he has committed an offence, there can be no grounds for this suspicion, because, without such suspension, he will not be discharged, because it does not follow that, inasmuch as a man has a right to demand that he be brought before a judge by a writ of habeas corpus, he shall therefore be discharged. He is only bound to examine him, and if he finds there is strong reason to believe he has committed a crime, he may remand him to confinement.

This is a writ of right, which ought to exist under all governments on earth. What right? The right of being examined by the tribunals of his country, to determine whether there is any ground for the deprivation of his liberty. Is this a right which ought to be suspended merely to gratify the apprehensions of gentlemen? I think not. The framers of the constitution have said: “the privilege of the writ of habeas corpus shall not be suspended, except when, in cases of invasion or rebellion, the public safety shall require it.” Well, but, says the gentleman from Massachusetts, can any one deny that this is a rebellion? It may perhaps be, but I think it does not deserve the name of a rebellion; it is a little, petty, trifling, contemptible thing, led on by a desperate man, at the head of a few desperate followers: a thing which might have been dangerous, if the virtue of the people had not arrested and destroyed it. But admit that it is a rebellion; will every rebellion justify a suspension of the writ of habeas corpus? The constitution says: “the privilege of the writ of habeas corpus shall not be suspended, except when, in cases of invasion or rebellion, the public safety shall require it.” Does, then, the public safety require this suspension? Does the constitution justify it? And, under present circumstances, confining a man in prison without a cause. There is no danger, the enemy is not at our door; there is no invasion; and yet we are called upon to suspend the writ of habeas corpus. This precedent, let me tell gentlemen, may be a ruinous, may be a most damnable precedent—a precedent which, hereafter, may be most flagrantly abused. The Executive may wish to make use of more energetic measures than the established laws of the land enable him to do; he will resort to this as a precedent, and this important privilege will be suspended at the smallest appearance of danger. The effect will be, that whenever a man is at the head of our affairs, who wishes to oppress or wreak his vengeance on those who are opposed to him, he will fly to this as a precedent; it will truly be a precedent fraught with the greatest danger; a precedent which ought not to be set, except in a case of the greatest necessity; indeed, I can hardly contemplate a case in which, in my opinion, it can be necessary.

In my opinion, this is a measure which ought never to be proposed, unless when the country is so corrupt that we cannot even trust the judges themselves. This, I consider the cause of the frequent suspension of this privilege in England. Whenever the whole mass of society becomes contaminated, and the officers of the judicial court are so far corrupted as to

countenance rebellion, and release rebels from their confinement, it may be then time to say, they shall no longer remain in your hands; we will take them from you. But I apprehend there is no such danger here, and I repeat it, we are at once creating one of the most dangerous precedents, and passing one of the most unjust acts that was ever proposed.

Mr. SLOAN.—At the same time that I express my purpose to vote on the same side with the gentleman from Maryland, I shall take the liberty of assigning very different reasons for my vote from those offered by him. The gentleman from Virginia has mentioned two preceding insurrections, which he considers of much greater magnitude than this. I am of a different opinion. Compared to this, I consider them as only a drop to the bucket. For a moment, let me ask the attention of gentlemen to those insurrections, or as I think they might, with more correctness, be termed, oppositions to Government. In consequence of certain citizens thinking themselves aggrieved by certain acts, in which they have been, in some measure, justified by their subsequent repeal, a handful of people raised in opposition to their execution. What analogy do those oppositions bear to this rebellion? I consider the late or present conspiracy to be of greater magnitude than any we know of in history. Under what authority has it been created? Under that of a man of great abilities and experience, who states that he expects encouragement from foreign nations. I do not pretend to say that this is a fact; but what has he done? Has he not drawn resources from every part of the Union? I, therefore, consider it of great magnitude, and it is certainly excited against the best government on earth, under which the people enjoy the greatest happiness. I shall, however, vote against the bill, under the belief that we may confidently rely on the love and affection of the people for their Government, to which we are already probably indebted for its suppression. Had this measure been brought forward a month or six weeks ago, I should have voted for it.

Mr. BIDWELL said, although he was not satisfied of the necessity of passing this bill, he was not prepared to reject it, in its present stage. As it had received the sanction of the Senate, he was disposed to treat it as a subject worthy of discussion and deliberation, by referring it in the usual course, to a Committee of the whole House. Before the passing of any bill of this nature, the House ought to have satisfactory proof that a rebellion in fact existed, (for there was no pretence of an invasion,) and that the public

safety required a suspension of the privilege of habeas corpus. By the terms of the constitution, both of these pre-requisites must concur, to authorize the measure. The first inquiry would naturally turn upon the existence of a rebellion. On that point he had no doubt. To constitute a rebellion, in the sense of the constitution, he did not think it necessary that a battle should have been fought, or even a single gun fired. If troops were enlisted, assembled, organized, and armed, for the purpose of effecting a treasonable object, it amounted to actual rebellion. Such was the existing state of things. The public notoriety of the fact was, perhaps, sufficient evidence for the Legislature to act upon, if necessary; but they had also the official statement of the President to that effect. He had, therefore, no doubt of the existence of a rebellion, and that, too, of a more wanton and malignant character than any insurrection which had heretofore been raised against our Government; for it had not been occasioned by any grievances, real or imaginary, but must have originated in motives of personal ambition, or some more unworthy passion.

An existing rebellion, however, even of this aggravated description, was not alone sufficient to justify a suspension of the writ of habeas corpus. To bring it within constitutional justification, it must be required by the public safety. That was a matter of opinion, rather than of fact. He was convinced that the proposed suspension was not requisite for the purpose of suppressing the conspiracy; for by the vigilance and energy of our Executive Government, seconded and supported by the exertions of particular States and Territories, and the army, this deep laid conspiracy was already in a good measure suppressed, and he trusted the means now in operation would complete the suppression. A suspension of the habeas corpus could not be necessary, except for the detection and conviction of the conspirators. A thorough investigation ought undoubtedly to be made. If any persons concerned in the conspiracy were arrested in situations which precluded an immediate production of such evidence as would warrant their confinement, justice would require that they should be detained until the proper evidence could be procured; but in the mean time they might be discharged by virtue of a habeas corpus; for, though he agreed with the gentleman from Maryland, (Mr. NELSON,) in the importance and utility of this writ, he could not subscribe to the doctrine which he understood that gentleman to maintain, that it would entitle a person to a discharge only for causes of irregularity in the arrest. Want of legal evidence to show, by oath

or affirmation, probable cause for detention, would be a ground of discharge. In ordinary cases, indeed, the release and escape of a guilty person, for such want of evidence, was esteemed a smaller evil than a denial of the common privilege. If it were so in respect to this conspiracy, there was, in his opinion, no good reason for passing this bill. That was a point which appeared to him worthy of some deliberation.

It had been mentioned in the debate, that in the whole history of our Government, notwithstanding two insurrections, the habeas corpus had, in no instance, been suspended. It was true. But an instance had been cited from one of the States. During the insurrection in Massachusetts there was such a suspension, in pursuance of a constitutional provision; and it was generally acknowledged to have been a necessary and salutary measure. He had never understood that it was abused, or that it was considered by the people of that State, a dangerous example. It was justified by the occasion. But it did not, therefore, follow, that a similar suspension would be justifiable on this occasion. That must depend on the present state and circumstances of the nation. Although a rebellion existed, he was not satisfied that the public safety required so strong and severe a measure. But, as it was an important question, on which the House had not yet taken time to deliberate, he was willing that the bill should go, according to the usual course of proceeding, to a Committee of the Whole; and therefore, he should not give his vote for rejecting it in the present state.

Mr. J. RANDOLPH.—I shall give my vote in a very different manner from the gentleman who has just sat down. I was extremely happy to witness the very prompt and decided opposition this measure received in the House, and from the quarter whence that opposition originated; and I subscribe with great pleasure to the sound constitutional doctrine, which the gentleman from Pennsylvania advanced this morning before our doors were opened. We are now told that to reject this bill at its first reading, will be to depart from the usual course of proceeding in this House, and an attempt is made to enlist the feelings of members so far at least as to permit the bill to progress one step farther, that we may avoid violating that decorum which ought to be observed between the two Houses. I do not, however, consider the subject in this light. I conceive, on the contrary, it is as competent to us to reject the bill on its first as on any other reading. I well recollect that about eight years ago an important bill was smuggled through the House by

this fastidious mode of proceeding. Gentlemen were allured from their honest opinions, and finally, by finesse and management, the bill was carried through the House. I understand that this course is pursued by the other branch of the Legislature on bills carried from this House; and I believe it will be found that with regard to the passage of bills between the two Houses, the course of procedure on the part of this House is more liberal than that pursued by the other. For I do not recollect a single instance in which the vote of a single member can stop the passage of a bill in this House received from the other branch of the Legislature. I, therefore, feel no scruples on this score. I think it just as well to say, that we will permit this bill to pass to a second or third reading, as to say that though we are opposed to the principle contained in a resolution which may originate in this House, we nevertheless permit a committee to bring in a bill to carry it into effect, because we may destroy the bill at its last stage. This appears to be a strange course of reasoning. It is like permitting yourselves to be bound in chains that you may be loosed again, or going into prison that you may afterwards come out. Gentlemen talk of the propriety of discussing this subject, but when a subject is so clear that every man has made up his mind upon it, where is the need of discussion? If it is not so clear, will any gentleman say that the discussion now had, in which every member has a right to speak twice, which is once more in my opinion than is necessary, will not be sufficient to develop all the merits and demerits of the bill? Will gentlemen undertake to say, if every member shall give the mature, or as it may be, crude suggestions of his mind, that the subject will not be sufficiently discussed, and lead to the formation of a correct judgment? I believe it will. And therefore, on this ground, a bill may as well be decided in its present stage as before a Committee of the Whole.

Some gentlemen, to whom I have listened with considerable gratification, tell us that, out of respect to the other branch, we ought not at this time to reject the bill. I, however, feel no such respect on this occasion, and shall express none. On the contrary, I am free to declare, that when a measure, tending to impose a burden on the people, or to detract from the privileges of the citizen, comes from that quarter, I shall always view it with jealousy. The inequality of the representation in that branch, the long tenure of office, and the custom with which they are so familiar of conducting their proceedings in conclave, (the House will recollect how long it was after the adoption of the constitution before the public could get admission into their

twopenny gallery,) render all their proceedings touching the public burdens, or the liberties of the people, highly suspicious. And to say the truth, I am not at all surprised that they did close their doors on this occasion, that they might not be under the inspection of the public eye, while they were passing the bill on the table. I say so, because I am willing to abide by the good old principle of judging all men by myself; and if I had introduced such a bill, I should have been glad, my name did not appear on the Journals, that the public might not know to whom they were indebted for such a precedent.

I have another objection to the bill, besides that of the quarter from which it originated, or the manner in which it has been presented to the House. It appears to my mind like an oblique attempt to cover a certain departure from an established law of the land, and a certain violation of the Constitution of the United States, which we are told have been committed in this country. Sir, recollect that Congress met on the first of December, that the President had information of the incipient stage of this conspiracy about the last of September—that the proclamation issued before Congress met, and yet that no suggestion, either from the Executive or from either branch of the Legislature, has transpired touching the propriety of suspending the writ of habeas corpus until this violation has taken place. I will never agree in this side-way to cover up such a violation, by a proceeding highly dangerous to the liberty of the country, or to agree that this invaluable privilege shall be suspended, because it has been already violated, and suspended, too, after the cause, if any there was, for it has ceased to exist. No; I wish to be true to those principles which I have constantly maintained, and, God willing, ever will maintain so long as I have a seat on this floor, or have life. It has heretofore been the glory of those with whom I have acted, that in all our battles we have combated for the principles of the constitution and the laws of our country, in the persons of those in whom they have been attempted to be violated, however infamous and contemptible. When those principles were prostrated under the sedition law, what did we say? That the character of the man accused could not change the laws of the land, or impair his rights—that we would support the constitutional rights of the citizen, in the person of the meanest reptile, as well as in the persons of those who occupy the highest stations in society. We have done so—let us continue to do so, regardless of popular clamor or odium, and we shall still continue to find ourselves on true ground. We never inquired what kind of a man Callender was—we said,

such is the law and the constitution; let justice take its course. I could quote other examples equally strong, but in deference to the feelings of the House I shall desist from doing it.

I beg pardon for detaining the House so long. I will, however, endeavor to express the remaining ideas I have to offer in a few words. There is another consideration which renders this bill highly objectionable. I consider the case as now at issue, whether the United States is under a military or civil government, or, in other words, whether the military government is subject to the civil power, or the civil authority to the military. I conceive that a case has occurred, in which the military has not only usurped the civil authority, but in which it has usurped nothing short of omnipotent power; and I consider this bill as calculated to give a softening and smoothing over to this usurpation; and on this ground I cannot assent to it. Suppose this bill either to pass or not to pass, what has been the practice under the constitution? By the expression, under the constitution, I do not mean conformably to it. Men have been taken up by a military tribunal, and have been transported contrary to law. I say transported, for if a man can be transported from the district where the offence with which he is charged was committed, he may also be deported to Cayenne, or transported to Botany Bay. And even you yourself, (addressing the Speaker,) if such acts be sanctioned by this bill, in your passage from this House to your lodgings, may be arrested, put on board a vessel and carried whithersoever the military authority may choose. To this I will never give my consent. It has been very well remarked by my colleague, that this is not the first case in which an insurrection has occurred in the United States, but that it is the first case in which an attempt has been made to suspend the precious privilege of the writ of habeas corpus.

I put it to any man, whether, now that we have received information of the extent of this conspiracy, and when we find that Catiline, Cethegus, and Lentulus, have not as many brother conspirators as themselves, this conspiracy is equal to that in Pennsylvania in 1794 or 1795? In physical force it is not comparable to it, however in intellectual talent it may be. I conceive then that according to the Constitution of the United States, there is but one case in which the writ of habeas corpus can be suspended, and I should not go into this view of the subject, if it had not been misstated by all those who have preceded me in the debate. My view of the subject is this

—that this privilege can only be suspended in cases in which not merely the public safety requires it, but that the case of the public safety requiring it, must be united with actual invasion or actual rebellion. Now, with whatever epithets gentlemen may dignify this conspiracy, I am not even of the opinion of the gentleman from Maryland (Mr. R. NELSON)—I think it nothing more nor less than an intrigue—and I am happy that I can declare on the honor, not of a soldier, but of a citizen, that I believe it to be a foreign intrigue, availing itself of domestic materials for answering its purposes, and poor indeed must be the soil of this, or of any other state of society, which would not furnish such materials.

A gentleman from Massachusetts has stated to the House that the organization and administration of the Government, at this time, forbids the apprehension of any abuse being made of the powers delegated under this law. Surely, sir, the gentleman could not mean to urge this as any thing new. He must have known, if he had consulted history—as doubtless he has—that the king *de facto*, and the administration *de facto*, are always above suspicion. That there never was a proposition brought forward, that did not find a majority ready to say, There is surely no danger of any improper use of this power in our time, for we are all honorable men, and we would not delegate it, if an improper use could be made of it; and that, if we reject a measure, we ought not to do it so much on account of ourselves, as on account of those who come after us. And what will those who come after us say of us? They will follow our example, and declare that the character of their forefathers was above every doubt and every suspicion. Now, for myself, I beg leave to be permitted to disclaim every argument of this kind. I do not, indeed, consider it fair to introduce such an argument. Let us take up the question on its own merits and demerits, without any allusion or reference to our own virtues, or the degeneracy of posterity. For myself, I have no hesitation in saying that I will not grant this power at any time, except under the most imperious necessity; and I say this without any disrespect to this honorable body, or to any of the public functionaries. Take man as he is, and in his best estate, you find him an animal prone to abuse and corruption. There does not exist a single constitution or law in the world, that does not enforce this salutary truth.

I shall consider this bill, if it passes, as establishing a new era in the Government. When I was a boy, I recollect to have consulted such

chronological tables as I could get access to. I recollect to have read, that at a certain time, monarchy was abolished in Rome; a little while after, the first Dictator was named; then the second Dictator—and I believe, as in a case of apoplexy, she scarcely got over the third fit. I believe a suspension of the writ of habeas corpus might have, here, the same effect as the establishment of the first Dictatorship at Rome. In what situation would it place yourselves and the citizens of this country? It would leave them at the mercy, not merely of a justice of the peace, but at the mercy of every subaltern officer of the army and navy. I believe it would comport as much with the safety and interest of this confederacy to give us power to send these people off, as to put this power in their hands. I believe we should be as trustworthy as they. And, let me ask, what compensation to an innocent man, to a man of honor and feeling, to a man of character, who should be tied neck and heels and sent off to New Orleans, and who should ultimately be proved to be innocent—I ask what compensation it would be to him to bring an action of damages? Against whom? A man without visible property? And what action? An action on the most mercenary principle. To be indemnified in his fame by dollars and cents. The injury would be irreparable. At present, all stand under the law. If any one offend, let him be brought under it. But, in this way, to put a man in an oyster boat, or skipper, and transport him to a distance from the place of his arrest, and then say he shall have a remedy, in case of his innocence, against an inferior officer, is absurd. If we pass such a bill, which God forbid! it should contain a large appropriation, and Government should be obliged to make good the injured party—to afford him redress. I say they should grant a large appropriation, for it is not for men with epaulets and gold buttons to make reparation. If the bill passes, we are told it will be but temporary. Why, the Sedition law was but temporary; and I think, sir, (alluding to the Speaker,) you were one of those who aided its passage—much against your will—by being present at the altar when it was more than once re-enacted. As to its three months continuance, I consider that as one of the most objectionable features of the bill—as a bait to the trap; as the entering wedge. If it is made reconcilable to the interests and feelings of this House to pass it for three months, do you think we will then feel the same lively repugnance to it that we now do? No! It has been truly said, that no man became perfectly wicked at once; and it may be affirmed, with equal truth, that a nation is never enslaved at once. Men must be initiated by degrees, and their repugnance must be

gradually overcome. Let me state a case. It is proposed to extend the time of service of the Executive Magistrate from four, to five, or eight years, or for life. If it be prolonged for a term, do you believe we shall stop at its expiration? No! Once extended for life, he will then claim the power to choose his successor, and the hereditary principle will follow. This is the old trick. Let me, however, tell gentlemen that old birds are not to be caught with chaff, though, unfortunately for them, the mass of mankind does not consist of old birds. Pass one other law, and I would quit the country. A twin brother to this same bill was introduced into the British Parliament in 1794; and that bill to prevent seditious assemblies, was brought forward for about as good reasons as this. According to it, if four or five persons assembled, and refused on the notice of a magistrate, to disperse, they were considered guilty of sedition, and were dispersed by force. These two bills form a complete tyranny—and tyranny of the most odious kind, because established under the mask of liberty. Was the tyranny of Robespierre less intolerable, oppressive, or odious, because inflicted in the name of the people, than a like tyranny in Turkey, under the Grand Seignor and his Muftis? Take one other thing along with you. These two fatal wounds, inflicted on the liberties of the English nation, were inflicted by the man who came forward in the character of a reformer—by the man who came forward as the advocate of a Parliamentary reform; from which circumstance he acquired that popularity which enabled him to inflict those deadly wounds on the liberty of his country.

Having said so much with regard to the principle, permit me to add one word on the details of the bill. There is a departure in it from the known, accustomed, and received language of the constitution, in the use of the word “authority.” The words are “warrant or authority.” The expression is, in my opinion, too lax. Perhaps, we may be told, that the bill may be amended on the third reading. But my objection to the principle contained in it is such, that I will not consent to carry to a third reading that which under no amendment can be rendered palatable to my taste. Mr. R. concluded by observing that he had so far exhausted himself that he was unable to go on.

Mr. SMILIE.—I shall not detain the House long by the remarks which I propose to make on this subject. I shall waive all observations on the mode of proceeding on this occasion—whether we shall reject the bill on its first,

or suffer it to go to a second reading. The question is now put, and I am called upon to give my vote, either in the affirmative or negative. I, therefore, feel under a necessity to put my negative upon it. I consider this one of the most important subjects upon which we have been called to act. It is a question which is neither more nor less than, whether we shall exercise the only power with which we are clothed, to repeal an important part of the constitution? It is in this case only, that we have power to repeal that instrument. A suspension of the privilege of the writ of habeas corpus is, in all respects, equivalent to repealing that essential part of the constitution which secures that principle which has been called, in the country where it originated, the “palladium of personal liberty.” If we recur to England, we shall find that the writ of habeas corpus in that country has been frequently suspended. But, under what circumstances? We find it was suspended in the year 1715, but what was the situation of the country at that time? It was invaded by the son of James II. There was a rebellion within the kingdom, and an army was organized. The same thing happened in the year 1745. On this occasion it was found necessary to suspend it. In latter times, when the Government had grown more corrupt, we have seen it suspended for an infinitely less cause. We have taken from the statute book of this country, this most valuable part of our constitution. The convention who framed that instrument, believing that there might be cases when it would be necessary to vest a discretionary power in the Executive, have constituted the Legislature the judges of this necessity, and the only question now to be determined is, Does this necessity exist? There must either be in the country a rebellion or an invasion, before such an act can be passed. I really doubt whether either of these exist. I really doubt whether a single law of the United States has been, as yet, violated. I will not say this is the fact; but I do not know any thing to prove the contrary. But, supposing that a rebellion does exist, we are then left at liberty to decide whether it is such a one as to endanger the peace of society to such a degree that no ordinary remedy will answer. If an ordinary remedy will not, it may be our duty to apply an extraordinary one. What is this mighty business? What is the opinion of the Executive as to its danger? Does he consider it dangerous? It is a little remarkable that, in every instance under the British Government, the proposition of such a measure originated with the Executive, while here, without any intimation of danger from the Executive, we propose, on our own suggestion, to suspend one of the most valuable

privileges that is secured to the citizen. Let us attend to the communication of the President on this subject. He states that, according to his information, the persons concerned in the conspiracy depend on receiving two kinds of aid; foreign aid, and aid derived in their own country. After giving his opinion of the foreign aid expected, he says:

“On the whole, the fugitives from the Ohio, with their associates from Cumberland, or any other place in that quarter, cannot threaten serious danger to the city of New Orleans.”

The President declares that, in his opinion, there is no danger to be apprehended. With regard to foreign force, he states his reasons for thinking there is no danger. As the Message is in the hands of every gentleman, there can be no necessity for me to read it. But he explicitly declares, from the state of our relations with other nations, there can be no danger from that quarter. This being the deliberate opinion of the Executive Magistrate, who is more deeply responsible on this occasion than any other member of the Government, is it not most extraordinary that we should attempt to take steps which can only be justified in the last resort? Are gentlemen aware of the danger of this precedent? This is the first attempt ever made under the Government to suspend this law. If we suspend it when the Executive tells us there is no danger, on what occasion may it not be suspended? Let us suppose that it shall be suspended on this occasion, what will be its effect? Parties will probably for ever continue to exist in this country. Let us suppose a predominant party to conjure up a plot to avenge themselves. Do not gentlemen see that the personal liberty of all their enemies would be endangered? I mention this to forewarn gentlemen of the dangerous ground before them. I do not say that our country may not, at some future day, be in such a situation as to justify such a suspension, but I have never yet seen her in such a situation, and, at this moment, I think it does not exist. When we see the great body of the people so firmly attached to their Government, ought we to be thus alarmed on beholding a few desperate and unprincipled men attempting to stir up an insurrection? There is another consideration which will induce me to give my hearty negative to this bill. If foreign nations see that we are obliged, under such circumstances, to suspend the writ of habeas corpus, will it not show that the constitution is incapable of

supporting itself, without the application of the most dangerous and extraordinary remedies?

Mr. DANA.—I understand that the question is, whether the bill shall be rejected on its first reading, without passing through the ordinary forms of proceeding. In such cases, the ordinary question is, Is there any thing in the bill proper for the House to deliberate upon? If they are of opinion that it can be modified in such a way as to ensure its passage, it ought to go to a Committee of the Whole. This was my opinion when the motion was first made to reject the bill. I was disposed to vote against the question, although the bill went to repeal the constitution. I have been accustomed to view the privilege of the writ of habeas corpus as the most glorious invention of man. I was notwithstanding, however, from a respect to the other branch of the Legislature, disposed to investigate the subject—to examine whether there was any necessity for it. As, on the one hand, I was inclined to believe that the judgment of the Senate had, on this occasion, been tinged by a strong abhorrence of rebellion; so I was willing, on the other, to take time to guard myself against an equally strong feeling of abhorrence of dictators. But, on one principle, I cannot agree to consider this bill as a proper subject of investigation, for one moment. I perceive, on further examination of the bill, that the Senate have provided for its suspension in cases where persons have been already presented. Had it been confined to future arrests, I might have agreed to deliberate on it, but viewing it in the light of an *ex post facto* law, I must give it my instantaneous negative. There is another principle which appears to me highly objectionable. It authorizes the arrest of persons, not merely by the President, or other high officers, but by any person acting under him. I imagine this to be wholly without precedent. If treason was marching to force us from our seats, I would not agree to do this. I would not agree thus to destroy the fundamental principles of the constitution, or to commit such an act, either of despotism or pusillanimity. Under this view of the subject, I am disposed to reject the bill, as containing a proposition on which I cannot deliberate.

The yeas and nays were then taken on the question, “Shall the bill be rejected?”—yeas 113, nays 19, as follows:

YEAS.—Willis Alston, jr., Isaac Anderson, David Bard, Joseph Barker, Burwell Bassett, George M. Bedinger, Silas Betton, William W. Bibb, Phaniel Bishop, John Blake, jr., Thomas Blount, James M. Broom, Robert Brown, John Boyle, William A. Burwell, William Butler, George W. Campbell, John Campbell, Martin Chittenden, John Claiborne, Joseph Clay, Matthew Clay, George Clinton, jr., Frederick Conrad, Orchard Cook, Leonard Covington, Samuel W. Dana, Ezra Darby, John Davenport, jr., John Dawson, Theodore Dwight, Peter Early, James Elliot, Caleb Ellis, Ebenezer Elmer, William Ely, John W. Eppes, William Findlay, James Fisk, John Fowler, James M. Garnett, Charles Goldsborough, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Silas Halsey, John Hamilton, Seth Hastings, James Holland, David Holmes, David Hough, John G. Jackson, Walter Jones, James Kelly, Thomas Kenan, John Lambert, Joseph Lewis, jr., Henry W. Livingston, Edward Lloyd, Matthew Lyon, Duncan McFarland, Patrick Magruder, Robert Marion, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Jeremiah Nelson, Roger Nelson, Thomas Newton, jr., Timothy Pitkin, jr., John Porter, John Pugh, Josiah Quincy, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, John Russell, Peter Saily, Thomas Sammons, Martin G. Schuneman, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, John Smith, Samuel Smith, Richard Stanford, Joseph Stanton, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Thomas W. Thompson, Uri Tracy, Abram Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Peleg Wadsworth, John Whitehill, Robert Whitehill, David R. Williams, Marmaduke Williams, Alexander Wilson, Joseph Winston, Richard Wynn, and Thomas Wynns.

NAYS.—Evan Alexander, John Archer, Barnabas Bidwell, John Chandler, Richard Cutts, Elias Earle, Isaiah L. Green, William Helms, Josiah Masters, Gurdon S. Mumford, Gideon Olin, Thos. Sanford, Henry Southard, David Thomas, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, Eliphalet Wickes, and Nathan Williams.

MONDAY, February 2.

Death of the Representative, Levi Casey, Esq.

Mr. THOMAS MOORE, a member of this House for the State of South Carolina, informed the House of the death of his colleague, General LEVI CASEY, late one of the members of the said State in this House: Whereupon,

Resolved, unanimously, That a committee be appointed to take order for superintending the funeral of General LEVI CASEY, late a Representative from the State of South Carolina.

Ordered, That Mr. THOMAS MOORE, Mr. EARLE, Mr. D. R. WILLIAMS, Mr. MARION, Mr. EARLY, and Mr. HOLLAND, be appointed a committee, pursuant to the said resolution.

Resolved, unanimously, That the members of this House will testify their respect for the memory of General LEVI CASEY, late one of their body, by wearing crape on the left arm for one month.

On motion of Mr. HOLLAND,

Resolved, unanimously, That the members of this House will attend the funeral of the late General LEVI CASEY this day, at one o'clock.

Resolved, unanimously, That a message be sent to the Senate to notify them of the death of General LEVI CASEY, late a member of this House, and that his funeral will take place, this day, at one o'clock.

THURSDAY, February 5.

National Defence.

GUNBOATS.

The House resumed the consideration of the unfinished business of yesterday, being the report of a committee on fortifying our ports and harbors.

The question was taken on the amendment offered by Mr. VAN CORTLANDT, which was disagreed to—ayes 51, noes 54.

The question then recurred on filling the blank in the 2d resolution with “\$250,000,” for building fifty gunboats.

Mr. MUMFORD.—I hope a majority of this House will agree to strike out the whole resolution respecting gunboats, with a view to appropriate that money to solid and durable fortifications. I was opposed to it in Committee of the Whole. I did then, and do now consider, that there is no necessity for any more gunboats. There are, in my opinion, a sufficient number already for the Southern sections of the Union, for which places they appear to be only adapted, except in a very few places to the North, where there is shoal water. They may answer a very good purpose in shoal water, but are inadequate for the defence of your ports and harbors to the north of the New Jersey shore; and I very much doubt, whether, in a gale of wind, they would not even sink at their mooring at the entrance of either of the harbors of Portsmouth, Salem, Plymouth, Newport, or New York.

It has been asserted that this was an electioneering scheme, and that as soon as our Spring elections were over, no more would be thought of it until the next election. I wish, sir, to put this question to eternal rest, by stating the plain matter of fact. Why, sir, it has been considered of so serious a nature in its consequences, and of so much importance, that the Legislature of the State of New York, in their last session, did enter into formal resolutions, instructing their delegation, in both branches of the Legislature of the United States, to use their utmost endeavors for the defence and protection of the port and harbor of New York: the whole State is alive on this subject—and the memorials now lying on your table from the Mayor and Corporation of that city, together with the petitions from the citizens of all political parties, tend to one and the same object, protection to their persons and to their property; there is not, there cannot be any dissenting voice with them on this subject.

Mr. J. RANDOLPH was too unwell to go far into the subject, but he would ask the House whether they were acting with their accustomed caution and distrust, where the expenditure of public money was involved? He thought not. If he were convinced that the expenditure of \$150,000 or even \$1,500,000 would answer the proposed end, he would cheerfully give it. But, as had been observed, the system of gunboats was matter of experiment, and if they should eventually turn out good for nothing, the House would be of opinion that they had vested as large a capital in a

worthless project as would be deemed necessary. He would not undertake to say that they were good for nothing—far from it. But there was no information before the House which entitled him to say they were good for much. When you compare, said Mr. R., the lavish appropriation made on this subject in Committee of the Whole, and view the economy this House always practises on every branch of expenditure, relative to the regular army and navy, looking with an eagle eye on every dollar before they part with it—it surprises me to see them voting away hundreds of thousands of dollars for a species of vessel, which, in all human probability, may be used for river craft in a few years. One thing has been ascertained. Ships of war are defensive and offensive, too, but the House will vote no money for an addition to them. I do not censure them for it; but if they will not appropriate for objects, the physical powers of which are ascertained, why vote the public treasure by handfuls for vessels, the powers of which have never been tried? Let the experiment be made, and, if it succeeds, let us appropriate liberally; but, till then, let us not vote more money than has been already appropriated. I believe there is one situation in which they may be useful—in the Mississippi. I wish, however, not to be understood as speaking as a man of science on this business. I only wish some evidence of the value of this machine, before I vest so large a capital in it. I hope, therefore, that the blank will not be filled with \$150,000. As it has been stated, I think it will be extremely disproportionate to vote \$20,000 for the fortification of all our harbors, and \$150,000 for gunboats.

Mr. ELMER said that, under existing circumstances, he was opposed to appropriating 150,000 dollars to building additional gunboats. The House had determined that they would not authorize the President to man those already built. It appeared to him very bad economy to suffer the public vessels to lie in dock, and to build other vessels, the utility of which was not ascertained. There might be situations in which gunboats would be useful, but had they not enough of them already? If it should be ascertained that thirty or forty gunboats should be wanted for any particular purpose, Mr. E. said it might be prudent to authorize their erection. He said he had been in favor of giving authority to the President to man and equip the armed vessels and gunboats. The House had, however, refused this. If, then, they would not authorize the President, whatever the emergency, to man the present vessels, why build additional vessels?

Mr. HOLLAND was opposed to filling the blank with so large a sum. He was also opposed to giving authority to man the armed vessels. The nation was in a state of profound peace, and he did not see that these vessels would have any thing to do. He was opposed to this appropriation on another ground. He believed, whenever the necessity should occur, they would be able, in one, two, or three months, to build as many gunboats as would be wanted.

Mr. GREGG said, from the discussions which had taken place, and the votes of the House, there might be a propriety in postponing the business for the purpose of obtaining information. For his own part, he was willing to acknowledge that he was altogether in the dark. He did not know in what situation gunboats would be useful, or the number of men required to man them; nor did he know whether land fortifications were necessary, in connection with them, to defend the port of New York. Before he could act understandingly on the subject, it was necessary for him to have this information. Some gentlemen say that gunboats will answer valuable purposes, while there are others of opinion that there are so few places, on the coast of the United States, where they will answer, that a small number of them will be sufficient. I believe, said Mr. G., under these circumstances, that it will be best to postpone the further consideration of the subject, and, in the mean time, call on the Secretary of the Navy to say at what points gunboats will answer, together with the number of them necessary, and on the Secretary at War to say whether he is in possession of any plan for the protection of New York, together with its expense and the number of men required. It will be next to madness to erect fortifications without putting in them sufficient men to keep them in repair. Many fortifications, commenced some years ago, for want of this provision, are now as useless as if they never had been begun. Mr. G. said he was particularly desirous to obtain information from the Executive as to the practicability of defending the port of New York. If it could be defended, he would not be backward on the subject.

Mr. FISK hoped the motion would prevail. Experience had proved gunboats to be useful. In their late war with Tripoli, they had been obliged to borrow a number of them, which had proved not only an instrument of defence, but likewise of offence. It was true, also, that, in other cases, they would be useful. Indeed, they appeared to be peculiarly adapted to the

United States, who had a large extent of seacoast and numbers of shoals, enabling them to act with effect; that they would rot in time was true; it was also equally true that other shipping would rot; and that the loss of fifty or sixty gunboats would not be equal to that of a single frigate. It was also equally true that gunboats did not require the same expense in manning and equipping as other vessels; they were also so situated as to be capable of being instantly manned, which was not the case in regard to other vessels. The Secretary of the Navy had stated the number of men necessary for each gunboat at twenty-seven. Take three hundred and fifty men as necessary for a frigate; of course thirteen gunboats will not require more men than one frigate. Mr. F. said he thought gunboats, in every point of view, the preferable defence. The Secretary of the Navy had stated sixty gunboats to be requisite. For the purpose, however, of accommodation, it is proposed to lessen the number of gunboats to thirty, and to apply the remaining sum to fortifications. He hoped this motion would prevail.

Mr. EARLY moved to postpone the further consideration of the second resolution to Monday week. In common with other members, he felt the necessity of information, before he agreed to carry further the system of gunboat defence. It appeared from the report of the Secretary of the Navy, that there were built, or on the stocks, seventy gunboats. He, for one, was of the opinion that this was a number amply sufficient to justify the requiring at least some information on the subject, either as to the ports capable of being defended by them, or their general capability of yielding defence to the United States.

The motion to postpone was disagreed to—ayes 49, noes 58.

Mr. G. W. CAMPBELL said he was in favor of filling the blank with \$150,000, as from all the official information before the House this appeared to be the best mode of defence which had been devised. He observed that some time since a majority of the House had considered the gunboat system as the best means of defence. He would ask gentlemen who were then in favor of this system, and were now opposed to it, what reasons they had for their change of opinion. If the President and Heads of Departments were of opinion that such a number of gunboats was necessary as had been named, he would ask them what reasons they had for thinking a smaller number sufficient, and whether the mere *ipse dixit* of a member of this House ought to stand in competition with the deliberate opinion of the

heads of departments? They were peculiarly responsible to the nation, and must be considered as having taken more pains to inform themselves on such a subject than an individual member of the House.

Mr. PITKIN, in reply to Mr. FISK, observed, that he had compared the estimates of a frigate and gunboats, from which he inferred that the equipment and annual expense of a frigate of 44 guns, compared to that of gunboats, was as eighteen to one.

Mr. ELLIOT said, that if the opinion of the President should be complied with, there would be one hundred and twenty-nine gunboats built, which in actual service would transcend the expense of the Navy of the United States, and would cost more than a million of dollars. Mr. E. said he considered the reproach cast upon those who were formerly the advocates of gunboats, as strong evidence of their inutility. Gunboats had been lately thought much of; what was the result? That gunboats might be considered as a kind of vessel guarding a little deposit of national spirit, if any there was left to put on board: but as soon as they were assailed by the wind or waves, their maiden purity was gone. They were of no use whenever there was wind or tide, and could only float in a time of profound tranquillity.

Mr. ALSTON said he possessed little information with regard to the advantages or disadvantages that were likely to flow from building the number of gunboats that was proposed. He merely rose to ask the attention of gentlemen to the grounds taken at the last session. The building of gunboats had been instituted on the recommendation of the President made at the last session. Gentlemen would there find the reasons on which that system had been begun. They were not intended to be set afloat on the ocean, to commit depredation or attack vessels at sea, but as an aid and support to our fortifications, and to prevent an enemy from annoying our seaports. It was, he believed, the opinion of the House at the last session, that gunboats constituted the best system that could be devised for this purpose.

Mr. EARLY moved to postpone the further consideration of the resolution until this day week.

Mr. LLOYD said he should have no objection to the postponement, if he knew any mode of obtaining the information desired. It appeared that the committee had applied to the Secretary of the Navy, who ought to possess

full information on the subject. What was his reply? Waiving altogether the expression of his own opinion, he merely confined himself to stating that the President thinks it expedient to build sixty additional gunboats. Whence, then, were they to get the information that was desired, to enable them to determine whether gunboats are a proper defence for the United States? They might apply to the President or the Secretary of the Navy, and get information from them that they think them necessary. Mr. L., however, said that he was of opinion that they ought to judge on this subject from what had already taken place. For himself he was free to declare that he was opposed to the gunboat system. He had carefully attended to the arguments of gentlemen, and to what did they amount? Have they adduced an argument to show their utility, or produced an instance to show where they have been useful? It has been said that their utility is established by the use made of them against Tripoli. But he would ask whether they would have been of any use if the vessels of Tripoli had left the shore? It was admitted that gunboats were not useful on the ocean. It was evident, then, that they were building a navy for a state of perfect calm; and were gentlemen disposed to expend millions for vessels that would be only useful under such circumstances?

Mr. MUMFORD.—The gentleman from North Carolina on my right, said that if any gentleman can show us any better mode of defence we shall be glad to hear it, and although I think it incumbent on him to show us the utility of gunboats, I will not detain the House but a few minutes to recommend what I conceive to be a far better mode of defence, I mean solid and durable fortifications that will last for ages, and block-ships similar to the draught now held in my hand, and which any gentleman may examine at his leisure if he chooses. Sir, the experience off Copenhagen is an evidence of their real utility. Witness the engagement with the British fleet and the Crown battery, (somewhat similar to the plan of Montalembert, recommended by me in debate yesterday,) and the block-ships. That fleet was actually silenced, and nothing saved the proud navy of old England on that memorable day but the game of flag of truce played off so successfully by the hero of Trafalgar; and when in order I shall move to adopt those block-ships in place of gunboats.

Mr. TALLMADGE said the question before the House had no connection with the defence of New York; it was a proposition for building gunboats.

Having been on the select committee that brought in these resolutions, he thought it proper to state that there had not in that committee been a unanimous opinion in favor of gunboats. He was himself entirely hostile to the measure. He saw no necessity for adding to the number already built, or authorized to be erected. They had thirteen gunboats fit for service, and fifty-six would be soon launched. It would seem to him better to comport with the system of economy, in the first instance, to finish and prepare these fifty-six for service. No reason had been assigned for the additional sixty that had been proposed, but the mere opinion of the President. Mr. T. said he did not wish to call in question the high authority attached to the opinion of the President, but he would wish to know whether any naval officer had recommended gunboats as a proper defence for the country. He did believe there were some particular circumstances under which they would be useful, and under this impression he had hitherto voted. But when he saw nothing but gunboats called for, he was placed under the necessity of refusing to grant a single dollar. It appeared as if they were contemplated to be relied on as the exclusive defence of the United States, and as if it were intended to let the frigates rot. He was opposed to the postponement, as he did not see the probability of obtaining any useful information not already before the House.

The question was then taken on postponing the consideration of the resolution until Monday, which was carried—yeas 69.

THURSDAY, February 12.

Indiana—Suspension of the Anti-slavery Clause of the Ordinance of 1787.

Mr. PARKE, from the committee to whom was referred the letter of William Henry Harrison, Governor of the Indiana Territory, enclosing certain resolutions of the Legislative Council and House of Representatives of the said Territory, made the following report:

That the resolutions of the Legislative Council and House of Representatives of the Indiana Territory relate to a suspension, for the term of ten years, of the sixth article of compact between the United States and

the Territories Northwest of the river Ohio, passed the 13th July, 1787. That article declares “there shall be neither slavery nor involuntary servitude in the said territory.”

The suspension of the said article would operate an immediate and essential benefit to the Territory, as emigration to it will be inconsiderable for many years, except from those States where slavery is tolerated; and although it is not considered expedient to force the population of the Territory, yet it is desirable to connect its scattered settlements, and, in regard to political rights, to place it on an equal footing with the different States. From the interior situation of the Territory, it is not believed that slaves would ever become so numerous as to endanger the internal peace or future prosperity of the country. The current of emigration flowing to the Western country, the Territories ought all to be opened to their introduction. The abstract question of liberty and slavery is not involved in the proposed measure, as slavery now exists to a considerable extent in different parts of the Union; it would not augment the number of slaves, but merely authorize the removal to Indiana of such as are held in bondage in the United States. If slavery is an evil, means ought to be devised to render it least dangerous to the community, and by which the hopeless situation of the slaves would be most ameliorated; and to accomplish these objects, no measure would be so effectual as the one proposed. The committee, therefore, respectfully submit to the House the following resolution:

Resolved, That it is expedient to suspend, from and after the 1st day of January, 1808, the sixth article of compact between the United States and the Territories and States Northwest of the river Ohio, passed the 13th day of July, 1787, for the term of ten years.

Referred to the consideration of the Committee of the Whole on Monday next.

FRIDAY, February 13.

Importation of Slaves.

The bill, sent from the Senate, entitled “An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight,” together with the amendments agreed to yesterday, were read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 113, nays 5, as follows:

YEAS.—Evan Alexander, Isaac Anderson, John Archer, David Bard, Joseph Barker, Burwell Bassett, George M. Bedinger, William W. Bibb, Barnabas Bidwell, Phaniel Bishop, John Blake, jr., Thomas Blount, James M. Broom, Robert Brown, John Boyle, William A. Burwell, George W. Campbell, John Chandler, John Claiborne, Joseph Clay, Matt. Clay, George Clinton, jr., Frederick Conrad, Orchard Cook, Leonard Covington, Richard Cutts, Samuel W. Dana, Ezra Darby, John Davenport, jr., Elias Earle, Peter Early, James Elliot, Caleb Ellis, Ebenezer Elmer, Wm. Ely, John W. Eppes, William Findlay, James Fisk, Charles Goldsborough, Peterson Goodwyn, Andrew Gregg, Isaiah L. Green, Silas Halsey, John Hamilton, Seth Hastings, William Helms, David Holmes, John G. Jackson, Walter Jones, James Kelly, Thomas Kenan, Nehemiah Knight, John Lambert, Joseph Lewis, jr., Henry W. Livingston, Edward Lloyd, Matthew Lyon, Duncan MacFarland, Patrick Magruder, Robert Marion, Josiah Masters, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, John Morrow, Jonathan O. Mosely, Gurdon S. Mumford, Jeremiah Nelson, Thomas Newton, jr., Gideon Olin, Timothy Pitkin, jr., John Porter, John Pugh, Josiah Quincy, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, John Russell, Peter Saily, Thomas Sammons, Thomas Sanford, Martin G. Schuneman, Ebenezer Seaver, James Sloan, Dennis Smelt, John Smilie, John Smith, Samuel Smith, Richard Stanford, Joseph Stanton, William Stedman, Samuel Taggart, Benjamin Tallmadge, Sam’l Tenney, David Thomas, Thomas W. Thompson, Uri Tracy, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, John Whitehill, Robert Whitehill, Eliphalet Wickes, Nathan Williams, Alex’r Wilson, Joseph Winston, Richard Wynn, and Thomas Wynns.

NAYS.—Silas Betton, Martin Chittenden, James M. Garnett, Abram Trigg, and David R. Williams.^[47]

MONDAY, February 16

Circuit Courts.

The bill sent from the Senate, entitled “An act establishing circuit courts in the district of Kentucky, Tennessee, and Ohio,” together with the amendments agreed to on the thirteenth instant, were read a third time: Whereupon, the bill, with amendments, was recommitted to a Committee of the Whole this day.

The House, accordingly, resolved itself into the said committee; and, after some time spent therein, the bill and amendments were reported without amendment thereto.

The bill was then read the third time, and on the question that the same do pass? it was resolved in the affirmative—yeas 82, nays 7.

Lewis and Clarke.

The House resolved itself into a Committee of the Whole on the bill making compensation to Messieurs Lewis and Clarke, and their companions. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House. The House proceeded further to amend the said bill: When an adjournment being called for, the House adjourned.

TUESDAY, February 17.

The Writ of Habeas Corpus.

The House proceeded to consider the motion of Mr. BROOM, of the seventh instant, and the same being read in the words following, to wit:

“*Resolved*, That it is expedient to make further provision, by law, for securing the privilege of the writ of habeas corpus, to persons in custody, under, or by color of, the authority of the United States.”^[48]

Mr. BROOM addressed the House as follows:

Mr. SPEAKER: It will be recollected by the House that I had the honor of submitting a resolution to make further provision by law for securing the privilege of the writ of habeas corpus to persons in custody, under or by color of the authority of the United States. It was then my wish that it should lie upon the table, in order that members might have an opportunity of considering the subject; being fully persuaded that the more it was considered the more evident would the importance of it appear. As it now becomes my duty to call the attention of the House to the subject, I shall move that the resolution be referred to a Committee of the whole House, and I should not offer a single observation in support of this motion, but for the doubts which have been suggested by several members, of the necessity and propriety of legislative interposition at this time. I trust therefore that I shall be indulged in pointing out the necessity and importance of the provision which it is contemplated to make. I am sensible that this subject is not familiar to the majority of this House; for, until now, no circumstance has occurred in this country which could make us duly appreciate the value of the privilege of the writ of habeas corpus. In ordinary times, the laws which already exist may be sufficient, for in such times there is no temptation to transgress the limits of constitutional or legal privileges; but in times of turbulence and commotion, the mere formal recognition of rights will afford too feeble a barrier against the inflamed passions of men in power, whether excited by an intemperate zeal for the supposed welfare of the country, or by the detestable motives of party rancor or individual oppression. I could have wished that circumstances had never occurred which would make it necessary to fortify, by penal laws, the constitutional privilege of habeas corpus, and that the whole nation, from the first to the least, had regarded it with such religious veneration, that no officer, either military or civil, would have dared to violate it. But recent circumstances have proved that such a wish would have been in vain, and have demonstrated, more powerfully than any abstract reasoning, the necessity and importance of further legislative provision.

This privilege of the writ of habeas corpus has been deemed so important that, by the ninth section of the first article of the constitution, it is declared that it shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Such is the value of this privilege, that even

the highest legislative body of the Union—the legitimate Representatives of the nation—are not entrusted with the guardianship of it, or suffered to lay their hands upon it, unless when, in cases of extreme danger, the public safety shall make it necessary.

The suspension of this privilege upon slight pretences, it was easily foreseen would destroy its efficacy, and if it depended on the mere will of Congress, it would become, in the hands of the majority, the most certain and convenient means to accomplish the purposes of party persecution, or to gratify political or personal rancor or animosity. This constitutional provision was only intended as a check upon the power of Congress in abridging the privilege; but was never intended to prevent them from intrenching it around with sound and wholesome laws; on the contrary, it was expected that Congress were prohibited from impairing, at their pleasure, this privilege; that they would regard it as of high importance, and by coercive laws insure its operation. By the fourteenth section of the judiciary law, vol. 1, L. U. S., page 58, power is given to certain courts and judges, to grant the writ of habeas corpus; and this is all the provision made by any act of Congress to secure this privilege. Thus the constitution sanctions the writ, and the act of Congress gives the judges power to grant it; but there is no law of the United States which compels the judge to grant it, or the officer to obey it; and the only remedy left to the individual is that which he derives from the common law of England, (if, indeed, gentlemen will allow to that law any operation in the United States courts;) and that very law upon which we now rely to enforce the privilege was found, during the reign of Charles II., utterly insufficient, and has ever since the thirty-first year of that reign, been considered in England as only auxiliary in securing the privilege of the writ of habeas corpus.

As the House has now agreed to consider the motion, I will proceed in support of it. The statute 31, chapter 2, was designed to remedy, and did effectually remedy, the defects of the common law provision on this subject. By that statute severe penalties were imposed on judges refusing to grant the writ of habeas corpus, and on all parties refusing to obey it. In most of the States, laws have been made upon the principle of the statute of Charles, and so far as they extend, are found to have the most beneficial effect in securing the privilege of the writ, but they do not extend to inflicting penalties on judges of the courts or officers of the United States. If

the privilege of the writ of habeas corpus be important, and the laws be defective, it is surely our duty to apply the remedy. Of its importance, it is true we have had but little experience in our own country. In England, from whence we derive our knowledge of it, they have proved its value; they have tried it, and it has not been found wanting. In England, this inestimable privilege has been for ages the proud theme of exultation; there they worshipped it as a talismanic wand which could unbar the gates of the strongest prison and dissolve in an instant the fetters of the captive. It was to Englishmen as a wall of fire by night, shielding them from the arbitrary sway of tyrannic power. It is, indeed, the great palladium of that English civil liberty which has exalted the English character. Of the power and influence of civil liberty upon the happiness of the people of England we need no stronger evidence than the situation of surrounding nations, where it was unknown. Let us go back to less civilized times, and we shall see in those nations men in the most abject state of society, suffering oppression in every possible shape; there, every private castle was a secret and inviolable prison; there the life and liberty of the most illustrious, as well as the meanest, subject, were alike the sport of the caprice of a tyrant. Even the petty lordling held as it were the shears of fate, and cut at pleasure the thread of the life of his vassals. A *lettre de cachet* could confine the unhappy victim of power for life in the loathsome walls of a dungeon, and in spite of the ties of affection or blood, friends must forget each other, or share a common fate. The savage tortures of the inquisition chilled the soul with horror, and the gloomy recess of the sanctuaries of religion too often bore witness to the diabolical temper of man when inflamed with passion and unrestrained by wholesome laws. Such was the condition of other countries while the people of England were reposing in security under the protection of their civil institutions; institutions which had received the sanction of ages, and were guarded by the religious veneration of the people. The right to personal liberty, unless for the commission of an offence against law; the right to know the accusation against them, and the right to be tried by their peers, were all recognized by their charters, and which their monarchs had sworn inviolably to observe. These rights were not merely secured by parchment; they were incorporated with the habits, manners, and customs of the people; they were handed down from father to son in trust for posterity, and guarded as a precious inheritance, which could never be diminished with honor. The people were early taught to know

them, and to consider it a sacred duty to draw their swords in defence of them. These fundamental rights of Englishmen have existed from their earliest ages; they were collected in a body by Edgar the Saxon; they were revised by Edward the Confessor, and were ratified by William the Conqueror; they were recognized by Magna Charta, and after the wars between Henry III. and his subjects, were confirmed by the statute of Marlborough, and never afterwards questioned. Rights thus maintained through all the convulsions of England; rights thus endeared to the nation, and engraven on the hearts of the people, and which have walked hand in hand with them through the darkest periods of their history, require no other proofs of their importance.

It has been too generally our misfortune to wait until offences have been committed, before we have provided a punishment; but, when such offences have been committed, the public attention has been awakened, and laws have been passed to guard against them in future. The violations of our constitutional privileges at New Orleans, have shown clearly the insufficiency of existing laws and the imperious necessity of providing the remedy. If we will not be roused from our slumbers by the experience which we have had, I shall despair that we will ever be awakened to any sensibility of our personal rights—for, let it be remembered that these abuses are not of an ordinary character—they have been committed by a military officer at the head of the army of the United States, and in full view of the highest authorities of the Union. The civil authority at New Orleans has been trampled under foot, and the commander of the army, in the plenitude of his power, avows his disobedience to laws and constitution, and takes on himself all the responsibility of the violation of our constitutional rights of personal liberty. Lost in amazement at this bold and unprecedented stretch of power, we can scarcely be sensible of its extent, unless we contrast it deliberately with the constitution. The constitution declares that no warrant shall issue but upon probable cause, supported by oath or affirmation; that no citizen shall be deprived of his liberty without due process of law; and that the accused shall enjoy the right of a speedy trial by a jury of the district where the offence was committed. Yet, in defiance of all these constitutional provisions, our citizens have been arrested without any warrant, and without any process of law whatever; deprived of their liberty; confined in military prisons, and transported under military guards, two thousand miles from the place where the offence was

committed. The constitutional privilege of the writ of habeas corpus, which is to secure these rights to the citizen, has been treated with contempt, and a military officer vauntingly takes upon himself all the responsibility of wilful disobedience to the writ. For all these violations we are to be told that the conspiracy which existed in that country will afford a sufficient justification. With respect to the conspiracy, whatever might have been its contemplated extent we have reason to believe that it is now at an end. And, without determining whether the aspect which it had at New Orleans was really alarming to the General, or whether any circumstances do exist which may palliate his conduct, this much we all know, that his power was employed in the arbitrary violation of the rights of the citizen, and that the conspiracy is to furnish the justification. Such conduct, and even such a justification, I look upon with abhorrence and dread. For, if, upon every alarm of conspiracy, our rights of personal liberty are to be entrusted to the keeping of a military commander, we may prepare to take our leave of them for ever. For my own part, I wish to live under a government of laws, and not of men; for, however pure and upright be the intentions of our military commanders, however virtuous, and even unsuspected be their conduct, I can never agree that my right to personal liberty shall depend on their forbearance and discretion. I know not whether these men that have been arrested are innocent or guilty of the treason with which they are charged, but, whether innocent or guilty, they must be arrested and tried according to law. However atrocious the crime which has been committed, the punishment must be according to law. For, in transgressing the limits of the law to revenge upon a criminal the wrongs of society, we are guilty of injustice both to society and the criminal. The manner and circumstances attending these arrests, have been of the most uncommon kind. It is said that all intercourse between one of the prisoners and his family and friends, was cut off, and that not a soul, except military men, was suffered to approach him; that, after being detained under close military confinement for nearly two weeks, he was transported, by the way of Baltimore to this city, and that, upon his arrival here, he was informed that there was no evidence to support any charge against him whatever. But whether this man, or the others who have been arrested, are guilty or not, it can have no influence upon our deliberations at this time. For, if even these violations now affect only the guilty, they may, at the discretion of the military officer, be extended to the innocent. It is enough for us to know that the rights of

personal liberty, guarantied by the constitution, have been openly violated in the person of a citizen of the United States, and that no laws exist sufficiently effectual to prevent or punish such violations. It then becomes our duty as faithful guardians of the public rights, to interpose our authority in order to preserve them. But, if we content ourselves with tamely looking on, while our best rights are trampled upon, we become partakers of the guilt by the encouragement which we give the offenders. For these violations, what remedy has the most innocent individual against the officer who arrested and transported him? As the laws of the United States have provided none, his remedy is at common law. He must sue for false imprisonment, and it depends entirely on the jury to say whether they will give him any thing or nothing. Can a remedy so uncertain prevent the offence? or, will a remedy so precarious, always remunerate the injured? But, if to this we add exemplary penalties, we have, surely, an additional security that the laws will be obeyed. The laws are not, and in my opinion will not be sufficient, unless they punish in the most prompt and exemplary manner all judges who refuse to grant the writ of habeas corpus, and all officers who refuse to obey it. For such offences, ruin ought to stare a man in the face; and, when he has so seriously abused his power, he ought to be stripped of it forever. But, if we have no laws to guard us against these abuses, and are unwilling to make any, we take upon ourselves all the responsibility of future violations.

Mr. BURWELL said he had determined to vote for the reference of the resolution, that the mover might suggest any additional security to the personal liberty of the citizen he thought necessary, although he did not believe a change in the law material, or that one essential provision had been omitted. Had the gentleman from Delaware confined his remarks to the subject of his motion, and avoided observations unconnected with his ostensible object, he should have acquiesced silently. The Constitution of the United States recognizes the writ of habeas corpus, without determining in what manner it shall be enforced in the courts. That can only be ascertained by recurring to the acts of Congress in 1789, establishing a judicial system, organizing courts, and fixing their powers. The fourteenth section of that law relates to this writ, and says: "This and all other writs not specially provided for by statute shall be issued agreeable to the principles and usage of law." Mr. B. contended the principles here alluded to could only be those of the English law, and the usages those of their courts;

otherwise there could not be found in the constitution, or laws of the Union, a single sentence relative to the subject, and the decisions heretofore had in our courts would be consequently illegal. He said he was fully justified in this position by the uniform proceedings in the courts, and particularly those which had recently taken place in this district before the court acting expressly under the laws of Congress. To show how ample the provisions were, he referred to Blackstone's Commentaries, vol. 3, page 137, statute Charles 2d, "Any prisoner may move for and obtain his writ of habeas corpus, &c., and the Lord Chancellor or judges denying the same on sight of the warrant or oath, that the same is refused, shall forfeit to the party grieved, the sum," &c. The judge is here compelled, under heavy penalties, to afford relief to all persons who apply for the writ, and we shall presently see the law guard against delay or evasion by further limitations on the discretion of the judges. Mr. B. said he admitted the specific penalties of the statute did not attach to the judges and courts of this country; but it established their duties, and the punishment inflicted is regulated by the Constitution and law of the United States applicable to judicial offences and misdemeanors. The same statute provides, "that officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent a copy of the warrant of commitment within six hours, or shifting the custody of the prisoner without sufficient authority, shall forfeit," &c. In addition to this, the court could enforce its process by attachment, fine and imprisonment, and call on the Executive for aid, if resistance is made. Mr. B. said this statute was considered as having completely guarded against oppression, and was expressly intended to put an end to the evasion of the judges: "The oppression of an obscure individual gave birth to the famous habeas corpus act, 31st Charles 2d, which is frequently considered as another magna charta of the kingdom, and by consequence and analogy has also in subsequent times reduced the general method of proceeding on these writs, and (though not within the reach of that statute by issuing merely at common law) to the true standard of law and liberty." Black. Com. 136. What more is requisite? Your courts are compelled to issue process and grant relief; your officers to carry it into effect, and your citizens to obey. Mr. B. observed, it appeared to him impossible to devise additional provisions, when those already incorporated into the jurisprudence of the country by the act of Congress, and exercised by the courts, embrace every case arising under the laws, and extend to all persons confined under the

authority or color of authority of the United States. He, however, was not a professional man, and was therefore the more disposed in favor of the commitment, lest he should be mistaken in his impressions. If the gentleman from Delaware should discover any salutary alterations, he should not only receive his vote but his thanks.

The gentleman from Delaware says, the late arrests at New Orleans by the military are early warnings of the danger of standing armies. Mr. B. accepted the hint, and hoped the gentleman would himself recollect and profit by it. Those who acted with him had long been partial to those establishments, and blind to their tendency. The events alluded to proved the indispensable necessity of preserving them subordinate to the civil authority. This proved the importance of reducing the standing army to the lowest point compatible with the safety of the frontiers. This was the reason which induced him during the present session to vote against the proposed augmentation of our forces; and while he continued to entertain his present opinions, and felt his present jealousies of a conflict between the civil and military power, he was determined to avoid the issue by keeping the latter in complete subordination. If an opposite policy should ever become ascendant in this country, the measures at New Orleans, instead of being temporary, will be entailed upon us. Mr. B. said he thought it improper to mention the events which had occurred at New Orleans. It was extremely probable prosecutions would be commenced against the officer, and any expressions of disapprobation in that House would give a tone to public opinion which justice required should as yet be suspended. Every person admitted the Commander-in-chief had violated the law. He admitted it himself, and assigned reasons of justification which we ought not to decide, but leave to the courts of justice. They are the proper tribunals to punish those who infringe the rights of the citizen; and until they are closed by power, or their decrees set at defiance, and the Executive unable to enforce them, legislative interference cannot be necessary. It has been said, every officer who refuses to obey the writ of habeas corpus from a court should be punished with death; and this has been proposed as an effectual provision to secure the benefit of this writ. Has the gentleman so soon forgotten the doctrine advanced on that side of the House, and assented to during the present session, when we were told a military officer knew no law but the orders of his superior; when we were told the contrary was monstrous, absurd, and subversive of all subordination in the army; that they were not

lawyers versed in your laws and constitution? Mr. B. hoped he had. But the gentleman from Delaware had run into exactly the opposite extreme, by placing the highest and lowest officer upon the same footing, exacting from both the same knowledge of the law, attaching the same responsibility, and, contrary to every principle of justice and humanity, punishing with the same severity the man who intentionally and knowingly violates the law, and the man who ignorantly commits a breach of duty. It would completely reverse what has been so long and wisely recognized in our criminal jurisprudence. The redress allowed to a man who has been forcibly seized and imprisoned without legal authority under the existing laws, is much more conformable to equity than this mode. It is an offence against an individual's rights, and should be punished, like all other injuries of a personal nature, by action and recovery of damages, in which the jury will always have a just regard to the rank of the offender, the innocence of the victim, and the wantonness of the violence. They will discriminate between the lawless exercise of power by the Commander-in-chief and the subaltern, who executes what he supposes he is bound by his oath to perform. Mr. B. said the mover of this resolution had expressed more alarm at the situation of this country than was real, or than he supposed was felt by any member of this House. One would imagine that the arrests at Orleans had extended through the whole nation, and that no man was safe from persecution. As far as he had understood, the moment those arrested had reached the United States, they had been turned over to the courts, and every privilege been extended to them. The people of this country can never be in danger while their Representatives remain pure, and are disposed to withhold from the Executive dictatorial powers. Have we not already, during the present session, given the most honorable pledge to our constituents that we are not inattentive to their security, when we rejected the bill to suspend the writ of habeas corpus? Why talk of the lettres de cachet which have issued in France, and of other oppressions in that nation? Our Government is neither actuated by such passions, nor invested with such powers. It is degrading to assimilate the two Governments, and argue from a similarity which does not and cannot exist. The one is composed of responsible agents; the other is despotic, cruel, unrelenting and corrupt.

But we are told that a most daring violation of human right has taken place—that men have been seized in New Orleans and shipped here for trial. Far be it from me to exaggerate or soften these acts. Such as they are, I

am willing to trust them to an enlightened community. An officer has undertaken at his own responsibility to seize and send here three persons. Two of them charged on his oath with treason, or misprision of treason, and the third by him believed to be guilty. The first two on their arrival here, were delivered over to the civil authority, and on solemn argument committed on a charge for treason. The other was delivered over to the civil authority also and discharged. No man will say that the conduct of the officer who seized and shipped these persons is legal. He has done an illegal act at the risk of his fortune in damages. Let the law take its course; let the individuals prosecute; let an honest jury put on one side the crime with which they are charged, and on the other, illegal arrest and shipment; let them strike the balance. If they assess damages, and it shall hereafter appear that this was a wanton and unnecessary exercise of power, the officer must suffer. If, on the contrary, it shall appear that the officer had no object in view but the public good, that he did really believe New Orleans about to be attacked by a superior force, and that these prisoners could not be safely kept there, I for one, shall not hesitate to pay the damages assessed against him. Freedom can never be endangered by an act like this, where your laws are suffered to take their natural course without suspension or interruption—where the injured individual can bring before a jury his claim for damages. What more safe, more certain, or adequate remedy can you ask for an injury done to personal freedom, than the verdict of a jury of freemen? What would be the feelings of an honest and independent jury called upon to decide a case like this, where an innocent individual of character had been seized and shipped? The damages would be such as to heal the wounded feelings of the oppressed individual, and to deter in future the commission of such an act. If, on the contrary, strong circumstances of guilt should appear against the individual, the damages would be nothing. The officer must depend on establishing before the community the purity of his motives, and the probable guilt of those on whom he has exercised power in violation of right. If the individuals seized and sent here shall be found to be innocent, I should wish them to recover heavy damages. Under my present impressions, I should certainly, if on their jury, not assess damages. If the charges made against them are well founded, I would as soon give damages against an individual who seized and secured for trial a highway robber. The public officer who knows of the existence of treason; who sees an individual embarked in schemes dishonorable to his country;

who believes him aiding an approaching enemy, would deserve to be broke if he did not seize him. On the present occasion the officer has gone further—he has seized and sent them to you. He has violated the personal right of the citizen. If from honest zeal for the public good, he will find a sure protection and shield before an independent and patriotic jury. If the persons are innocent, and have been seized by him to wreak private resentment, or on any motive less pure than the public welfare, his reputation as a soldier is destroyed, and his fortune must be lost in damages. I do not believe, however, that much sympathy will be excited in the public mind, when the people shall understand about what, and about whom, all these clamors have been raised. What is the naked fact? General Wilkinson has seized and sent round to the seat of Government three persons, at a time when he believed New Orleans in danger of being attacked by a superior force. Of these persons, the one is a bankrupt foreigner, charged on oath with being an accomplice of Aaron Burr. The second, a young American, charged also on the oath of your Commander-in-chief, with having disgraced the American character, by condescending to be employed as an agent for corrupting your army; with having actually carried proposals of bribery to your Commander-in-chief. The third, a foreign lawyer, who owes to the liberality of the people of this country his bread. Two of these persons, in good Federal times, might have been transported under the alien law to Botany Bay. But men are now seen in your courts actively denouncing this measure, who voted for and perhaps brought forward the alien law. I mention not this to justify the present proceeding, but to show to the people the spirit in which this resolution has originated. Your Commander-in-chief has been placed in a difficult situation. In daily expectation of an attack by a superior force, and opposed by the whole body of the law in the territory, a man greatly his superior in talents and firmness might have erred. He ought most certainly to have delivered over these persons to the civil authority. Had he done this, however, it is not yet decided where the trial would have been held. The district court of New Orleans has the same jurisdiction with the district court of Kentucky. The Kentucky district court has the ordinary criminal jurisdiction of a district court of the United States, which extends only to offences punishable by fine or whipping, and the whole civil jurisdiction of a circuit court of the United States; so that these persons, if charged with treason against the United States, could not have been tried in New Orleans, and must have

been sent here or elsewhere by the civil authority. Thus much for the violation of right which has taken place.

Mr. BIDWELL observed, that on a motion to refer this resolution to a Committee of the Whole, he thought it unnecessary to discuss the merits of the subject at large; since the very object of the commitment was to afford a full and fair opportunity for such a discussion, and for any specific proposition which the mover might think proper to submit. He was in favor of the proposed commitment, but on very different grounds from some of those which had been urged. Whether the conduct of the commander of the army in arresting certain persons who attempted to corrupt him and to seduce the army, to join in a conspiracy against their country, was to be condemned or not, was a question not suitable to be acted on at the present time, and under existing circumstances. If the House were the proper tribunal to decide that point, this was not the proper mode of deciding it, nor the proper time for the decision. No one would deny that the commander of an army or of a post might be so circumstanced that it would be his duty to make a seizure of suspected persons, or perhaps do other acts not provided for by any law. In such a case he must act under a high responsibility, and throw himself upon the justice of his country. On this ground General Wilkinson had professed to act. If his professions should be justified by the real state of facts, he would be entitled to a favorable consideration. But at present it was unseasonable for the Legislature to express any opinion or take any measure. He regretted, therefore, that the gentleman from Delaware (Mr. BROOM) had resorted to this transaction in support of his motion. On general principles, Mr. B. added, he was willing to go into a Committee of the Whole on the subject. The importance of the privilege of habeas corpus was acknowledged by all. The constitution, by restricting the Legislature from suspending it, except when in cases of invasion or rebellion, the public safety may require a suspension, had recognized it as a writ of right, and our statutes had authorized certain courts and magistrates to grant it. It had been, indeed, in some respects doubtful where the authority to issue such writs was lodged. Whether, for instance, the Supreme Court, a circuit court, or the justices of the Supreme Court, out of their appropriate circuits, had that authority, were questions on which not only professional men, but judges themselves, had differed in opinion. Some improvements, perhaps, might be suggested. Although he lamented that the gentleman from Delaware had moved the subject at the

present time, while some of the questions involved in it were under the consideration of the judiciary, and that he had referred, in his argument, to the late transactions at New Orleans, of which we have not sufficient information to form a satisfactory judgment, yet he would consent to refer the resolution to a Committee of the Whole, for the purpose of considering such propositions as that gentleman might offer for the amendment of the law.

Mr. EARLY.—Mr. Speaker, the motion, timed as it is, and accompanied by the speech we have this day heard from the honorable mover, has a suspicious aspect and influence upon certain judicial procedures, depending at the present moment within the walls of this building. Is this House willing to suffer such manœuvres to take their proposed course, and to produce their wished-for effect? Are they prepared to interpose the weight of their influence to ward off the infliction of punishment upon traitors, by passing sentence of condemnation on acts which have produced their arrest and confinement? But it is not now alone that this pernicious tendency of the resolution is to be felt. Actions for damages are no doubt to be brought against the Commander-in-chief. Whether the damages which may be recovered, ought or ought not to be made good to him by the Government, must depend upon circumstances yet to be developed. That he has violated both law and constitution, is not denied. But whether there existed that imperious necessity for such violation which alone can justify it, and give him a claim upon the Government for the damages to which he may be subjected in consequence thereof, can only be determined upon a full view of all circumstances. Here presents itself another strong objection to the resolution. Its tendency is to procure now that expression of opinion by the National Legislature, in relation to the events at New Orleans, which will, which must, raise a powerful obstacle hereafter, against a remuneration of any damages that may be recovered against the Commander-in-chief. To this I will not consent—against it I hold up my hands, and enter my most solemn protest. There is still a farther objection; the tendency of the resolution, if adopted by the House, will be to influence the amount of damages which may be assessed. Yes, sir, it will be viewed as the expression of an opinion on the part of Congress as to the demerits of the act for which damages are claimed. The effect upon the minds of a jury is even more to be dreaded than that upon the opinion of the judges. Who is there that cannot perceive its force? Who that must not deprecate its effect?

If it should be observed that the resolution itself cannot be open to all the objections now urged against it, let it be recollected that the honorable mover has taken special care to give to it a direction, and accompany it by circumstances which must insure to it the operation complained of. In ordinary cases there can most certainly be no objection against an inquiry after defects in any branch of law, with a view to the application of some remedy. But such is not, as I apprehend, the state of the present question. Admit, for argument's sake, that a defect does exist in the present provisions for securing the habeas corpus privilege, can an adequate remedy be now applied? It cannot, we know it cannot.

But, Mr. Speaker, where is the proof that the provisions now in force are not sufficient for the security of the person? Have you any evidence to this effect? If you have, I am ignorant of it. Are not the courts of justice open? Let the persons injured resort thither. Let their complaints be laid before an American jury. Will not an adequate redress be had there? Are the people of the United States too insensible of the value of the privilege of the habeas corpus to award damages proportionate to the injury sustained by its infraction? Or is it that gentlemen suspect, that the individuals who have been arrested were engaged in a plot so diabolical that a jury would, upon a view of the whole ground, assess damages too inconsiderable to comport with their wishes? Is it for this reason that the American Congress are asked to prejudge the case, and to throw their weight into the scale against an officer who, from every thing that yet appears, has acted from motives of the purest patriotism? The part he had to perform was one of the most arduous ever assigned to the lot of man. Entrusted with the defence of an important and extremely remote point, where all was to be done before instructions could be received from his Government, every measure was to be taken by his own judgment and upon his own responsibility. His chance of information as to the extent of the danger was extremely limited, and, so far as facts have come to light, he had powerful reasons for believing that the conspiracy was deeply laid—that it had diffused itself extensively in the very bosom of the country against which it was directed, and that it would be supported by a military force far more numerous than any he had at command.

Mr. BROOM.—Mr. Speaker, I confess that the opposition which this resolution has met with does surprise and astonish me, and more especially

when I consider the quarter from which it comes. That those who have been the most clamorous about the rights of the people, who have been jealous in the extreme of even the lawful exercise of power, who have assumed to themselves almost the exclusive privilege of protecting our rights, should now refuse even an inquiry whether those rights cannot be better protected, is to me a problem which I cannot solve, unless I suppose that these were principles and professions intended only for opposition, but never as the guide of administration. But when the principle is avowed that no laws shall be enacted for better securing our personal rights, and that no inquiry even on the subject shall be made at this time lest it might cast a censure on the conduct of an officer who violated them, I consider it my duty to protest against it. Sir, is it come to this, that when the Commander-in-chief of the Army of the United States shall turn his arms against our constitutional rights, that we shall not provide against future violations for fear of exciting a prejudice in the public mind against the officer? Prostrate indeed must be our condition when we can see our great rights of personal liberty trampled upon by a military commander, and be deterred from legislating lest the punishment of future violations should be construed into the murmur of disapprobation of the past! For my own part, I deprecate such a state of things, and, in spite of party, trust that the highest legislative body of a free people will not be found so unfaithful to themselves and their country as to give it their sanction.

The Message of the President, of the 22d of January, informs us that two persons have been seized at New Orleans by General Wilkinson, and embarked for ports in the Atlantic States, and promises that, upon their arrival, they shall be delivered over to the custody of the law. General Wilkinson states that Mr. Bollman, one of the persons so seized, was required by the superior court, but that he got rid of that affair under the usual liability for damages. Another message informs us of their arrival here, and that measures are taken to hold them in custody. These facts warrant me in saying that, in defiance of the Constitution of the United States, persons have been seized by military authority; that they were demanded by the civil authority; that the military refused to deliver them up; and that they were transported under military guard, and by military authority alone, to this city, and that here the first steps were taken to put them into the custody of the law. Is it possible that we can shut our eyes upon these transactions, or reconcile it to ourselves to become the mere

passive spectators of this violent usurpation of power? What excuse can any man render to his country for his supineness, in case of the commission of future violations? Can he plead his ignorance of what is officially communicated to him? Or can he say he was not warned of the dangerous consequences of these measures, or of the insufficiency of the laws to prevent them? The whole country know the fact, and deprecate the consequences, and they know also that we have received official information of them, and they look to us, as their Representatives, to use every means in our power to prevent the recurrence of them. Can any man be willing that his right to personal liberty shall depend on the will of an executive or military officer? If he can, he does not deserve to possess the right, and is well represented by those who refuse to protect it.

In speaking of probable cause of arrest, I confined my observations to the case of Mr. Alexander. I have seen no message informing us of the particulars of this case, but it is said that this gentleman, in his professional character, moved the court at New Orleans for a writ of habeas corpus, for one of the persons arrested by military orders; upon the refusal of the General to obey the writ, he either moved, or was about to move the court for an attachment against him, and was soon after arrested by order of the General, and transported to Fort McHenry, at Baltimore; from thence he was brought to this city, and taken before a judge of the Territory of Columbia, where he was informed that there was no charge against him sufficient to warrant his arrest, and he was accordingly discharged.

I now put it to the candor of gentlemen to say whether in this case there was any probable cause of arrest, or whether the same outrage might not be practised upon any other citizen of the United States upon the same principle, by the commander of any fort or garrison; and I will ask, also, whether the General might not as well have sent him to California, or Nootka Sound? For he was not charged with any offence upon which he was liable to arrest. If we have constitutional privileges, we must be always ready to protect them; and if the privileges now violated are not worth protecting, where are we to make the stand? When we see a cancer even in the extremities of the body politic, we must apply the knife, or the caustic, or it will reach the vitals. There ought to be no temporizing; for it will become the more inveterate and confirmed, the longer we delay. Without the most prompt attention to the preservation of our privileges, we may

have the form, but we shall not long have the substance of a free Government; and of all Governments I think that the worst, where the sound of liberty supplies the place of the reality, and a thousand petty tyrants take shelter under the cloak of republicanism.

It is said these men could not be tried at New Orleans; it is not material to involve in our discussion this question; for if they could not be tried they might have been imprisoned there, until they were transferred according to law to the place where a trial could be had; but it can never be justifiable in a military officer to seize and deport to any part of the United States, any citizen whom he might suspect of guilt. If it were admitted, an officer might carry a man from place to place until he found judges and juries disposed to convict—the constitution to the contrary notwithstanding. General Wilkinson's zeal may have been sincere and his motives pure, and the pressure of circumstances such as to make him feel justifiable in his conduct; but, sir, we never can with safety entrust such unlimited discretion to any military officer; and such conduct, however innocent the motives, ought to be guarded against by the most severe laws. The second objection of the gentleman from Massachusetts is, that the laws are already sufficient. They surely have not been effectual to prevent the abuse of the privileges of habeas corpus. The writ was issued at New Orleans, and General Wilkinson in open court took upon himself the responsibility of refusing to obey it. The writ was issued at Charleston, and the officer refused to obey it, and the military continued in possession of their prisoner until they arrived at the place of their destination. The people of England never considered the writ of habeas corpus perfectly secure until it was strengthened by the statute of Charles.

Mr. JACKSON had hoped that the gentleman from Delaware would have contented himself with professing his regard for the rights of the citizen, and not troubled the House with the long speech which he had delivered on the occasion. Mr. J. said it gave him alarm to find such sympathy for men guilty of the most atrocious crimes. Treason in some countries may be an act of magnanimity, but here it is the worst of all crimes, because it aims at the destruction of the best Government and the happiest society in the world.

Mr. J. proceeded to observe that if any officer will violate the constitution and take the responsibility, it is in vain to make laws in order to prevent it.

But were there no circumstances to justify Wilkinson? He saw treason lurking on every side. There are cases in which necessity affords a complete palliation. The President's Message does not confirm the declaration of the gentleman from Delaware, that there were no grounds for a charge against Alexander. [Mr. J. here read Wilkinson's affidavit.] Does it not show that they are all linked together? Wilkinson believed, and no doubt justly, that these persons could not be safely imprisoned at New Orleans. When it appeared that the judges, at least one of them, was desirous not to oppose the treason, it would have been madness in the extreme to have left the traitors there, and especially when it was expected that Burr would soon arrive with a powerful force.

The relief for abuses of the writ of habeas corpus is in trial by jury. This is the best relief. But the violator is also liable to impeachment, and is amenable to the Government. The outrages spoken of have a remedy—the privilege of the writ is amply secured; if the constitution has been broken, a law would also have been broken in the same circumstances. Mr. J. then concluded by announcing his determination to vote against the reference of the resolution.

Several members were rising to speak, when an adjournment was moved and carried—yeas 60.

WEDNESDAY, February 18.

Writ of Habeas Corpus.

The House resumed the consideration of the motion of Mr. BROOM, depending yesterday at the time of adjournment.

Mr. ELLIOT.—Mr. Speaker, gentlemen have generally been disposed, and I think with propriety, to consider the subject in two points of view. First, to examine the merits of the proposed resolution upon general principles, abstracted from all connection with events that have occurred, either recent or distant. Secondly, to consider the propriety of exercising the supreme legislative power, to preclude the recurrence of events which have sacrificed for a time “the holy attributes of the constitution,” to borrow the

language of the great violator of the constitution himself, at the shrine of military power.

Upon the first point, gentlemen who have expressed their sentiments, have been unanimous, or nearly so, in declaring that legal provisions of the kind now contemplated ought to be made, at a proper time, if those now existing are insufficient and inoperative. Those who have told us that the British statutes upon the subject of the writ of habeas corpus are in force in the United States, or even that it is doubtful whether they are so or not, need not have told us that they are not professional men; it was a work of supererogation. No professional man could for a moment entertain the idea that the statutes of Great Britain are laws of the United States. The question may be considered as undetermined, whether the common law of England, or any part of it, which has not been expressly recognized by our constitution and statutes, is law in the United States, considered in their federal character; it is at least well known that upon that question, a unanimous opinion does not exist in the first judicial tribunal of our country. For one, I do not believe that the United States, as the United States, possess any code of common law. I know of no laws of the Union but the constitution and statutes. That constitution and those statutes have recognized, or rather referred to certain portions of the common law, and particularly to certain technical common law terms and rules, as rules of practice in the federal courts; and beyond those the courts have common law powers. At all events, we have not adopted any of the British statutes, and particularly, and by mere implication too, statutes highly penal in their operation. The doctrine is too absurd to be countenanced, upon serious reflection, by any man of common discernment. The constitution has declared that "the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of invasion or rebellion, the public safety shall require it." But neither the constitution nor your laws have made it a positive duty of the courts to issue the writ in any particular case; still less have they secured the performance of that duty by any penal sanctions. Can it then be improper to provide means to coerce the courts and officers of the United States in this particular, and to leave to all the citizens, at all times and under all circumstances, such an invaluable constitutional privilege? Very few will deny or doubt the propriety of the measure. But many will say that it is ill timed, and the question of time naturally introduces us to the second scene of discussion.

It is said that it is improper at the present period to agitate the question now under consideration. In my apprehension the objection is a very strange one. The constitution has just been violated by the commander of your army; violated at the point of the bayonet, and in more than one or two of its most essential articles. In addition to the celebrated part of that instrument which prohibits the suspension of the habeas corpus, except by the supreme civil power, in crises of great national danger, several of those amendatory articles which peculiarly secure the rights of the citizen, and the adoption of which, on that account, were necessary to reconcile the majority of the people to the original constitution itself, have been disregarded and derided by a military chieftain. I allude to the following articles, all of which have been violated in most of their essential provisions:

“ART. 4. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

“ART. 5. No person shall be held to answer for a capital, or otherwise infamous crime, unless upon a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

“ART. 6. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defence.”

It is obvious that most of the privileges intended to be secured by these articles to our citizens have recently been denied to some of them, at the

point of the bayonet, and under circumstances of peculiar violence. It may, indeed, be said that the privilege of the writ of *habeas corpus* was not denied in the first instance; that it could not be said to be suspended until the injured persons were placed in a situation which entitled them to demand it from the judicial power of their country. It is true that, notwithstanding *inter arma silent leges*, although the laws were silent amid the thunder of arms, and although a thousand terrors hovered around those who dared to exercise their professional duties in support of the constitutional rights of the citizen, a writ of *habeas corpus* was claimed and obtained; and I had supposed that the very singular return which is said to have been made to the writ was placed on our official files. On searching them, however, I do not discover it; but it has been published in all the newspapers, and a copy of it is now before me, which I will read:

“The undersigned, commanding the Army of the United States, takes on himself all responsibility for the arrest of Dr. Erick Bollman, on a charge of misprision of treason against the United States, and has adopted measures for his safe delivery to the Executive of the United States. It was after several consultations with the Governor and two of the judges of this Territory that the undersigned has hazarded this step for the national safety, menaced to its base by a lawless band of traitors, associated under Aaron Burr, whose accomplices are extended from New York to this city. No man can hold in higher reverence the civil institutions of his country than the undersigned, and it is to maintain and perpetuate the holy attributes of the constitution against the uplifted hand of violence that he has interposed the force of arms in a moment of extreme peril, to seize upon Bollman, as he will upon all others, without regard to standing or station, against whom satisfactory proofs may arise of a participation in the lawless combination.

“JAMES WILKINSON.

“HEADQUARTERS ARMY OF THE U. S.,

“*New Orleans.*”

Here is a return, not of obedience to the laws, and high reverence for civil institutions, but of disobedience and defiance. The constitution is violated in order to preserve it inviolate! Prostrated in the dust by military power, for

the purpose of maintaining and perpetuating its holy attributes. And what great national object was to be accomplished by such extraordinary measures? What necessity could exist of seizing one or two wandering conspirators, and transporting them fifteen hundred or two thousand miles from the constitutional scene of inquisition and trial, to place them particularly under the eye of the National Government, when, if the opinion of the officer himself was correct, it would immediately become the duty of that Government to suffer them to go at large? In regard to one of them, the General was uncertain whether he had committed a major or a minor crime; and the other he explicitly pronounces, as we learn from our official documents, guilty of misprision of treason, at all events a bailable offence. He says, "from the documents in my possession and the several communications, verbal as well as written, from the said Dr. Erick Bollman, on this subject, I feel no hesitation in declaring, under the solemn obligation of an oath, that he has committed misprision of treason against the United States." Surely it is desirable to provide against the recurrence of scenes of this description. Or shall it be admitted that the whim, the caprice, the passion, or the ambition of a martial chief, may supersede at will the most important checks and safeguards of the constitution?

Mr. J. RANDOLPH introduced his speech in favor of the resolution by observing, that he understood the question before the House to be, whether they would refer to a Committee of the Whole a motion proposing an inquiry whether further legal provision be not necessary to prevent violations of the writ of habeas corpus.

How long it had been the fashion to debate the merits of a subject on a simple motion to commit, it was not material to inquire. He believed it had commenced the present session.

Mr. R. then observed that he would proceed to answer some objections which had been yesterday offered against the resolution, and state the reasons which induced him to support it, come from whence it may. The first objection which he heard was, the quarter whence the resolution came. Permit me, said Mr. R., to remind the House that if those who have been called into public life on account of their professed attachment to correct principles, ever quit the ground of trial by jury, the liberty of the press, and the subordination of the military to the civil authority, they must expect that their enemies will perceive the desertion and avail themselves of the

advantage. Can they who thus desert their old principles blame others for assuming the popular ground, which they have abandoned? Whoever stands forward in defence of the constitution, and the rights of the people, shall have my support *quo ad hoc*.

We have now on our tables official information from the President of the United States, that the privilege of the writ of habeas corpus has been denied and the constitution violated. And will you attend to reports from your Committees of Claims, of Commerce and Manufactures, of Ways and Means, and leave the constitution and the rights of the people to shift for themselves? There is abundant time. Congress can meet again after the fourth of March, and to postpone or delay a subject which affects the vitals of the State on account of a press of private or local business, would be a dereliction of our duty and of our oaths. Away then with such objections.

As to the objection that the subject of habeas corpus is now, *sub judice*, in the court below, no one thinks of a law which shall have a retro-active operation. I trust in God that no such *ex post facto* provision will be agreed to as was foisted into the bill which came from the Senate, to suspend the habeas corpus, and which was intended in a side way to cover with a mantle the most daring usurpation which ever did, will, or can happen, in this or any country. There was exactly as much right to shoot the persons in question as to do what has been done.

It has been contended that any measures on the part of this House will give a bias to the proceedings which have been instituted in the courts. Let me ask, what official notice we have of any such proceedings? But disdaining such a shelter, though it has been resorted to on the other side, it is sufficient to observe that a man has only to break the law or constitution in the beginning of a session, and then forsooth you are to be foreclosed from legislating on the subject, because an instance has recently occurred to show the necessity of legislative provision.

Mr. R. said this was the first time in his life that he had heard it asserted that no law ought to be passed to punish any offence, because that offence had recently happened. He hoped he should never hear again such a reason delivered. The Romans, believing the crime impossible, had no law to punish parricide, till a case occurred, which proved their mistake. What

would you think of Cato or Cicero rising in the Senate of Rome, and urging such a reason against a law for the punishment of this crime?

In the discussion of this simple motion to refer the resolution to a committee for inquiry, which I should have supposed would have been carried without any objection at all, hints of indemnity, I suppose to try the public pulse, have been thrown out. Permit me to say that bills of indemnity are not known to the constitution. If the time ever arrives when the representatives of the people vote the public money to indemnify those who break the constitution, we shall indeed become *homines servile paratos*, and fit for any Government and for any state of society, however despotic or barbarous. If ever the minions of the Executive, or the Legislature, whether civil or military, are indemnified for their outrages out of the public Treasury, the constitution must have arrived at its last crisis.

It has been insinuated that certain gentlemen in this House lean too much towards standing armies, &c. Agreed. But in advocating an increase of the public force, my object was to chastise an insolent foe, not to employ it against our own citizens and to substitute it in lieu of the civil authority. My dread of standing armies has been more than a hundred times increased in consequence of the services to which our present little force has been put. From such armies good Lord deliver us!

I hope the committee to whom this subject may be referred will not forget to prevent a man from being embarked on board a shallop, and transported one thousand or two thousand miles for trial. For I have heard a law officer of the United States contend that a man may be arrested in one of the territories, and a trial had in any part of the country, wheresoever he may be brought. If this abominable doctrine be supported by law, it is high time to correct it. The constitution, in an article amendatory, declares that unusual punishments shall not be inflicted. Transportation, even after conviction, is an unusual, cruel, and severe punishment; but here it has been inflicted even before a conviction, and before any trial of the delinquents.

The court of Orleans has the same power as the district court of Kentucky, which is invested with the powers of a circuit court. If the district court of Kentucky has jurisdiction of treason, which no man ever doubted, it follows that the court of Orleans has the same authority.

When the constitution gave to Congress exclusive jurisdiction over a district ten miles square, it filled the friends of liberty with alarm. But no man then dreamed that this blot on the map, this nondescript region, a King's Bench was to be established for the trial of delinquents against the Government, collected from all parts of the country. The inhabitants of this miserable heath, men held in a state of bondage to which no man would submit, who have no voice in electing rulers of the country, are destitute of the right of self-government—these men are made the judges and jurors to try the freemen of America. Were I on trial, I would challenge the jury. They are not qualified for this office; they are not my peers. The people here must be the tools and expectants of ministerial favor. Let them move in their own humble sphere, but let them never dare to touch a charge of treason.

In the Declaration of Independence, transportation for trial is alleged as one of the grievances imposed by the British Government on the colonies. Now it is done under the constitution, and under a republican Administration, and men are transported without the color of law, nearly as far as across the Atlantic.

I make no profession of sympathy for the men who have been denounced as traitors. I argue on the supposition that they are traitors; there is no need of much exertion in behalf of good men. Attacks on the liberty of the people are, as has been stated before, made always in the persons of the vile and the worthless. But when precedent is once established in the case of bad men, who, like pioneers, go before to smooth the way, good men tremble for their safety.

Mr. R. observed that he would not say much of the Commander-in-chief. The least said, till they knew all, was the best. He had always thought that there were more rogues than one. This business of canonizing and sanctifying men before they are dead, he did not like. In the State of Virginia they had been compelled to change the names of several counties. There was a time in which the name of Arnold might have been preferred, and perhaps there may now be places in the United States which derive their names from Burr.

Mr. R. could not admit the jesuitical casuistry which had been displayed with regard to an oath. If a man breaks the constitution, which they were all

sworn to support, punish him. If the violator be Washington, Franklin, or Jefferson, Mr. R. would punish him, and he would also say, that no indemnity ought to be voted for him.

Mr. R. stated at some length the circumstances of the proclamation issued in England to prohibit the exportation of corn, when Chatham and Camden were in the Ministry, and who afterwards refused a bill of indemnity. Mr. R. observed that bills of indemnity were known to the English Constitution, and requisite in the case stated. But Chatham and Camden, though both the known and tried friends of liberty, here abandoned the popular ground, and rested their defence on arbitrary principles, while the wary Mansfield, an old tory and a high churchman, availed himself of the advantage, took up the cudgels for the people, and completely succeeded.

Mr. G. W. CAMPBELL said the first inquiry that naturally presents itself, in discussing this subject, is, what has occasioned the measure to be brought before the House at this time? This answer is given—the conduct of General Wilkinson, in arresting Bollman and others, at New Orleans, and transporting them to this place for trial, under military orders, in violation of the constitution and laws of the Union. Suppose this to be the case, what remedy can the Legislature apply? Does the evil complained of arise from the want of laws to protect the liberty of the individuals and punish those who violate it, or from those laws not being duly obeyed? If the evil arises from a disobedience to existing laws, no act passed by this House can afford a remedy. Those entrusted with the execution of the laws may be stimulated to carry them into effect by this transaction, and to punish the aggressors, but it is no ground upon which this House can act, and no act that we could pass could, in any degree, affect the measures that have already taken place. The principal inquiry therefore appears to be, whether there is any law to punish the commission of such crimes as General Wilkinson is charged with? There can be no doubt on this subject; there are laws in every part of the Union to punish offences. If those persons were seized and carried away without legal authority, or a just cause that would excuse the act, it will be a false imprisonment, including in it an assault and battery—an offence punishable by law in every part of the United States. The offender may be indicted, and, on conviction, fined and imprisoned according to the nature of his offence. He may also be sued by the party injured, and damages recovered in proportion to the injury sustained. This is the remedy afforded

by the law in such cases, and it has been considered sufficient to correct the evil.

It has not been pretended that General Wilkinson, if he has acted in the unwarrantable manner stated on this floor, cannot be punished according to the nature of his offence; and it has already been stated that he is liable, if guilty, to be punished by indictment, and be made to answer in damages by civil suit. With regard to the violation of the constitution said to have been committed by General Wilkinson, in not obeying the writ of habeas corpus issued by the judge at Orleans, I may be permitted to observe that this part of the subject does not appear to have been well examined by those who have spoken in favor of the measure. The words of the constitution on this subject are, art. 1. sec. 9: "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." This provision evidently relates to Congress, and was intended to prevent that body from suspending, by law, the writ of habeas corpus, except in the cases stated, and has no relation whatever to the act of an individual in refusing to obey the writ—such refusal or disobedience would not certainly suspend the privilege of that writ, and must be considered in the same point of view as the violation of any other public law made to protect the liberty of the citizen. In the present case, however, if there was a refusal to obey this writ, it was a violation of an act of Congress, establishing that part of Louisiana where this transaction took place into a Territory, which expressly declares that the inhabitants of the said Territory shall be entitled to the benefit of the writ of habeas corpus, and it is punishable as such; but it cannot be considered a breach of the constitution in any other respect than the violation of any public law made in pursuance of that constitution would be, and of course cannot require legislative interference. With regard to the other three articles of the constitution, to wit: the 4th, 5th, and 6th amendments thereto, said to have been violated by the conduct of Wilkinson, a very brief examination will show that there are provisions by law in every part of the Union to enforce obedience to those parts of the constitution and punish those who violate them. The first of these articles merely declares the right of the people to be secure in their persons, houses, &c., against unreasonable searches, seizures, &c.; and that no warrant shall issue, but upon probable cause, supported by oath or affirmation, &c. The first part of this only can relate to the present case, for it is not alleged that any warrant was issued; and every

law existing in society for punishing offences against the persons and property of individuals, is calculated to enforce obedience to this provision. If a man is seized without legal authority or a just cause, cannot the offender be punished? He certainly can—and in what other way could you enforce obedience to this provision? The other two articles before mentioned can certainly have no bearing on the question before the House, they merely relate to the manner in which, and the place where offenders shall be tried—they are directory to the Legislature and to courts of justice; and it is not stated that either the one or the other have acted contrary to their provisions. No attempt to try these persons was made by General Wilkinson; he sent them to this place, they were delivered to the civil authority, and their case is now under legal adjudication. The courts of justice are the proper tribunals to decide, according to existing laws, where they are to be tried and in what manner. We are told, however, sir, it is necessary to make provision by law to enforce obedience to the writ of habeas corpus, to punish those who may refuse to grant it. With regard to the latter case, there is not the least ground of complaint—the writ has not been refused in any instance when demanded. It was issued at New Orleans, and also at Charleston, and indeed it is not pretended the civil authority have on any occasion violated this writ. It has, on the contrary, yielded the most prompt obedience to it in every instance.

If it was made to appear to me that there were not provisions, by existing laws, to enforce obedience to the writ of habeas corpus, and to punish the violations of it, I would be among the first to make such provisions. But this has not been shown, and cannot, I presume, be proved to be the case. In every State, and in every Territory, as far as we are informed, there are laws to enforce obedience to this writ, and to regulate the mode in which it shall be obtained and prosecuted; and, by the thirty-fourth section of the act to establish the judicial courts of the United States, it is declared that “the laws of the several States, except when the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in all cases where they apply.” This provision must relate to criminal as well as to civil cases. You have, therefore, the same provisions, at least, to enforce obedience to the writ of habeas corpus in the courts of the United States, that there are in the respective State courts; and it has not been shown that these provisions are defective in the State courts. Gentlemen have not

pointed out an instance in which this writ can be violated with impunity. In every case that can be stated, the aggressor may be punished under existing laws; and that is the only mode in which you can enforce obedience to this writ, or to any law. You cannot prevent, absolutely, the commission of a crime; you can only punish the offender, and thereby discourage others from committing similar offences. You cannot prevent a man, while at liberty, from exercising his physical strength; and you can no more prevent him, by law, from violating the writ of habeas corpus, than you can prevent one man from striking another, or from seizing him, and carrying him away by force. All you can do, in either case, is to declare the punishment that shall be inflicted on such offenders.

The gentleman from Vermont (Mr. ELLIOT) has told us he has not discovered a tittle of evidence to show that the persons have committed treason, and that their crime, at most, can only be misprision of treason. Although we are given to understand that that gentleman is a professional character, I must beg leave to differ with him on this subject. If treason has been committed by the author of this conspiracy, those persons, if guilty of any crime, must be guilty of treason, and not of misprision of treason only. They aided and abetted in carrying into effect the project. They carried and delivered a letter, knowing its contents, from the principal conspirator to General Wilkinson, for the purpose of engaging him to join in this undertaking. They used their influence to corrupt him. These must be considered overt acts, giving aid and comfort to the enemies of the nation, and will make them principals in the treason, if such a crime has been committed; for, in this crime, there can be no accessories—all who are concerned are principals. Misprision of treason is a distinct and separate offence. It is merely the neglect or omission to make known to the proper authority the treason that has come to the knowledge of the party. It supposes that no act has been done by the party charged; that he has given no aid or assistance whatever to the enemies of the country, but has merely acted wrong, mistaken his duty (which is the meaning of the term) in not discovering, in due time, the acts of treason that have come to his knowledge, and is, on that account, guilty of high misdemeanor. It was not, however, my wish, or intention to give any opinion on the merits of this case. I am willing to leave it to the decision of the constitutional tribunals. But, gentlemen seem as if they were determined to discuss the guilt or innocence both of General Wilkinson and the prisoners. This I consider

altogether improper, as it might give an undue bias to the public mind on this subject. For this reason also, sir, I am opposed to referring the resolution to a select committee.

Mr. HOLLAND.—It is said by gentlemen, that, by the conduct of General Wilkinson in sending Bollman and others from Orleans to this city, there is a flagrant violation of the constitution, and a crime committed that should be punished as a felony, and the purpose of making an offence of this kind a felony is the object of the present motion. That these persons may have been deprived of certain rights secured by the constitution is a possible and probable case; for every illegal deprivation of right secured by law under the constitution, may be said with equal propriety to be a violation of the constitution. But, sir, so far as respects the habeas corpus, the suspension of it applies to the Legislature, and not to persons. The constitution says it shall not be suspended but in case of rebellion, or when the public safety requires it. This prohibition manifestly applies to the Legislature, and not to persons in their individual capacity. If, therefore, the Legislature suspend the habeas corpus when there is no rebellion, or when the public safety does not require it, they would be guilty of a violation of it. But how has General Wilkinson violated it? He has no power to issue or detain the writ. The issuing of the writ of habeas corpus is the duty of your judges, and they have in all cases issued the writ. It was issued in the present case at Orleans; and issued at this place in behalf of these men. Your judges have at all times in this particular been ready to do their duty. And if so, where is the necessity of coercing them, as proposed, by fines and penalties? Sir, the necessity does not exist. If General Wilkinson has disobeyed this mandatory writ, he stands in contempt, and your judicial courts have already power to punish contempts. If he has violated any law, he is liable to be punished. If he has deprived any persons of their rights secured by the constitution or by the law, he has done it upon his own responsibility. The laws are ample, and will give redress for every injury. Let these persons bring their actions, and if it should appear that they are innocent, and that the General has wantonly deprived them of their rights, an honest jury will give exemplary damages; but if on trial it should appear that they were guilty persons, and that the public safety required their being transmitted to this place, they will not, they ought not, recover a single cent.

Mr. ALSTON said this proposition is brought forward in a most imposing shape, and it is undoubtedly one to which no one would object, if brought forward at a proper time, if there were not questions depending on which it is calculated to operate, and if there existed the least probability of any thing final being done upon it, before the close of the session. The inquiry is proposed to be made by a select committee; the mover of the resolution will of course, according to the mode of proceeding in the House, be chairman of that committee, and the report will in all probability be made at too late a period of the session, to admit of a full discussion, and an effect be produced by the report very different from that which would result from a full investigation of it. May not its effect be, to cover a decision which the gentleman knows is about to be made? To make it appear that those who make that decision have the voice of the people with them? The first course proposed, of submitting this proposition to a Committee of the Whole, had a tendency to produce an immediate investigation of the subject; an agreement to the present course will have the contrary effect, of delaying it. This proposition really presents a strange appearance. Gentlemen, heretofore the vehement advocates of energetic measures, are now converted into their opponents. This, however, is not strange to an accurate observer of human nature; opposition is opposition still, and let it come from what quarter it may, the general clamor is a regard to the liberty and rights of the citizen. But surely this of all species of protection is the strangest! The protection of men engaged in violating the rights, the liberties, and constitution of their country! Any judge, says the gentleman, who shall dare to refuse to grant the writ of habeas corpus, or officer who shall refuse to obey it, shall be mulcted in heavy damages. What does this amount to? If any person shall even see treason committed before his face, or Aaron Burr marching at the head of the marine corps, he shall not dare to arrest them; but shall, in the first instance, go before a judge, or render himself liable to be mulcted in heavy damages.

Mr. J. RANDOLPH.—Where are we? Are we in the Congress of the United States? Is this the House of Representatives of this Union, and are we to hear on this floor the doctrine advocated that a flagrant violation of the constitution is to be remedied by an action of damages as in a common assault and battery? Is it possible that such can be the idea of this House; such our respect for the constitution, for the institutions we are all sworn to support, and which, if we do not support, whether our treason be committed

under the banners of Aaron Burr, or under the cover of law, we are equally traitors? Is this House ready to sanction the doctrine that an open and avowed contempt of the civil by the military authority, shall be considered as nothing more than a common violation of law? A refusal to respect the writ of habeas corpus by a civil officer, is a high misdemeanor. Much more is it a misdemeanor, when committed by a military man, and more especially if committed by the commander-in-chief of an army. With regard to plots and plotters, conspiracies and conspirators, I am not their friend. If they exist, I would deal with them according to law, I would give them sheer law; they should have no more at my hands. Do gentlemen, however, pretend to say that you can proceed against a man otherwise than according to law? I stand here as the advocate of the law. Laying aside the question of guilt, I say proceed according to law. If you do not do this, you may first incarcerate a man, and afterwards summon a *venire* to try whether the act is justifiable. It is said dead men tell no tales. I will put a case. I will suppose Aaron Burr a conspirator against the United States; a traitor. Let him die. If so, I would hear the sentence pronounced with pleasure.

But suppose another thing—suppose a conspiracy has been going on for several years; suppose a person has been for several years concerned in it, and to cover himself from suspicion he outhierods Herod, and because his weak nerves cannot endure the sight of a traitor stabs him. Is this to be justified? It is well known that a conspiracy to separate Kentucky from the Union is no new thing, and no zeal which any man concerned in it may now manifest can throw off suspicion from his shoulders. These are the plain facts.^[49]

I will put another case. If a man charged with a crime committed in a territory can be carried to a territory two thousand miles distant by a military guard and there tried, what is the situation, Mr. Speaker, in which you stand? You yourself may be arrested; for you are in a territory, and the little remnant of the army here may be charged to carry you to New Orleans. Your privilege will not extend to felony or to a breach of the peace.

I will put another case. A member of this House may be carried to the marine barracks. You may issue your writ, and your Sergeant-at-Arms make return that the member is carried to Orleans; and as accidents will happen, he may be knocked over by the boom, and there is an end of him. Will you sit down contented with such a doctrine, that the civil authority shall be put

at defiance by the military, and the citizen shipped off to New Orleans, there to be tried by a dependent tribunal?

I avoid saying any thing as to plots. I have no doubt, however, of this plot, and I have no doubt of the existence of a plot also in 1788, and down to the year 1795. But in what way has every free people become slaves? The common recipe is—take a *quantum sufficit* of plots and of military force, always kept ready for the purpose, and the end is accomplished; and I say this must, if you give sanction to such acts, be the death of your Government. Has any revolution taken place in the affairs of France, which was not preceded by a plot? Are we sure that time and chance, which happen to all men and all nations, may not happen to us?

One word on the subject of the quarter from which this motion comes.

An attempt is made to sound the tocsin, and to discipline the House under the banners of party, on a constitutional question. Where the violation of the constitution is not pretended to be denied, it is expected that the House is to be rallied under the banners of party. The gentleman who brings forward this proposition is charged with the sentiments he entertained some years since; but it is the misfortune of this argument that it cuts two ways; if you resort to the sedition law, the alien law, and other acts of those days, you have no right to refuse gentlemen now the benefit of their principles. The people of this country, after two or three juggles of this kind, will be apt to conclude that federalism or republicanism depends on being in or out of the Government; that those who are in are good federalists, and those out republicans; they will find this out, if they do not suspect it already. A few such instances, and the scales will fall from their eyes. You quote the most detestable instances of a violation of a law which have taken place in time past—no, this is the most detestable of all—and yet you gravely tell the people that you will not listen to men who advocate rights thus infringed. The people of the United States will eventually listen to them, if you pursue this course; and it is because I do not wish them to listen to them, that I do not wish to see them foremost in such a cause as this. It is a disgrace to the old republican party, if indeed it is yet in existence, that the writ of habeas corpus should find its first defenders in that quarter. There is on this subject one melancholy fact, and that is—that in 1797 the federalists were in a majority; in 1807 the republicans are in a majority—has the generation of 1798 passed away? No; the same people that were in 1798 federalists are in

1807 republicans, and that is the clue to the thing; all those who swim with the tide come over to the stronger side.

In my mind it is high time to make a provision for a complete *casus omissus* of power delegated by the constitution. You have found members this session voting to make a violation of a provision of the slave bill death, on the broad principle of natural right; and yet would you do less for a violation of the liberty of your citizens, when you are bound to protect them, not only by natural right but by conventional institutions and your oath? If a military man should take, I will not say a member of this House—but any one of the miserable citizens who inhabit this place—and escort him under military guard to New Orleans—I say the military man who would do such a thing ought to be precipitated from the top of the Capitol. I would teach the military that they are to be subordinate to the civil power, and that if they undertake to violate the civil institutions of their country, they should pay the penalty of their lives. If you do not guard the people from such an excess of military power, the time will come when you will be kicked out of doors at the point of the bayonet. We have seen the Legislature of a nation as enlightened as ours, treated in this way. There is one institution on which I fear we have placed too great a reliance. I have been always attached to the press, and desired to see it free and unfettered; and I have gone uniformly with those who supported this opinion, even in the time of alien and sedition bills, and not merely in a period of sunshine. Experience has proved to us that the press in the hands of a tyrant may become one of the firmest supports of his authority; and if there shall be a collision between the press and the bayonet, it needs no prophetic spirit to say which will kick the beam.

Mr. M. WILLIAMS said he would state one or two reasons why he should vote for committing the resolution. As he understood the subject, the only consideration at present was, whether it was necessary to make an inquiry into the expediency of amending the laws on this subject. It had been endeavored to make this a party question; he considered it of no importance from what quarter a proposition came. If he thought it right, he should vote for it. The gentleman from Tennessee has observed that the constitution has made an ample provision on this subject. It appeared to him that the constitution had only secured the writ of habeas corpus; no penalty had been attached to its violation, and hence the necessity of some legislative

provision to answer this purpose. The same gentleman has observed, that there is no necessity for legislative provision, as the statute book is already crowded with cases; but, Mr. W. said, he believed there was no legislative provision for the violation of the writ under the authority of the United States. It had been also said, that a provision under the Government of the United States would abridge the rights of the States; but, Mr. W. said, he could not see how this remark applied. He did not wish for any abridgment of those rights. The States undoubtedly had a right to pass laws relative to the execution of the writ within their jurisdiction, and Congress had a concurrent power to regulate it under the jurisdiction of the United States. Mr. W. said, in his mind many arguments had been urged which were irrelevant; such as the conduct of the commandant at New Orleans, and of the persons brought before the court. It had been said that this was an improper time to bring the case before the Legislature; but, gentlemen would find that new cases had very frequently given rise to new laws; and the present case clearly showed the necessity of some new provisions. Whether the persons implicated in this conspiracy had committed treason or not, was not the inquiry; the only question was, whether any further legislative provision was necessary to secure the writ of habeas corpus. He would ask, whether in this instance the constitution had not been violated by the interposition of the military authority? Whether the persons arrested were guilty or not, was not for the House to say. Mr. W. said he did not think that the reference of this resolution would have any influence on the court; as an injury by the House would impose censure neither one way nor the other.

TUESDAY, February 19.

Writ of Habeas Corpus.

Mr. BIDWELL.—The motion, as now amended, embraces two objects: to provide additional penalties for the security of the privilege of habeas corpus, and to define the powers of the Supreme Court as to issuing writs of habeas corpus. It is proposed to appoint a select committee to inquire into the expediency of making these provisions. Each member of this proposition is expressly predicated, by its mover, upon particular recent occurrences; the one, upon the conduct of General Wilkinson, in seizing

certain persons at New Orleans, and sending them to the seat of Government, under military arrest; the other, upon the late determination of a majority of the Supreme Court to exercise jurisdiction in a case of habeas corpus, for the discharge of some of those persons. With respect to both of these objects, and also as it respects the propriety of referring the question to a select committee, I am opposed to the motion, and hope it will not be adopted.

But, sir, is it necessary or proper, if we had leisure, to pass a law on the subject, at the present time? The principal argument in favor of it has been drawn from the recent transactions at New Orleans. We have been told that the constitution has been violated, and that Congress ought to act on the occasion; otherwise, we may become familiarized to encroachments on the constitution, until all respect for that sacred instrument may be lost. Sir, this argument is a two-edged sword. It cuts both ways. If, for a temporary purpose, the trumpet of alarm is sounded, when there is no real danger; if, by way of appeal to the public, we are urged to legislate upon a suggestion that the constitution has been violated when there has been no such violation, or none but what the ordinary course of law is competent to correct and redress; we may be familiarized to charges of that nature, until we become insensible, indifferent, and disinclined to interpose, when legislative interposition may be really necessary.

For the sake of argument, let it be admitted that a constitutional right has been infringed. Does it follow that Congress ought to legislate on the occasion? Take the instance which, in order to bring the subject home to ourselves, has been put. Suppose a member of this House, in contempt of his constitutional exemption from arrest, except for treason, felony, or breach of the peace, is arrested on civil process, and imprisoned in this territory, or carried out of it, if you please, under arrest; would Congress feel themselves called upon to pass a law, in consequence of such infringement of a constitutional privilege? No, sir. The legal remedies already provided would be sufficient. The party injured might sue out a habeas corpus for his discharge, in the first place, and afterwards commence his action for damages, to be assessed by a jury, upon a full consideration of all the circumstances of aggravation or alleviation; and the officer or person who did the injury would be still further liable to be indicted by a grand jury and tried and punished by the proper tribunal. These, sir, are the existing

provisions of law. And I am not willing to disparage the right of jury trial, so solemnly recognized in the constitution, by treating it as inadequate to give relief. It is a privilege by no means inferior to the habeas corpus. It is one, indeed, without which that cannot be enforced. It is a legal and constitutional remedy; and no friend to our laws and constitution will attempt to degrade it. I am not pretending that it is perfect. Imperfection is stamped upon every thing that is human. Courts and juries are not infallible; they are not inaccessible to those passions and prejudices which are common to men in all situations. But they are not more liable to the influence of erroneous or improper considerations than legislatures are. No safer institution than that of trial by court and jury, has been devised to redress infractions of personal rights. It is open to all persons who think they have sustained an injury, and is as free from objection as the lot of humanity will admit.

Has any officer refused to serve a writ of habeas corpus? No such refusal is pretended. Has any person, on whom a writ of habeas corpus, from a court or judge of the United States, has been served, refused to obey it? No instance of such disobedience has been officially communicated to us, according to my understanding and recollection of the official communications. It has, I am sensible, been charged upon General Wilkinson, and, in proof of the charge, a gentleman from Vermont has read, from a newspaper, that officer's return to a writ granted by the Territorial court of Orleans. For it is to be observed, that the application was not made to the court of the United States there, but to that of the Territory. The General's return was expressed in the language of a soldier, and not of a lawyer. It did not state, with technical precision, whether Dr. Bollman was within his control at the service of the writ. I may be incorrect, for I have not particularly investigated the subject, and it may not be very material, but I understand the fact to have been, that Dr. Bollman had been sent from New Orleans, on his way to this city, when the writ was served on General Wilkinson. This appears from the further proceedings of the court, as published in the same paper, from which the first return has been read.

[Here a message from the President was received and read, after which Mr. B. proceeded.]

When the message was announced, I was noticing an extract from the proceedings of the Territorial court at New Orleans, which I now beg leave

to read.

“In the Superior Court of Orleans, December 26th. In the matter of the *Habeas Corpus ad subjiciendum*, directed to General Wilkinson, to produce the body of Dr. Erick Bollman; on motion of Mr. Livingston (in behalf of Mr. Alexander, the attorney upon record) that General Wilkinson be required to make a further and more explicit return to the said habeas corpus, or show cause to-morrow morning, at the opening of the court, why an attachment should not issue against him: *It was ordered*, that the rule be granted, and that a copy thereof be immediately delivered by the sheriff to General Wilkinson. On the next day, on motion of Mr. Duncan, in behalf of General Wilkinson, and on reading the following, as an amended return to the above-mentioned habeas corpus:

“The undersigned, commanding the Army of the United States, takes on himself the responsibility for the arrest of Dr. Erick Bollman, on a charge of misprision of treason against the United States, and has adopted measures for his safe delivery to the Executive of the United States. The body of the said Erick Bollman is now, and was at the time of the writ of habeas corpus, to which this return relates, out of the possession, power, or custody of the undersigned.

‘JAS. WILKINSON.’

“*Ordered*, That the same be received and filed, and the rule *nisi* of attachment be discharged.”

The fact is here stated as I have understood it. Dr. Bollman was on his passage to this place, before the writ of habeas corpus, sued out by his friends, was served on General Wilkinson; whose transaction, therefore, in whatever light it is to be viewed, in relation to the laws and authorities of that Territory, was not a disobedience to this writ of habeas corpus, but a military seizure and transmission of a person from New Orleans to Washington, under an avowed responsibility, and upon the principle that it was necessary for the public safety. At any rate it does not appear to have resulted from a want of penalty, or any defect whatever in the habeas corpus laws of that Territory, whose courts and laws, and not those of the United States, were resorted to for relief.

One case has been mentioned in the newspapers, in which a writ of habeas corpus, issued under the authority of the United States, was not obeyed. An officer at Charleston, South Carolina, it is said, instead of producing Dr. Bollman, in obedience to a writ from the district judge, transmitted him to Washington, because the orders of General Wilkinson, in general terms, directed his transmission, without any particular instructions respecting a habeas corpus. The officer seems to have considered it his duty to obey the orders of his commander, without regard to any interfering lawyer or civil process. I am of opinion that he erred, and has exposed himself to punishment, as well as to damages. But his error does not appear to have been wilful, nor to have resulted from any defect in the law, but from an erroneous military principle. The same principle, however, has, at the present session, found very respectable advocates on the floor of this House. Yes, sir, in the case of Captain George Little, gentlemen held that a military or naval officer is not bound to take notice of any law in opposition to, or even in explanation of, the orders of his superior. It will be recollected that I opposed that doctrine, although I admitted that an officer, civil or military, acting contrary to law, through misapprehension of its meaning in a doubtful case, or in some great emergency not provided for by law, might be equitably entitled to indemnification. Damages had been recovered against Captain Little, for doing an illegal act, in pursuance of orders from the late President of the United States, and Congress have passed a law to indemnify for those damages. The Executive orders, under which he claimed, taken in connection with the law, which was referred to in the orders, did not appear to me to warrant the transaction, which has been adjudged to be illegal, and for which the damages were recovered. I did not, therefore, vote with the majority in favor of his claim. But gentlemen who supported it on the ground I have mentioned, will, if they are consistent, be so far from inferring a necessity for further penalties, from the case of Captain Kaltiesas at Charleston, that they will be ready to grant him an indemnification, if he shall be found to have acted honestly, according to his understanding of his orders. By indemnification, I do not mean an act of indemnity, in the British sense of the term, pleadable in bar both to an action for damages and to a prosecution for an offence. Such an act might here be considered unconstitutional and void. A remuneration for damages incurred has been the mode of indemnification adopted by our Government.

On this subject an example has been quoted for our instruction, from English history. It was a proclamation, issued in derogation of law, by the King, with the advice of the celebrated Lords Chatham and Camden, on a great national exigency. The measure was generally approved and applauded throughout the nation. The Parliament were ready to sanction it. But, instead of accepting an act of indemnity, those Ministers undertook to justify it, as legal, upon the principle of necessity. In that they erred. When the question came before the court for judicial consideration, Lord Mansfield decided against the doctrine of his great political rivals, and I think his decision was correct. As a judge or a juror I should have condemned them. But, sir, if instead of justifying the proclamation, as legalized by State necessity, the Ministers had acknowledged their responsibility for it, and thrown themselves upon the justice of their Government, had I been a member of the British Parliament I would have voted them an indemnity. Their error consisted, not in doing an illegal act for the public good, but in doing it under color of legal authority, when the law did not authorize it. Whether General Wilkinson's conduct has been correct or erroneous in other respects, he has not fallen into this error of those celebrated English statesmen. He has not pretended that, in seizing the persons alluded to and transmitting them to the seat of Government, he was justified by orders or by law. He has not cast the responsibility upon any other officer or department of Government. He has explicitly assumed it all to himself, and put himself on the candor of his country for indemnification. If it shall appear that he has acted honestly, for the safety of the Army and the preservation of the Union, under the pressure of such urgent necessity as he professes, I trust he will be indemnified. On the contrary, if it shall turn out, upon future investigation, that he has acted unnecessarily and wantonly, from motives of malice or resentment, he will undoubtedly be left to suffer the consequences. I give no opinion of the merits of his conduct. I hope the House will not, at present, give an opinion, or adopt any measure calculated to have a bearing on the question. It is premature. We have not sufficient information. We have not a statement of all the facts, nor the evidence in support of the facts, which are stated. In due time an inquiry will be proper, and doubtless will be instituted. General Wilkinson will probably demand it himself. But it would be unfair and unjust, as well as impolitic, to anticipate it.

Mr. QUINCY.—So long as an intention appeared to make this a party question, I had no inclination to intermeddle with it. The subject seems to me to be of too high a nature, and too deeply to be connected with the rights and liberties of us all, to be examined under those narrow and temporary views which party spirit necessarily introduces. Since the discussion has assumed a milder aspect, I shall offer a few considerations; limiting myself to a very simple and brief elucidation of the subject, in a point of view which no other gentleman has taken of it, as yet, on this floor.

I cannot agree with those gentlemen who maintain that in the arrest and transportation of Bollman and Swartwout, they can see no violation of the rights of individuals. The privileges of the constitution are as much the inheritance of the humblest and the most depraved, as of the most elevated or virtuous citizen. To be seized by a military force, to be concealed and hurried beyond the protection of the civil power, and to be sent a thousand miles for trial, in a place where the crime charged was not committed, I humbly conceive are violations of individual rights, and of the constitution. I am not, however, prepared to say, that in no possible case they can be pardoned; nor, with the gentleman from Virginia, (Mr. RANDOLPH,) that in no case, I would consent to indemnify a military commander for making such an arrest. A case might exist when it might be the duty of a legislature thus to indemnify. I agree, however, that it must be an extreme case, and that the party to be indemnified must evince that he had himself no voluntary agency in producing the state of things which made such an unconstitutional exercise of power necessary to the safety of the State. I give no opinion concerning the conduct of General Wilkinson. The events which happened at New Orleans have no other relation to the subject before the House than this: they have turned the attention of reflecting men in this nation to the nature of the security they possess against similar violence; and, in common with other reflecting men, it has become our duty not only to understand the nature of that security, but also to supply, as soon as possible, any deficiencies we may discover in it.

The only question is, Have this people the privilege of the writ of habeas corpus secured to them as fully and effectually as the constitution intended, and as wise and prudent men ought to desire? I answer, unequivocally, they have not. So far as relates to cases under the exclusive jurisdiction of the United States, we have virtually no writ of habeas corpus. And for this plain

reason, that we have none of the sanctions of the writ; we have none of those penalties, without which the writ of habeas corpus is a dead letter: particularly in all cases in which the state of party passions, or of any predominant power, leads to the oppression of an individual.

The writ of habeas corpus and the penalties by which it is enforced, and in which the great benefit of the privilege consists, are distinct things in their nature. The former was known to the English common law, and although, at all periods of English history, it was held a very precious right, yet were its provisions found wholly inefficacious against arbitrary power, until after the statute of Charles II. called by Englishmen their second Magna Charta. This statute gave penalties unknown to the common law. If a judge refuses to grant, or an officer refuses to execute the writ, he is liable to a penalty of five hundred pounds sterling, and similar sanctions annexed to other neglects of the precept. The House will observe, that all these penalties are securities given to personal liberty, additional to those which exist at common law, and are not substituted for them. These penalties are annexed for disobedience to the writ, not as indemnification for the injury. All the other remedies against the judge, or the party imprisoning, remain unimpaired.

The question recurs, does the Federal Constitution, by securing to us “the privilege of the writ of habeas corpus,” secure to us those sanctions of the writ which constitute in England its characteristic security? If the constitution had re-enacted the statute of Charles, there could be no doubt. But will gentlemen seriously assert, that a penal statute of another country can, by construction, be declared the law of this, so as to make our citizens obnoxious to its penalties? If that statute be our national law, how was it obtained? Re-enacting statute we have none. And “the United States, as a Federal Government, have no common law,” if we give credit to declarations daily made upon this floor, or respect the opinions of one of the highest law authorities in this nation. I refer to the opinion of Judge Chase, in the case of the United States against Worrall. 2 Dallas, 394.

This view of the subject is certainly sufficient to satisfy this House, that their security for this great privilege is, at least, uncertain; and is not this reason enough, for this Legislature to commence an inquiry into the nature of that security, and the additional provisions it requires? This at present is the only question.

But the gentlemen ask “What need of further penalties? If the judge refuses the writ, is there not impeachment? Against the person illegally imprisoning another, is not an action for damages?” I answer: Both these securities for the personal liberty of the citizen existed, and do still exist in England, as fully as they do here, yet was it ever before heard that these were reasons against enacting that celebrated statute of Charles, or were ever urged as evidence that its provisions were needless, or useless? The penalties of that statute are guarantees of the liberties of the citizen, additional to those which result from the law and the constitution. The principle of that statute is, to rest satisfied with nothing short of the actual liberation of the person from illegal imprisonment, in the shortest time possible. To this end all its provisions tend. It will not leave a citizen to languish in prison, in expectation of the result of the slow progress of legislative inquisition, or for the purpose of ultimately qualifying him to receive a heavy compensation in damages. Impeachment is always a dubious, and an action for false imprisonment often an inadequate security for the observance of the writ of habeas corpus. Great violations of the privilege of this writ can never happen, unless in times of great violence. In such times, what hope of an impeachment against a judge who abuses his authority in coincidence with the views of a prevailing party? And as to damages, is personal liberty to be estimated by money? And if it were, what certainty that the person guilty of the illegal arrest will be competent to pay the damages recovered? In the case of seizure by a military power, can it ever be expected, from the universal pecuniary deficiencies of the soldiers, that damages will be realized, even should the civil arm be competent to enforce an execution?

The penalties affixed by the statute of Charles, on the contrary, assure the obedience of the courts and officers of justice, independent of all party influences which may happen to prevail in the nation, and secure personal liberty by pecuniary perils, suspended over the heads of men, whose situation in society is such as, in general, makes the attainment of the penalty certain, should it be incurred. Upon the whole, those who oppose the present motion seem to me to be reduced to this dilemma; either they must acknowledge that they are content that the citizens of these United States should possess less security for their liberties than the subjects of the law of England enjoy for theirs, or they are reduced to the necessity of adopting the doctrine that the statute penalties of another country may by

construction become the laws of this nation; than which, I can conceive nothing more monstrous or absurd.

In this discussion it has been my wish to avoid all notice of the party and personal invectives which have been uttered. The question is too important to be mingled with feelings and passions of these descriptions. And the circumstances of the times and of the nation, seem to me to claim from us a contempt for these local and ephemeral distinctions.

Mr. NEWTON.—I presume I may be permitted, notwithstanding the motion has been tried, to go fully into the subject before the House. I hope this House will not indefinitely postpone it. If ever there was a subject within the attention of an enlightened Legislature, it is the subject before us. Every subject that regards the liberty of the citizen should be received with reverence and respect by the votaries of liberty. If we can better the situation of the people of the United States, and keep from them, under all circumstances, the hand of oppression, it is our duty to do it, and to pay attention to whatever is likely to eventuate in such an issue. I shall not consider this case as the basis of an impeachment. The only true inquiry at present is, whether the writ of habeas corpus is sufficiently fortified by legislative provisions? I will not commit my understanding so far as to decide on the conduct of the Commander-in-chief. If he has done wrong, let him be answerable to the laws of his country; much less will I talk of indemnifying him. For this reason, because the jury before which the case may come, may, under such circumstances, have regard, not to his circumstances, but to the Treasury of the United States.

My friend and colleague, from Virginia, has offered a most important amendment to this resolution. The Supreme Court of the United States, after having this all-important case for a long time under advisement, and after an argument from the bar, are again afloat on the ocean of uncertainty, have started some new doubts, and have asked the gentlemen of the bar to come forward with a new argument. If this is the fact, does it not show the necessity of our attending to the subject; and of some new legislative provisions upon it? I am for defining the power of our courts. I wish to understand the extent of their prerogatives; and particularly whether they have appellate jurisdiction in criminal cases; before whom criminals are to be brought; who are to grant writs of habeas corpus, and admit to bail?

These are all considerations of importance, and constitute the reasons which induce me to vote for referring this resolution to a select committee. But, say gentlemen, we cannot mature this subject this session. Perhaps so; but is this a sufficient reason for not commencing the investigation, for comparing our ideas on the subject, and going forward as far as we can in our progress towards a decision? I, for one, shall always be in favor of an inquiry into subjects that have a reference to personal liberty.

This subject has been spread over an immense extent of ground. The single point, however, at issue, is, whether we will commit this resolution, in order merely to obtain correct facts and information, which shall present the subject in such a form as shall enable us to act understandingly upon it. I am not at present in favor of acting definitively upon it; but merely for inquiry. So circumstanced, I presume our proceedings cannot injure any individuals implicated in this business, as nothing we can do can have a retrospective effect. These are my reasons for voting in favor of the present motion.

Mr. J. RANDOLPH.—There has been a dispute in the world from time immemorial between wit and dullness—between imagination and judgment. So we have been told, though some who cultivate the sceptical philosophy dispute it. But this impression has been so long attempted to be made, that there is not a precise or formal coxcomb that does not on the score of dullness arrogate to himself judgment and profound wisdom. While I am willing to allow that declamation, or the powers of an effervescent imagination, are no evidences of wisdom, the House must admit that the mere dullness of a special pleader without his accuracy does not imply any pretensions to knowledge. The truth is, that on this as on other subjects, it has been my misfortune to come to the House too unprepared. I knew nothing of the subject until it was brought under discussion. I got up yesterday, as I have to-day, to say what first came into my head, and in this way I hope I shall be permitted to go on.

I consider the whole of this business as one of the most unfortunate kind that could have happened to the United States. If we had acquired Louisiana by force of arms or conquest, we could scarcely have inspired the people of that country with greater indignation than by these events—in which it is yet to be seen whether these people are at all concerned; or whether they are not standing like sheep, suffering the wolves to pass without disturbance—

events which must sow the seeds of lasting misfortune, unless healed by a timely interposition of the Government. And nothing can have a more fatal effect than any thing done by this House, or the other part of the Government, to sanction the conduct of the Commander-in-chief, taking it to be such as is ascribed to him. As a member of this House I am free to give my opinion of what would restore peace to that country—though out of doors I might not do it. The first step ought to be the immediate recall of every man directly or indirectly concerned in this business. You can hardly suppose, sir, that I look forward to be made their Governor, or desire on my recommendation to introduce a friend to that place. But I have no hesitation in saying that unless some such step be taken, the attachment of that country to the United States is lost for ever. I would take such a step boldly—I would know nothing of their little disputes; I would act with the authority of a venerable parent, who, on returning home, found his children by the ears. I would correct them all, I would discountenance at once all such intrigues—I would recall every man who has directly or indirectly participated, or is suspected of having participated in them—I would, in short, rub out and begin again. It is an extremely unfortunate thing that the people of New Orleans, for the most part speaking the French language, a great part of them attached to the Crown of Spain—transferred to the United States by an honorable purchase—told they were about to taste the sweets of a Government of laws—told that arbitrary notions and *lettres de cachet* were to be proscribed—that the constitution was not to be departed from, but that they were to enjoy all the blessings of citizens of the United States—it is extremely unfortunate that New Orleans should be the first place in which a lesson of military despotism should be taught. I deem it extremely unfortunate—it cannot tend to attach those people to the United States; it will, however, have another tendency—it will prevent every man of character from emigrating to that country, and instead of mixing the Americans with the French, the latter will be kept as a distinct class. For will any man, having the least regard to his rights, go to a place where he will be seized by a military commandant? Suppose, Mr. Speaker, such a thing had taken place in your country or mine. The military would not at this period be before the court—the spirit of the country would have long since settled the question. I recollect in 1798 or 1799, when the officers of the army were following their legal avocation of enlisting recruits, such was the spirit of detestation in which a standing army was held in my district,

that these men were obliged to break up and move off. That spirit would scarcely endure the legal act of a man acting under legal authority, and yet we have now an apology for men acting in direct contravention of legal authority. Will any man point out a good cause for this change?

The writ of habeas corpus is the only writ sanctioned by the constitution. It is guarded from every approach except by the two Houses of Congress; and yet this writ, thus acknowledged, thus specially designated, this second Magna Charta, as it has been called, is to be put on the footing of a common trespass. Really, when a man tells me that if imprisoned I may get damages, it requires no ghost to come and tell us that this may be done even without the writ of habeas corpus. But will gentlemen point to any legislative sanction by which the execution of this writ is guarded? Perhaps action on the case might be sustained for disobeying it; but suppose a judge should deny it. Impeach him, say gentlemen. But will gentlemen rely on that? That affords no certain punishment, and an uncertain punishment is inadequate. We want a certain and adequate remedy.

I stated that I would make a military officer, acting under his own responsibility, acting as commander-in-chief, punishable with death for such an infraction. Did I, in saying so, also say that I would punish an inferior officer with death? Will any man deny that a military character arraying himself against the constitution of his country is worthy of death? I say he is a traitor. A commander-in-chief of an army, who, on his own responsibility, puts the constitution and laws of his country at defiance, is a traitor; and, supposing the case stated at New Orleans to be correctly stated, the Commander-in-chief is as much a traitor as any other man concerned in the conspiracy. Who are these traitors? Burr & Co. What are they about to do? To put down the civil authority by military force; and is there any substantial difference whether the civil authority is trampled under foot by Burr and his banditti, or by a commander-in-chief and his regular army? I will go farther. Suppose these measures for putting down Burr shall eventually prove to have been measures for putting up somebody else, in what will these men differ? In nothing. If the commander of an army, to give himself a false eclat, shall trample the constitution under foot, shall go a certain length with conspirators, and finding his ground no longer tenable, shall determine to make up in zeal what he wanted in fidelity, he is guilty of treachery to the constitution and laws—he is guilty of more—he is guilty of

violating the principle respected by knaves—the principle of fidelity to each other.

The gentleman from Massachusetts (Mr. QUINCY) has stated the difference that exists between the right of the writ of habeas corpus and the remedy. He has correctly stated that it is not intended as a remedy—not to allow an action for false imprisonment—but to prevent false imprisonment, and therefore that it ought to be guarded by sanctions. But the gentleman has omitted to mention one circumstance, which is, that in England the writ of habeas corpus is secured by the sanction of death. And is our attachment to liberty less than that of England? I say that a Chief Justice of England for refusing to issue a writ of habeas corpus, may be impeached, taken to Tower Hill and decollated. If there had existed the privilege of the writ of habeas corpus in England at the time of the impeachment of Strafford, could there have been a charge more strong than a settled design to do away that privilege? In England also it is guarded by the power of attainder. Thank God! we have not that feature in our constitution. But if the same spirit pervades that country now which once did, nothing would sooner pass a bill of attainder, through the two Houses of Parliament, than a known and wanton invasion of this privilege. But fortunately our constitution has denied to us this power; and it is because we cannot pass bills of attainder, and because judgments on impeachments do not affect the life, that it behooves us to guard this important principle with some more solemn sanctions than it now possesses.

Mr. J. CLAY said, before the question was taken, he would mention one or two points that went to show the necessity of a reference. He understood that one of the persons arrested by General Wilkinson had been landed on an island near Charleston, and, on the issuing a writ, the officer had refused to obey it. He would ask whether this was not a violation of the writ of habeas corpus that required a remedy by law? Mr. C. said he always viewed it as a matter of regret, that questions of this kind should be taken up on party ground. He considered such a suggestion, on the present occasion, as a mere trap to get a few votes. They were told of the dark times when alien and sedition laws were passed. If, however, under the alien law, men might be deported, gentlemen should recollect that it was according to law—that there was an express statute that justified the measure. Mr. C. said he considered the kidnapping alluded to by gentlemen as a gross violation of

the habeas corpus, and would be glad to know whether sending a man to Baltimore from Orleans, was not as gross a violation of principle as sending him from this place to Orleans? Mr. C. concluded by observing that he considered it a very unfortunate thing for any gentleman of talents to be educated at the bar. So many distinctions were there taken, that a man of his plain mind could scarcely see any thing. He should, however, adhere to the constitution, and would ask whether a military arrest was not a gross violation of it; and whether there ought not to be some exemplary punishment to guard against it?

Mr. ELMER said he should vote for the postponement of the resolution. It had been under discussion for three days, and he did not perceive they were nearer a result than on the first day. Was it discreet to refer this resolution to a select committee, when it was manifest they could not go through the business without neglecting important business already before them? He should also vote for the postponement, as, although three days had been taken up in the discussion, he had not heard any one gentleman urge a single reason to show the necessity of any additional provisions. This very transaction, he believed, would ultimately turn out beneficial to the United States, notwithstanding the arts of ambitious men. It would display such a striking regard of the people to the government of their choice, as to prevent any like attempts in future. Mr. E. said he did not know whether General Wilkinson was a conspirator, but in this case he did not see that the constitution had been so flagrantly violated. Take the case of a conspiracy against the constitution, to level and destroy the constitution altogether, and directed towards the garrison which General Wilkinson commanded, in a remote part of the United States, and distant from any strength to support him. If we consider the question in this view, that the lives and property of the citizens were at stake, and even the judges engaged with the conspirators, was it improper to take up these men and send them to a place where they could be impartially tried? Let gentlemen, said Mr. E., pass as sanguinary laws as they please, if I considered the judges concerned, and were satisfied there were conspirators within, I would arrest them, though death were the consequence, and I am persuaded every officer faithful to his trust, would do the same thing. I admit that in all cases, except of the greatest emergency, the military ought to give way to the civil power. With regard, however, to what gentlemen call the audacity of sending these people here, in the face of the legislative body, I confess I entertain a

different opinion. In cases of military arrest, I am most afraid of secrecy. Does not publicity, as far as it goes, show a good conscience? Does it not show the wish of the Commander-in-chief that his conduct should be examined in the face of the nation, conscious that, on a full examination, he will appear to have acted as a good officer and an honest man? As I have said before, I do not know that he is honest. I know that he has been charged with being a conspirator, but on this point we have no proof before us.

Mr. KELLY said, in order to obtain a right understanding of the subject, it is necessary to inquire how this inestimable privilege was secured to the subjects of Great Britain by Magna Charta, the great charter of their privileges, which was extorted sword in hand by the Lords and Barons, from King John at Runnymede, and how far the privilege thus secured, was made more effectual by the statute of Charles II., which was called the second great charter of their liberties. This writ of *habeas corpus ad subjiciendum*, which was secured by this charter, became a writ of right, not less secured to the subjects of that kingdom than the same is secured to our citizens by our constitution.

We are informed by Sir William Blackstone, in his famous commentaries on the English law, that the inestimable privilege of the writ of habeas corpus was of early date in Great Britain, almost coëval with the first rudiments of their constitution. The liberty of the subject could not be abridged in any case without special permission of law, although sometimes impaired by the usurpation of princes and the ferocity of particular times. It was, however, established on the firmest basis by the provisions of Magna Charta, and a long succession of statutes under Edward III., and was recognized by the Crown in several after reigns. And it will hardly be contended that this privilege is better secured to the citizens of the United States by our constitution, than the same was secured to the subjects of the British Crown by the provisions of Magna Charta. Yet abuses had crept into daily practice in England, which had in a great measure defeated this great constitutional remedy. The flagrant abuse of power by the Crown, generally, produced a struggle which discovered the exercise of that power to be contrary to law, or restrained it for the future. An obscure individual gave birth to the famous habeas corpus act in the reign of Charles II., which was justly called another Magna Charta of the kingdom. Francis Jenkes was

committed by the Council Board for a turbulent speech made at a common hall assembled at Guildhall, for the purpose of choosing officers. He applied to the then Lord Chief Justice Kaimsford for a habeas corpus, who alleged that he could not grant the writ in vacation. The friends of the prisoner afterwards applied to the Lord Chancellor, who said the king would not grant it without a petition; application was afterwards made to the court of quarter sessions to have him bailed; the court said, there was no such name in the calendar; upon application to the jailer, he said he never returned any man committed by the Council Board. When a copy of the commitment was obtained, the jailer evaded making proof of it by going away, as was believed with the privity of the court; at length, the commitment being established, the court doubted their power to act, when the Lord Chief Justice and Lord Chancellor had refused, the court took time to consider of the application until next term. A petition was afterwards presented to the Lord Chancellor, who also took further time to consider; at length the Lord Chief Justice, upon the matter being suggested to the King, issued a habeas corpus, and the prisoner was discharged. To prevent similar abuses in future was the famous habeas corpus act passed, which regulated the mode of proceeding upon writs of habeas corpus, and fully ensured its benefits and provisions to the subject.

The question on indefinite postponement was then taken by yeas and nays, and carried—yeas 60, nays 58.

FRIDAY, February 20.

Lewis and Clarke.

The House resumed the consideration of the unfinished business of Monday last, on the bill making compensation to Messrs. Lewis, Clarke, and their companions.

The bill grants land warrants, which may be either located or received at the land offices in payment of debts due there, at the rate of two dollars per acre. The bill grants these persons 24,960 acres.

A motion was made by Mr. LYON to strike out so much as permits the receipt of these warrants at the land offices in payment of debts. This was

opposed by Mr. ALSTON and supported by Messrs. TALLMADGE, J. CLAY, QUINCY, COOK, LYON, ELY, and D. R. WILLIAMS. It was contended that double pay was a liberal compensation, and that this grant was extravagant and beyond all former precedent. It was equivalent to taking more than \$60,000 out of the Treasury, and might be perhaps three or four times that sum, as the grantees might go over all the Western country and locate their warrants on the best land, in 160 acre lots.

A motion to recommit the bill was made, and after considerable debate, was carried—ayes 66.

WEDNESDAY, February 25.

Post Roads.

On motion of Mr. THOMAS, the House proceeded to consider the Post Office bill.

Mr. J. RANDOLPH observed that this was an extraordinary bill, and was passing in an extraordinary manner. It gave New Hampshire, Massachusetts, New York, and some other Northern States, a large number of post roads, and not one to Virginia. It was not wonderful that this subject was pressed on by certain gentlemen. If it would not be considered as too alarming a proof of Virginia influence on this floor, he would propose a new road from Prince Edward County, in the district which he represented, to Petersburg. Mr. R. spoke at considerable length.

Mr. BLOUNT observed that many large counties in the Southern States had no post roads, while scarcely a town in the Northern States was without one.

Mr. QUINCY repelled the suggestion of partiality by recurring to former laws and showing that the Southern States had been previously accommodated better than the Northern States.

Mr. J. RANDOLPH said this was a new sort of political arithmetic. The gentleman from Vermont (Mr. FISK) had said that three roads were discontinued in that State, and four only established, so that the gain was only one. In Virginia you discontinue four established roads, and give us no

new one, though we have claimed several. We must work negative quantities; we are *minus* four. He wished to know how the equation was to be adjusted and managed. Mr. R. concluded a long speech by proposing a new section which went to forbid the carriers of the mail deviating from the old established routes, under penalty of twenty dollars for each offence.

This motion was intended to coerce the mail carriers to go through Colchester, and not through Occoquan, Virginia.

THURSDAY, February 26.

Claim of M. Beaumarchais.

Mr. HOLMES, from the Committee of Claims, to whom was referred the Message of the President of the United States, transmitting a memorial of the French Minister, on the subject of the claim of Amelie Eugenie de Beaumarchais, heir and representative of the late Caron de Beaumarchais, made the following report:

This claim was presented to Congress at their last session by the agent of the representative of the late Caron de Beaumarchais, and a report was made thereon by the Committee of Claims, which was not finally acted upon by the House. The documents presented with that report, and the memorial of the French Minister, transmitted with the President's Message, contain a full statement of all the material facts and principles involved in the consideration of the case. As the papers accompany the present report, your committee do not deem it necessary to detail particularly the circumstances attending the charge of one million of livres, made of the United States, in their account with Caron de Beaumarchais, (which is the foundation of the present application.) The claimants have uniformly contested the correctness of this charge, declaring that Mr. Beaumarchais has settled with the French Government for the same, conformably to the tenor of his receipt. The substance of this declaration is now confirmed by the French Government, through their Minister, in the following words:

“That the million given on the 10th of June, 1776, to M. de Beaumarchais, was employed in a secret service; that an account of it has been rendered to the King, and approved by him; and that it was not given on account of supplies furnished by the said Beaumarchais to the United States.”

The source whence this declaration proceeds renders it unnecessary to allude to any corroborative circumstances in support of the fact; but, as questions of law may arise in investigating the case, your committee think the course most consistent with the principles of justice, to which the United States have always adhered, would be to submit the claim generally to the consideration of the Secretary of State, with instructions to report to Congress at their next session; that he might consult the Attorney-General upon any questions of law arising in the course of the investigation, and furnish Congress with any other information that would tend to elucidate the subject. They therefore submit the following resolution:

Resolved, That the Message of the President of the United States, transmitting a memorial of the French Minister on the subject of the claim of Amelie Eugenie de Beaumarchais, legal representative of the late Caron

de Beaumarchais, be referred to the Secretary of State, and that he be directed to report thereon to Congress at their next session.

The report was agreed to.

FRIDAY, February 27.

Lewis and Clarke.

An engrossed bill making compensation to Messrs. LEWIS and CLARKE and their companions, was read the third time, and on the question that the said bill do pass, it was resolved in the affirmative—yeas 62, nays 23.

MONDAY, March 2.

Public Lands.

The House proceeded to consider the bill sent from the Senate, entitled “An act to prevent settlement being made on lands ceded to the United States, until authorized by law,” together with a report of the Committee on the Public Lands thereon.

Mr. QUINCY moved its indefinite postponement. He observed that the provisions of the bill were highly important, and affected great constitutional questions, which it was not possible for the House to do justice to at so late a period of the session. The principle contained in the first section was, that the rights of all persons shall be forfeited, who shall undertake to settle on the public lands. This provision was not against trespassers, but was obviously intended to destroy the constitutional rights of those who had existing rights. The object of the bill was to defeat these constitutional rights. He had another objection to the bill. It went to forfeit the whole right to the land, in violation of the constitution, which expressly declares that “no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted,”—and yet, under this law, it is undertaken, without any crime, to forfeit the rights of the individual, not only during his life, but likewise during that of his heirs. He

had another constitutional objection. The constitution says, “nothing in this constitution shall be so construed as to prejudice the claims of the United States, or of any particular State.” Among the rights derived from the States, if the property has passed, is the right of possession. This bill is therefore an invasion of the rights of the States. There is another constitutional objection. The ninth article of the amendment to the constitution provides that “in suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” Here the right is taken away in a question of the highest magnitude to the individual. The object of this law is nothing more or less than to build up the legislative power on the destruction of that of the Judiciary. There was another objection. The constitution says, “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Here is an extensive fine imposed. Mr. Q. said it was impossible, in the time that remained, to do justice to this subject—he therefore hoped it would be indefinitely postponed.

Mr. GREGG said he had no intention, on a proposition to postpone, to go into a discussion of the merits of the bill; but he believed an attention to its provisions would obviate many of the objections raised against it. He would not attempt to justify the bill in all its minutiae. He hoped, however, the gentleman would withdraw his motion; he would then have an opportunity, when the bill was taken up, to offer such amendments as might remove his objections. Mr. G. said he thought the propriety of such a bill was justified by the necessity of the case. The simple question was, whether the United States should derive any benefit from the public lands, or whether they should be given up to intruders. It must be known to every one that almost innumerable persons had settled down on the public lands without meaning to pay for them. Their object was to settle down on them for a while, to sell their improvements, and then make other settlements. Hence the absolute necessity of making some provision on the subject. Mr. G. said he had no particular part of the lands of the United States in view—he took the subject upon general grounds. He believed the intrusions were most numerous in the Indiana Territory; but there was no district in which they had not been made to a considerable extent. He did not pretend to say that this law was the best that could be passed on the subject—they might not however be able to get one much better. When taken up it would be in the power of gentlemen to offer such amendments as they pleased.

Mr. OLIN said he hoped the gentleman from Massachusetts would not withdraw his motion. He believed no man would charge him with a design to cover certain fraudulent claims; but he trusted the principle contained in this bill would not be sanctioned. They were not a judicial body; and had not a right to take the ground assumed in the bill. They had formerly had an attempt made upon them to sanction claims founded in fraud, and he had voted against it. He should also vote against this bill; he would never agree that men should be dispossessed of their property in such a way.

Mr. HASTINGS spoke against the bill, and in favor of the indefinite postponement.

Mr. N. WILLIAMS considered the bill so objectionable that he could not vote for it; and as, from the short period of the session that remained, it was impossible to give it a proper attention, he would vote for the postponement. The first objection he should make to the bill was this—that it destroyed that right hitherto considered sacred, the right of asserting a claim to property—a right that was established and coëval with the laws of the country. Nothing was better settled than that an individual who claimed a right to a piece of property had a right to take possession of it, and hold it till deprived by process of law. Here that right is denied, and in the most exceptionable manner, by giving the President the power of judging when the rights of the United States are violated, and the power to dispossess by military force, before trial of the case. Mr. W. said this appeared to him a principle too tyrannical for them to adopt at the present day—to authorize the President to send a military force to deprive a man of his property, without leaving him any mode of trying his right. This was the very last act, which ought in no case to be resorted to, till the civil laws had been found insufficient. Mr. W. said he did not know that any such power had been ever exercised in Great Britain, or in any other country where less freedom was enjoyed. The military force ought only to be called out when the civil force was insufficient. This was not the only objection he had to the bill. The citizens were rendered liable by it to imprisonment and punishment, without due course of law, notwithstanding all they had lately heard of trial by jury, and the zeal manifested for it. More might be said, but as the time of the House was precious, he would forbear adding any thing further.

Mr. D. R. WILLIAMS hoped the motion would not prevail; and for the very reasons urged by gentlemen. If the details are defective, let us get at the bill

—if the principle is defective, that indeed may be a reason for postponement; but any defect in the detail may be corrected. Mr. W. said he could not but congratulate gentlemen on their returning sensibility for the constitution. When their feelings had been harrowed up on a recent occasion, gentlemen had felt no sensibility for the constitution; but when they come to the adoption of a bill, which went to affect Yazooism, all their sensibility was roused. Against this different course he protested. The gentleman from Massachusetts had observed there were not many intruders on the public lands, but surely he could not have read the papers even of his capital, or he must have recollected a proposition made in them to raise and march ten thousand men to take possession of the public lands. Would he in the face of such a fact say there was no danger? But, say gentlemen, will you deprive individuals of their rights? And what are they aiming at? Are they not endeavoring to deprive you of your rights? The fact, however, is, if these people do not trespass on the public lands they will not be affected by this law; and if they do, they ought to be affected by it. As to the application of military force, that is not a new principle; as, under the Administration of General Washington, it was found necessary to vest the power.

Mr. QUINCY.—I did not mean to argue the details of the bill on this question—I merely stated certain considerations to show that it was not proper at this time to discuss the principles contained in the bill. And I ask gentlemen, whether, from the temper which has been manifested, and the importance of the subject, it is possible to get through the bill during the present session? If gentlemen will sit still, and be as callous as they were lately, it may perhaps be carried through this session; but if it be properly discussed, it cannot. Gentlemen say we have no sensibility to constitutional questions, except on this occasion. On the subject, however, of Yazooism, I have not said a word. My remarks were general. I placed that and all other claims on the footing of the law. This bill applies to the whole of them.

The question was then taken by yeas and nays on the indefinite postponement of the bill—yeas 43, nays 68.

Mr. QUINCY moved to strike out the following part of the first section of the bill:

“Such offender or offenders shall forfeit all of his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, which he or they shall have taken possession of, or settled, or caused to be occupied, taken possession of, or settled, or which he or they shall have surveyed, or attempted to survey, or caused to be surveyed, or the boundaries thereof, he or they shall have designated, by marking trees or otherwise.”

He said so far as this section went to provide against trespasses, it was unnecessary; and so far as it went to operate against persons having rights to land, it was unconstitutional. So far as respected the former, the arm of the law was sufficiently strong, and they might be removed by its ordinary process. It was not contended that this law was meant to apply against them—it would be absurd to say so, when they alleged no rights. The truth was, this was a general law, made to suit a particular case. This had been acknowledged by the gentleman from Virginia. Mr. Q. said he believed no man would contend, that were it not for that case, such a law would pass. He believed making a general law for particular cases, unusual and unconstitutional.

Mr. Q. here recapitulated the constitutional objections which he before urged.

He observed that the gentleman from South Carolina had referred to a law passed in the year 1799, which prevented any settlement within the Indian boundaries. Could any gentleman compare the case with this? In that case a treaty had been made between the United States and the Indians, one of the provisions of which prevented any citizen from going within the Indian boundary. Mr. Q. said he would use but one other argument, which was, that this law would be a mere nullity. If individuals wished to try their title, as soon as the military attempted to remove them, the courts of justice would interfere; and this would decide the question of title which gentlemen seem afraid to meet.

Mr. LYON supported the motion to strike out.

On which the question was taken by yeas and nays—yeas 35, nays 54.

Mr. QUINCY offered the following proviso to the first section:

“Provided, also, That nothing in this act shall prevent any person claiming title to any such lands, under or by virtue of an act or grant of any State, from peaceably entering thereon, for the purpose of being enabled thereby to bring to a judicial decision at law or in equity the validity of the title so claimed.”

Mr. QUINCY said he made this motion, because he considered this section no more nor less than levelled at the Judiciary of the United States; and that his vote might be recorded, he would ask for the yeas and nays.

The question was then taken by yeas and nays on the proviso, and decided in the negative—yeas 30, nays 64.

Mr. FISK said, that rather than have such a principle introduced into the laws of the United States, as was contained in this bill, he would prefer seeing all the Yazoo land sunk in the sea. He had no idea of seeing the rights to property tried at the point of the bayonet. He had often heard the Yazoo represented as a wicked business. He believed it was such; but he had ever hoped that the Judiciary would not be affected by it. This was nothing more nor less than providing by an armed force to turn men off from the land they occupy, and to deprive them of their rights, if they had any. If they had no rights, it was unnecessary to introduce such a principle into the bill; and if they had, they were to be divested of them by an armed force, without a trial by jury. He would ask if this were constitutional? He would ask gentlemen where were the feelings which they had recently displayed for the rights of the people who had sent them here? He wished gentlemen to recollect the maxim they laid down, that it was immaterial who were the persons affected, the rights were the same, and their invasion as dangerous in the person of the lowest wretch as in that of the most exalted character. Mr. F. said he was decidedly against the bill, and should vote for its rejection.

The bill was immediately read the third time.

Mr. LYON spoke against its passage.

When the question was taken on its passage by yeas and nays, and decided in the affirmative—yeas 57, nays 44.

TUESDAY, March 3.

The bill sent from the Senate, entitled “An act confirming claims to land in the district of Vincennes,” together with the amendments agreed to yesterday, were read the third time, and passed.

Mr. SAMUEL SMITH presented to the House a petition of sundry inhabitants of the State of Pennsylvania, praying an amendment to the second section of the third article of the Constitution of the United States, which extends the judicial power of the United States “to controversies between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens, or subjects.”—Laid on the table.

The further consideration of the bill sent from the Senate, entitled “An act to explain the act, entitled ‘An act supplementary to an act, entitled “An act to divide the territory of the United States north-west of the river Ohio into two separate Governments,”’” was postponed indefinitely.

The House resolved itself into a Committee of the Whole on the bill in addition to an act, entitled “An act in addition to an act, entitled ‘An act supplementary to the act providing for a Naval Peace Establishment, and for other purposes.’” The bill was reported with an amendment thereto; which was read, and agreed to by the House.

Eodem Die, half past 6 o'clock.

A message from the Senate informed the House that the Senate have passed a bill, entitled “An act repealing the acts laying duties on salt, and continuing in force, for a further time, the first section of the act, entitled ‘An act further to protect the commerce and seamen of the United States against the Barbary Powers,’” with an amendment; to which they desire the concurrence of this House.

Ordered, That the farther consideration of the bill for the relief of Edward Weld and Samuel Bebee be postponed indefinitely.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled “An act repealing the acts laying duties on salt, and continuing in force, for a further time, the first section of the act, entitled ‘An act further to protect the commerce and seamen of the United States against the Barbary Powers;’” and the same being again twice read, was, on the question put thereupon, agreed to by the House.

An engrossed bill making compensation for extra services to the Governor, Judges, and Secretary of the Indiana Territory, was read the third time, and passed.

Resolved, That the Clerk of the House of Representatives be directed, within one month after the close of the present session of Congress, to advertise three weeks successively, in two newspapers, printed in the District of Columbia, that he is ready to receive separate proposals for supplying the House of Representatives, for the next Congress, with the necessary stationery, printing, and wood for fuel, in manner prescribed by two resolutions, passed by the House of Representatives, the first on the twenty-eighth of February, one thousand eight hundred and five, and the other on the twenty-first of April, one thousand eight hundred and six.

Thanks to the Speaker, and Adjournment.

On motion of Mr. GREGG, it was resolved unanimously, that the thanks of this House be presented to NATHANIEL MACON, in testimony of their approbation of his conduct in the discharge of the arduous and important duties assigned to him whilst in the Chair: Whereupon,

Mr. SPEAKER made his acknowledgments to the House, in manner following:

“*Gentlemen*: It has been my constant endeavor to perform faithfully the promise made to you two years ago, to discharge the trust reposed in me with industry and fidelity. For the resolution which you have this minute passed, I earnestly beg of you to accept my sincere thanks; permit me also to assure you, that it will be always remembered with gratitude. I wish you safe home, and a happy meeting with your friends.”

Mr. VARNUM, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service, and that the President signified to them he had no farther communication to make during the present session.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn without day; and that the Clerk of this House do go with the said message. The Clerk accordingly went with the said message; and, being returned, Mr. SPEAKER adjourned the House *sine die*.

TENTH CONGRESS.—FIRST SESSION.

BEGUN AT THE CITY OF WASHINGTON, OCTOBER 26, 1807
PROCEEDINGS IN THE SENATE.

LIST OF MEMBERS OF THE SENATE.

New Hampshire.—Nicholas Gilman, Nahum Parker.

Massachusetts.—John Quincy Adams, Timothy Pickering.

Vermont.—Stephen R. Bradley, Jonathan Robinson.

Rhode Island.—Benjamin Howland, Elisha Mathewson

Connecticut.—James Hillhouse, Chauncey Goodrich.

New York.—Samuel L. Mitchill.

New Jersey.—John Condit, Aaron Kitchel.

Pennsylvania.—Samuel Maclay, Andrew Gregg.

Maryland.—Samuel Smith, Philip Reed.

Delaware.—Samuel White, James A. Bayard.

Virginia.—Andrew Moore, William B. Giles.

North Carolina.—James Turner, Jesse Franklin.

South Carolina.—Thomas Sumter, John Gaillard.

Georgia.—John Milledge, (Geo. Jones,) Wm. H. Crawford.

Ohio.—Edward Tiffin, John Smith.

Kentucky.—Buckner Thruston, John Pope.

Tennessee.—Joseph Anderson, Daniel Smith.

A PROCLAMATION

By the President of the United States of America.

Whereas great and weighty matters claiming the consideration of the Congress of the United States form an extraordinary occasion for convening them, I do by these presents appoint Monday the twenty-sixth day of October next for their meeting at the City of Washington; hereby requiring the respective Senators and Representatives then and there to assemble in Congress, in order to receive such communications as may then be made to them, and to consult and determine on such measures as in their wisdom may be deemed meet for the welfare of the United States.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

Done at the city of Washington, the thirtieth day of July, in the year of our Lord one thousand eight hundred and seven, and in the thirty-second year of the Independence of the United States.

[L.S.]

TH. JEFFERSON.

By the President:

JAMES MADISON, *Secretary of State.*

MONDAY, October 26, 1807.

Conformably to the above Proclamation of the President of the United States, of the 30th July last, the First Session of the Tenth Congress commenced this day, at the city of Washington, and the Senate assembled, in their Chamber, in the Capitol.

PRESENT:

GEORGE CLINTON, Vice President of the United States, and President of the Senate.

NICHOLAS GILMAN, from New Hampshire.

JOHN QUINCY ADAMS and TIMOTHY PICKERING, from Massachusetts.

BENJAMIN HOWLAND, from Rhode Island.

STEPHEN R. BRADLEY, from Vermont.

SAMUEL L. MITCHILL, from New York.

JOHN CONDIT and AARON KITCHEL, from New Jersey.

SAMUEL MACLAY and ANDREW GREGG, from Pennsylvania.

SAMUEL WHITE, from Delaware.

SAMUEL SMITH and PHILIP REED, from Maryland.

JAMES TURNER, from North Carolina.

THOMAS SUMTER, from South Carolina.

JOHN MILLEDGE, from Georgia.

BUCKNER THRUSTON, from Kentucky.

JOSEPH ANDERSON and DANIEL SMITH, from Tennessee.

JESSE FRANKLIN, appointed a Senator by the Legislature of the State of North Carolina, for the term of six years, commencing on the fourth day of March last; GEORGE JONES, appointed a Senator by the Executive of the State of Georgia, to fill the vacancy occasioned by the death of Abraham Baldwin; NAHUM PARKER, appointed a Senator by the Legislature of the State of New Hampshire, for the term of six years, commencing on the fourth day of March last; JONATHAN ROBINSON, appointed a Senator by the Legislature of the State of Vermont, to supply the place of Israel Smith, whose seat has become vacant; and EDWARD TIFFIN, appointed a Senator by the Legislature of the State of Ohio, for the term of six years, commencing on the fourth day of March last, respectively took their seats, and produced their credentials, which were read; and the oath prescribed by law was administered to them.

JOHN POPE, appointed a Senator by the State of Kentucky, for the term of six years, commencing on the fourth of March last, stated that the Governor and Secretary being absent when he left home, he came to the seat of Government without his credentials; but that he expected they would be speedily forwarded to him: whereupon, he took his seat in the Senate, and the oath was administered to him as the law prescribes. The oath was also

administered to Messrs. BRADLEY, GREGG, MILLEDGE, and REED, their credentials having been read and filed during the last session.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled, and ready to proceed to business.

Ordered, That Messrs. ANDERSON and BRADLEY be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

On motion, it was

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose; provided that the same be furnished at the usual rate for the annual charge of such papers; and provided, also, that if any Senator shall choose to take any newspapers, other than daily papers, he shall be supplied with as many such papers as shall not exceed the price of three daily papers.

On motion, it was

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one Assistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him, weekly, for that purpose, to commence with and remain during the session, and for twenty days after.

On motion, it was

Resolved, That two Chaplains, of different denominations, be appointed to Congress during the present session, one by each house, who shall interchange weekly.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled, and have elected JOSEPH B. VARNUM, one of the Representatives for Massachusetts, their

Speaker, and are ready to proceed to business. They have appointed a committee on their part, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

The Senate adjourned to 11 o'clock to-morrow morning.

TUESDAY, October 27.

Mr. ANDERSON reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of yesterday, and that the President informed the committee that he would make a communication to the two Houses this day, at 12 o'clock.

President's Annual Message.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Circumstances, fellow-citizens, which seriously threatened the peace of our country, have made it a duty to convene you at an earlier period than usual. The love of peace, so much cherished in the bosoms of our citizens, which has so long guided the proceedings of their public councils, and induced forbearance under so many wrongs, may not ensure our continuance in the quiet pursuits of industry. The many injuries and depredations committed on our commerce and navigation upon the high seas for years past, the successive innovations on those principles of public law which have been established by the reason and usage of nations as the rule of their intercourse, and the umpire and security of their rights and peace, and all the circumstances which induced the extraordinary mission to London, are already known to you. The instructions given to our Ministers were framed in the sincerest spirit of amity and moderation. They accordingly proceeded, in conformity therewith, to propose arrangements which might embrace and settle all the points in difference between us,

which might bring us to a mutual understanding on our neutral and national rights, and provide for a commercial intercourse on conditions of some equality. After long and fruitless endeavors to effect the purposes of their mission, and to obtain arrangements within the limits of their instructions, they concluded to sign such as could be obtained, and to send them for consideration, candidly declaring to their other negotiators at the same time that they were acting against their instructions, and that their Government therefore could not be pledged for ratification. Some of the articles proposed might have been admitted on a principle of compromise, but others were too highly disadvantageous; and no sufficient provision was made against the principal source of the irritations and collisions which were constantly endangering the peace of the two nations. The question, therefore, whether a treaty should be accepted in that form, could have admitted but of one decision, even had no declarations of the other party impaired our confidence in it. Still anxious not to close the door against friendly adjustment, new modifications were framed, and further concessions authorized than could before have been supposed necessary; and our Ministers were instructed to resume their negotiations on these grounds. On this new reference to amicable discussion we were reposing in confidence, when, on the 22d day of June last, by a formal order from a British Admiral, the frigate Chesapeake, leaving her port for a distant service, was attacked by one of those vessels which had been lying in our harbors under the indulgences of hospitality, was disabled from proceeding, had several of her crew killed, and four taken away. On this outrage no commentaries are necessary. Its character has been pronounced by the indignant voice of our citizens with an emphasis and unanimity never exceeded. I immediately, by proclamation, interdicted our harbors and waters to all British armed vessels, forbade intercourse with them; and, uncertain how far hostilities were intended, and the town of Norfolk, indeed, being threatened with immediate attack, a sufficient force was ordered for the protection of that place, and such other preparations commenced and pursued as the prospect rendered proper. An armed vessel of the United States was despatched with instructions to our Ministers at London to call on that Government for the satisfaction and security required by the outrage. A very short interval ought now to bring the answer, which shall be communicated to you as soon as received; then, also, or as soon

after as the public interests shall be found to admit, the unratified treaty and proceedings relative to it, shall be made known to you.

The aggression thus begun has been continued on the part of the British commanders, by remaining within our waters in defiance of the authority of the country, by habitual violations of its jurisdiction, and, at length, by putting to death one of the persons whom they had forcibly taken from on board the Chesapeake. These aggravations necessarily lead to the policy either of never admitting an armed vessel into our harbors, or of maintaining in every harbor such an armed force as may constrain obedience to the laws, and protect the lives and property of our citizens against their armed guests. But the expense of such a standing force, and its inconsistency with our principles, dispense with those courtesies which would necessarily call for it, and leave us equally free to exclude the navy as we are the army of a foreign power from entering our limits.

To former violations of maritime rights another is now added of very extensive effect. The Government of that nation has issued an order interdicting all trade by neutrals between ports not in amity with them. And being now at war with nearly every nation on the Atlantic and Mediterranean seas, our vessels are required to sacrifice their cargoes at the first port they touch, or to return home without the benefit of going to any other market. Under this new law of the ocean, our trade on the Mediterranean has been swept away by seizures and condemnations, and that in other seas is threatened with the same fate.

Among our Indian neighbors in the North-western quarter, some fermentation was observed soon after the late occurrences, threatening the continuance of our peace. Messages were said to be interchanged, and tokens to be passing, which usually denote a state of restlessness among them, and the character of the agitators pointed to the sources of excitement. Measures were immediately taken for providing against that danger; instructions were given to require explanations, and, with assurances of our continued friendship, to admonish the tribes to remain quiet at home, taking no part in quarrels not belonging to them. As far as we are yet informed, the tribes in our vicinity, who are most advanced in the pursuits of industry, are sincerely disposed to adhere to their friendship with us, and to their peace with all others. While those more remote do not

present appearances sufficiently quiet to justify the intermission of military precaution on our part.

The great tribes on our South-western quarter, much advanced beyond the others in agriculture and household arts, appear tranquil, and identifying their views with ours, in proportion to their advancement. With the whole of these people, in every quarter, I shall continue to inculcate peace and friendship with all their neighbors, and perseverance in those occupations and pursuits which will best promote their own well-being.

The appropriations of the last session for the defence of our seaport towns and harbors, were made under expectation that a continuance of our peace would permit us to proceed in that work according to our convenience. It has been thought better to apply the sums then given toward the defence of New York, Charleston, and New Orleans, chiefly, as most open and most likely first to need protection, and to leave places less immediately in danger to the provisions of the present session.

The gunboats, too, already provided, have, on a like principle, been chiefly assigned to New York, New Orleans, and the Chesapeake. Whether our movable force on the water, so material in aid of the defensive works on the land, should be augmented in this or any other form, is left to the wisdom of the Legislature. For the purpose of manning these vessels, in sudden attacks on our harbors, it is a matter of consideration whether the seamen of the United States may not justly be formed into a special militia, to be called on for tours of duty in defence of the harbors where they shall happen to be; the ordinary militia of the place furnishing that portion which may consist of landsmen.

I informed Congress at their last session of the enterprises against the public peace, which were believed to be in preparation by Aaron Burr and his associates, of the measures taken to defeat them, and to bring the offenders to justice. Their enterprises were happily defeated by the patriotic exertions of the militia whenever called into action, by the fidelity of the Army and energy of the Commander-in-chief, in promptly arranging the difficulties presenting themselves on the Sabine, repairing to meet those arising on the Mississippi, and dissipating, before their explosion, plots engendering there. I shall think it my duty to lay before you the proceedings, and the evidence publicly exhibited on the arraignment of the

principal offenders before the circuit court of Virginia. You will be enabled to judge whether the defect was in the testimony, in the law, or in the administration of the law, and wherever it shall be found, the Legislature alone can apply or originate the remedy.^[50] The framers of our constitution certainly supposed they had guarded, as well their Government against destruction by treason, as their citizens against oppression, under pretence of it; and if these ends are not attained, it is of importance to inquire by what means more effectual they may be secured.

The accounts of the receipts of revenue during the year ending on the thirtieth day of September last, being not yet made up, a correct statement will be hereafter transmitted from the Treasury. In the mean time, it is ascertained that the receipts have amounted to near sixteen millions of dollars, which, with the five millions and a half in the Treasury at the beginning of the year, have enabled us, after meeting the current demands and interest incurred, to pay more than four millions of the principal of our funded debt. These payments, with those of the preceding five and a half years, have extinguished of the funded debt twenty-five millions and a half of dollars, being the whole which could be paid or purchased within the limits of the law and of our contracts, and have left us in the Treasury eight millions and a half of dollars.

Matters of minor importance will be the subjects of future communications, and nothing shall be wanting on my part which may give information or despatch to the proceedings of the Legislature in the exercise of their high duties, and at a moment so interesting to the public welfare.

TH. JEFFERSON.

OCTOBER 27, 1807.

The Message was read, and three hundred copies thereof, together with the documents therein referred to, ordered to be printed for the use of the Senate.

THURSDAY, October 29.

JAMES HILLHOUSE, from the State of Connecticut, attended.

MONDAY, November 2.

JOHN GAILLARD, appointed a Senator by the Legislature of the State of South Carolina, for the term of six years, commencing on the fourth day of March last, and JOHN SMITH, appointed a Senator by the Legislature of the State of New York, for the term of six years, commencing on the fourth day of March last, respectively took their seats, and the oath prescribed by law was administered to them: their credentials having been read and filed during the last session.

On motion, by Mr. MILLEDGE, it was

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the Honorable ABRAHAM BALDWIN, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.

On motion, by Mr. HILLHOUSE, it was

Resolved, That the members of the Senate from a sincere desire of showing every mark of respect due to the memory of the Honorable URIAH TRACY, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape round the left arm.

TUESDAY, November 3.

ANDREW MOORE, from the State of Virginia, attended.

The PRESIDENT communicated a letter, signed William Eaton, enclosing the translation of a petition of Hamet Bashaw Caramalli, stating his services and sufferings in behalf of the United States, in which, relying on promises of remuneration, he hath exposed his life, and sacrificed all his means, and praying relief; and the petition was read, and ordered to lie for consideration.

THURSDAY, November 5.

Removal of Federal Judges on Address from Congress.

Mr. TIFFIN submitted the following motion for consideration:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following section be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding, as a part of the Constitution of the United States, in lieu of the first section of third article thereof:

“The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices for —— years, shall be removed by the President on the address of two-thirds of both Houses of Congress requesting the same, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.”

MONDAY, November 9.

Mr. POPE, appointed a Senator by the State of Kentucky, produced his credentials, which were read and ordered to lie on file.

FRIDAY, November 13.

Slavery in Indiana Territory.

Mr. FRANKLIN, from the committee to whom were referred, on the 7th instant, the resolutions of the Legislative Council and House of Representatives of the Indiana Territory, on the propriety of suspending the sixth article of compact contained in the Ordinance for the government of the North-western Territory, passed the 13th day of July, 1787, together with a remonstrance of certain citizens of Clark County against the said resolutions, made report; which was read, and ordered to lie for consideration.

The report is as follows:

The Legislative Council and House of Representatives, in their resolutions, express their sense of the propriety of introducing slavery into their Territory, and solicit the Congress of the United States to suspend, for a given number of years, the sixth article of compact, in the Ordinance for the government of the Territory north-west of the river Ohio, passed the 13th day of July, 1787. That article declares: "there shall be neither slavery nor involuntary servitude in the said Territory."

The citizens of Clark County, in their remonstrance, express their sense of the impropriety of the measure, and solicit the Congress of the United States not to act on the subject, so as to permit the introduction of slaves into the Territory; at least until their population shall entitle them to form a constitution and State government.

Your committee, after duly considering the matter, respectfully submit the following resolution:

Resolved, That it is not expedient at this time to suspend the sixth article of compact for the government of the Territory of the United States north-west of the river Ohio.

TUESDAY, November 17.

The PRESIDENT communicated a letter from JAMES FENNER, stating the resignation of his seat in the Senate.

Slavery in Indiana.

The Senate took into consideration the report of the committee to whom was referred, on the 7th instant, the resolutions of the Legislative Council and House of Representatives of the Indiana Territory, on the propriety of suspending the 6th article of compact contained in the ordinance for the government of the North-western Territory, and agreed thereto; and,

Resolved, That it is not expedient, at this time, to suspend the 6th article of compact for the government of the Territory of the United States north-west of the river Ohio.

THURSDAY, November 19.

The credentials of ELISHA MATHEWSON, appointed a Senator by the Legislature of the State of Rhode Island, in the place of JAMES FENNER, elected Governor, were read.

FRIDAY, November 20.

Mr. MATHEWSON, from the State of Rhode Island, took his seat in the Senate, and the oath prescribed by law was administered to him.

FRIDAY, November 27.

CHAUNCEY GOODRICH, appointed a Senator by the Legislature of the State of Connecticut, to fill the vacancy occasioned by the death of the late Hon. Uriah Tracy, attended, and his credentials were read; and the oath prescribed by law was administered to him.

Case of John Smith.

Mr. MACLAY offered the following resolution:

Resolved, That a committee be appointed to inquire and report to the Senate their opinion whether John Smith, a Senator from the State of Ohio, ought not to be expelled from the Senate, in consequence of the part which he took in the conspiracy of Aaron Burr, against the peace and prosperity of the United States, or what other steps, in their opinion, it may be necessary and proper, under the present circumstances, for the Senate to adopt.

Mr. HOPE moved to amend this resolution; to make way for which amendment, Mr. MACLAY withdrew his resolution.

Mr. THRUSTON offered the following resolution as an amendment, omitting that part in italics, which Mr. JONES moved as an amendment to the amendment:

Resolved, That a committee be appointed to inquire whether it be compatible with the honor and privileges of this House, that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the Circuit Court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to hold a seat therein; and that the committee do inquire into *all the facts regarding the conduct of Mr. Smith, as an alleged associate of Aaron Burr*, and report the same to the Senate.

Mr. HILLHOUSE objected to the resolution on the ground of allowing the committee too wide a latitude.

Mr. ADAMS vindicated the resolution from this objection.

The question was then taken on the resolution offered by Mr. THRUSTON, and amended by Mr. JONES, and carried without a division; and Messrs. ADAMS, MACLAY, FRANKLIN, S. SMITH, POPE, THRUSTON, and ANDERSON, were appointed the committee.

WEDNESDAY, December 9.

WILLIAM H. CRAWFORD, appointed a Senator by the Legislature of the State of Georgia, to fill the vacancy occasioned by the death of Abraham Baldwin, attended and produced his credentials, which were read, and the oath prescribed by law was administered to him.

FRIDAY, December 18.

Embargo.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The communications now made, showing the great and increasing dangers with which our vessels, our seamen, and merchandise, are threatened on the high seas and elsewhere, from the belligerent powers of

Europe, and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States.

Their wisdom will also see the necessity of making every preparation for whatever events may grow out of the present crisis.

TH. JEFFERSON.

DECEMBER 18, 1807.

Ordered, That the Message, together with the papers therein referred to, be committed to Messrs. SMITH of Maryland, ADAMS, ANDERSON, BRADLEY, and GREGG, to consider and report thereon; and that the same be considered as confidential.

MONDAY, December 21.

Mr. REED, from the State of Maryland, attended.

THURSDAY, December 31.

Case of John Smith.

Mr. ADAMS stated that the committee appointed on the 27th of November last, "to inquire whether it be compatible with the honor and privileges of this House that JOHN SMITH, a Senator from the State of Ohio, against whom bills of indictment were found at the Circuit Court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein," were ready to report: and he made the following motion, which was read and agreed to:

Ordered, That John Smith, a Senator from the State of Ohio, be notified by the Vice President to attend in his place.

The VICE PRESIDENT accordingly notified Mr. SMITH in the words following:

SIR: You are hereby required to attend the Senate in your place without delay.

By order of the Senate:

GEO. CLINTON,
President of the Senate.

JOHN SMITH, Esq., *Senator from the State of Ohio.*

And Mr. SMITH attended.

Whereupon, Mr. ADAMS made a report from the committee last mentioned; and the report was read, and three hundred copies thereof were ordered to be printed for the use of the Senate.

The report was read, ending with the following resolution:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the *peace, union, and liberties* of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States. And that he be therefor, and hereby is, expelled from the Senate of the United States.

The documents accompanying the report are very voluminous. Among them is the answer of Mr. JOHN SMITH, covering ninety-six manuscript pages.

MONDAY, January 4, 1808.

JAMES A. BAYARD, from the State of Delaware, attended.

The PRESIDENT communicated a letter from JOHN SMITH, a Senator from the State of Ohio; which was read.

THURSDAY, January 7.

WILLIAM B. GILES, from the State of Virginia, attended.

FRIDAY, January 8.

Executive Contingent Fund.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

To the Senate and House of Representatives of the United States:

I now render to Congress the account of the fund established for defraying the contingent expenses of Government for the year 1807. Of the sum of \$18,012 50, which remained unexpended at the close of the year 1806, \$8,731 11 have been placed in the hands of the Attorney-General of the United States, to enable him to defray sundry expenses incident to the prosecution of Aaron Burr and his accomplices, for treasons and misdemeanors alleged to have been committed by them. And the unexpended balance of \$9,275 39 is now carried, according to law, to the credit of the surplus fund.

TH. JEFFERSON.

JANUARY 8, 1808.

The Message and papers therein referred to were read.

WEDNESDAY, January 13.

Mr. FRANKLIN, from the State of North Carolina, attended.

MONDAY, February 1.

Claim of Thomas Paine.

The PRESIDENT communicated an address, signed Thomas Paine, stating his claim on the United States for services rendered during the Revolutionary war, and his title to remuneration. The address was read, and is as follows:

NEW YORK, *January 21, 1808.*

To the honorable the Senate of the United States:

The purport of this address is to state a claim I feel myself entitled to make on the United States, leaving it to their Representatives in Congress to decide on its worth and its merits. The case is as follows:

Towards the latter end of the year 1780, the continental money had become so depreciated (a paper dollar not being more than a cent) that it seemed next to impossible to continue the war.

As the United States were then in alliance with France, it became necessary to make France acquainted with our real situation. I therefore drew up a letter to Count de Vergennes, stating undisguisedly the true case, and concluding with the request whether France could not, either as a subsidy or a loan, supply the United States with a million sterling, and continue that supply, annually, during the war.

I showed the letter to Mr. Marbois, Secretary to the French Minister. His remark upon it was, that a million sent out of the nation exhausted it more than ten millions spent in it. I then showed it to Mr. Ralph Izard, member of Congress from South Carolina. He borrowed the letter of me, and said, "We will endeavor to do something about it in Congress."

Accordingly, Congress appointed Colonel John Laurens, then aid to General Washington, to go to France and make a representation of our situation, for the purpose of obtaining assistance. Colonel Laurens wished to decline the mission, and that Congress would appoint Colonel Hamilton; which Congress did not choose to do.

Colonel Laurens then came to state the case to me. He said he was enough acquainted with the military difficulties of the Army, but that he was not enough acquainted with political affairs, nor with the resources of the country, to undertake the mission; "but," said he, "if you will go with me, I will accept it;" which I agreed to do, and did do.

We sailed from Boston in the Alliance frigate, Captain Barry, the beginning of February, 1781, and arrived at L'Orient the beginning of March.

The aid obtained from France was six millions of livres as a present, and ten millions as a loan, borrowed in Holland, on the security of France.

We sailed from Brest in the French Resoulue frigate the first of June, and arrived at Boston on the 25th of August, bringing with us two millions and a half of livres, in silver, and convoying a ship and a brig laden with clothing and military stores. The money was transported with sixteen ox teams to the National Bank at Philadelphia, which enabled the army to move to Yorktown to attack, in conjunction with the French army under Rochambeau, the British army under Cornwallis. As I never had a cent for this service, I feel myself entitled, as the country is now in a state of prosperity, to state the case to Congress.

As to my political works, beginning with the pamphlet *Common Sense*, published the beginning of January, 1776, which awakened America to a declaration of independence, as the President and Vice President both know, as they were works done from principle, I cannot dishonor that principle by asking any reward for them. The country has been benefited by them, and I make myself happy in the knowledge of it. It is, however, proper for me to add, that the mere independence of America, were it to have been followed by a system of government modelled after the corrupt system of the English Government, it would not have interested me with the unabated ardor it did. It was to bring forward and establish the representative system of government, as the work itself will show, that was the leading principle with me in writing that work, and all my other works, during the progress of the Revolution. And I followed the same principle in writing the *Rights of Man*, in England.

There is a resolve of the old Congress, while they sat at New York, of a grant of three thousand dollars to me. The resolve is put in handsome language, but it has relation to a matter which it does not express. Elbridge Gerry was chairman of the committee who brought in the resolve. If Congress should think proper to refer this memorial to a committee, I will inform that committee of the particulars of it. I have also to state to Congress, that the authority of the old Congress was become so reduced

towards the latter end of the war as to be unable to hold the States together. Congress could do no more than recommend, of which the States frequently took no notice; and when they did, it was never uniformly.

After the failure of the five-per-cent duty, recommended by Congress, to pay the interest of a loan to be borrowed in Holland, I wrote to Chancellor Livingston, then Minister for Foreign Affairs, and Robert Morris, Minister of Finance, and proposed a method for getting over the whole difficulty at once; which was, by adding a Continental Legislature to Congress, who should be empowered to-make laws for the Union, instead of recommending them; so the method proposed met with their full approbation. I held myself in reserve, to take the subject up whenever a direct occasion occurred.

In a conversation afterwards with Governor Clinton, of New York, now Vice President, it was judged that, for the purpose of my going fully into the subject, and to prevent any misconstruction of my motive or object, it would be best that I received nothing from Congress, but leave it to the States, individually, to make me what acknowledgment they pleased.

The State of New York made me a present of a farm, which, since my return to America, I have found it necessary to sell; and the State of Pennsylvania voted me five hundred pounds, their currency. But none of the States to the east of New York, or the south of Philadelphia, ever made me the least acknowledgment. They had received benefits from me, which they accepted, and there the matter ended. This story will not tell well in history. All the civilized world know I have been of great service to the United States, and have generously given away talent that would have made me a fortune.

I much question if an instance is to be found in ancient or modern times of a man who had no personal interest in the cause he took up—that of independence and the establishment of a representative system of government, and who sought neither place nor office after it was established—that persevered in the same undeviating principles as I have done, for more than thirty years, and that in spite of difficulties, dangers, and inconveniences, of which I have had my share.

THOMAS PAINE.

MONDAY, February 22.

Removal of Federal Judges on Address from Congress.

Mr. MACLAY, agreeably to instructions from the Legislature of the State of Pennsylvania to their Senators in Congress, submitted the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the first section of the third article of the Constitution of the United States be so altered and amended “that the judges of the courts thereof shall hold their offices for a term of years; that they shall be removed by the President of the United States on the address of the majority of the members present, of the Senate and House of Representatives of the United States in Congress assembled; and that on all trials of impeachment for high crimes and misdemeanors, a majority of the Senate shall be competent to conviction.”

And the resolution was read, and referred to Mr. TIFFIN and others, the committee appointed the 25th of January last, on this subject, to consider and report thereon.

Death of Hon. John Dickinson.

Mr. WHITE.—Mr. President: It is with much pain and regret, sir, that I rise to announce to the Senate the irreparable loss our country has sustained in the death of one of her worthiest citizens and most distinguished patriots. Time has measured and told the days of another venerable sage of the Revolution. JOHN DICKINSON, the illustrious cotemporary and friend of Washington and Franklin, is now no more—his head and his heart devoted to the service and love of his country, till his locks were bleached by the frosts of more than seventy winters, have now descended in silence to the grave. No humble eulogy of mine shall attempt to approach his exalted merit. The happiness of his fellow-citizens was his only aim, and upon the grateful hearts of his countrymen is indelibly engraven the dearest memento

of his wisdom and his worth. Those who shared his personal acquaintance will never forget his private virtues—volumes from his pen, that do honor to the age, that will be read and admired as long as the love of science and freedom shall be cherished, record his inflexible patriotism; and the liberties of this country, which he contributed so essentially in establishing, will I hope long, very long indeed, sir, continue to be the proud and unshaken monument of his fame. The feelings of every gentleman of this honorable body will I am sure be in unison on the motion I am about to propose; it is an humble tribute of respect to the memory of the deceased, in the form of the following resolution:

Resolved, unanimously, That the Senate is penetrated with the full sense of the merit and patriotism of the late JOHN DICKINSON, Esq., deceased, and that the members thereof do wear crape on the left arm for one month, in testimony of the national gratitude and reverence towards the memory of that illustrious patriot.

This resolution was immediately adopted.

WEDNESDAY, March 2.

Impressment of American Seamen.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with a resolution of the Senate, of November 30, 1807, I now transmit a report of the Secretary of State on the subject of impressments, as requested in that resolution. The great volume of the documents, and the time necessary for the investigation, will explain to the Senate the causes of the delay which has intervened.

TH. JEFFERSON.

MARCH 2, 1808.

DEPARTMENT OF STATE, *Feb. 29, 1808.*

Agreeably to a resolution of the Senate of the 30th November last, the Secretary of State has the honor to submit to the President, for the information of the Senate, the statements herewith enclosed, from No. 1 to 18, inclusive.

No. 1. A statement of impressments from American vessels into the British service, since the last report made from this department on the 5th March, 1806, founded upon documents transmitted in the first instance to this office.

Those from No. 2 to 13 inclusive, being a series of returns and abstracts received from General Lyman, the agent of the United States at London, giving an account of the applications made by him in relation to seamen, from 1st April, 1806, to 30th June, 1807, and of the result of those applications, and exhibiting other particulars required by the resolution.

Not having received any returns from the West Indies since the date of the last report to the House of Representatives on this subject, nor from General Lyman for the quarter ending on the 1st January last, the Secretary of State has not the means at present of giving, with any degree of precision, the information asked for in the last clause of the resolution. From the returns in the office it would appear that four thousand two hundred and twenty-eight American seamen had been impressed into the British service since the commencement of the war, and that nine hundred and thirty-six of this number had been discharged, leaving in that service three thousand two hundred and ninety-two. General Lyman, in a letter dated on the 21st October, 1807, estimates the American seamen now detained in the British service at a number greatly beyond what is here stated; but he does not give the data on which his estimate is made.

All which is respectfully submitted.

JAMES MADISON.

The PRESIDENT *of the United States.*

The Message and papers were read, and ordered to lie for consideration.

FRIDAY, April 1.

Case of John Smith.

This being the day assigned for hearing counsel, the PRESIDENT said the Senate were ready to hear the counsel of JOHN SMITH, in any thing they had to offer why the resolution (for expelling him) should not be adopted.

Mr. ADAMS submitted it to the Senate, whether it was not most proper that the counsel should be permitted to show cause why the report should not be adopted. He remarked that in like cases the whole report, comprising the grounds on which the final resolution was founded, had been the subject of discussion, and of approbation or rejection. He considered this the correct course, that the world and posterity might know the grounds on which the Senate acted.

A short conversation ensued on this suggestion of Mr. ADAMS, in which the principles of the report were incidentally noticed. In reply to Mr. ADAMS' remarks, it was said that it could not be expected that a deliberative body, however agreed in the guilt or innocence of the accused, would be able to unite in their agreement to a complicated report, embracing a variety of abstract and disputable principles.

Mr. GILES intimated the idea that this discussion was premature; that, as the Senate had by their vote determined to hear counsel on the report, it was proper that this course should, in the present stage of the business, be pursued. After having heard counsel, it would be for the Senate, as they then should see fit, either to decide on the resolution alone, or on the report connected with it.

This suggestion having been acquiesced in, without any vote,

Mr. FRANCIS S. KEY, of counsel for Mr. SMITH, asked for subpœnas for Messrs. DAVENPORT, MORROW, and STURGES, of the House of Representatives, to attest the credibility of witnesses; and likewise for a subpœna for General Wilkinson.

It was intimated that the usual mode of proceeding in such a case was to request the attendance of the members of the other House.

Mr. KEY then opened the defence by a few very concise preliminary remarks. He observed that the counsel of Mr. SMITH felt highly gratified in appearing before the Senate with a body of testimony sufficiently strong to

flatter them with the assurance of a favorable result; that all the apprehensions which had arisen from the distance and the extent of the testimony were almost removed; and that although testimony was still coming in, they were fully satisfied with that they had already received.

He said they would be able to show that the testimony of Elias Glover was not worthy of credit. He admitted that if this testimony were correct, JOHN SMITH was unworthy of his seat; but they would be able entirely to destroy its weight by destroying his credibility. They would, likewise, be able to show that there was nothing else in the other testimony which materially affected the character of the accused. They would also, after this, enter into a consideration of the principles on which a decision in this case ought to be made; and endeavor to show that that decision could only be made according to legal evidence; that the Senate were bound by judicial principles, and that the accused was consequently entitled to the same privileges as he would be in a court of justice.

Mr. KEY said he should first proceed to offer depositions to discredit Elias Glover. He would show that he had not only made charges, which were contradicted by respectable testimony, but likewise by his own declarations at other times. He would commence with the proof of his general character, and show that it had been such, ever since he entered into life, as to destroy the weight of his testimony; he would show that he had in several instances perjured himself. He would then show his inducements to perjure himself in this case, by establishing the existence of a combination, of which he was the head, to ruin Mr. SMITH.

Mr. KEY was about to read sundry depositions taken at Newtown, Connecticut. Previous to this he read the certificates of notice given by Mr. SMITH to Mr. Glover, of his purpose to take depositions relative to his character. From these it appeared that Mr. SMITH had, on the 10th of February, notified him of his intention to take depositions at Delhi, New York, on the 15th February, at Newtown, Connecticut, on the 20th, in the Mississippi Territory on the 25th, at Cincinnati the ——

Mr. CRAWFORD objected to reading these depositions. He observed that they went seriously to affect the character of Mr. Glover; that the Senate had, in such a case, prescribed that the depositions should only be received in case of reasonable notice having been given to the person whose

character it was intended to discredit: that in this case no such reasonable notice had been allowed; that the notice was too short to be of the least use to Mr. Glover.

Mr. HARPER, of counsel for Mr. SMITH, observed that as much time had been given by Mr. SMITH as he could possibly spare. The times fixed for taking depositions at the several places, had been as distant as they could be, consistently with Mr. SMITH's getting the testimony forwarded to the seat of Government by the 1st of March; the period then fixed by the Senate for his hearing.

Mr. S. SMITH stated that, although the resolution fixing the 1st of March for a hearing had passed on the 20th of January, the notices of Mr. SMITH were not dated till the 10th of February, at Berrysville, in Virginia, where he had put them into the post office.

A short debate followed, in which the principal circumstances noticed were, that according to Mr. SMITH's affidavit, on which the first postponement had taken place, it was not expected that depositions to discredit Elias Glover's would be taken at any other place than Cincinnati; that, if these depositions, though informal, were read, they would be taken by the Senate only for what they were worth, and that, if ex parte evidence was received in favor of Mr. SMITH, it could not be rejected when against him.

On reading the depositions, seventeen members being a majority, rose in the affirmative.

The counsel then read the depositions of Calvin Chamberlain, Henry Peck, jun., Ely Perry, William Meeker, Daniel Wheeler, John Norfrop, Luther Bulkley, Zalmon Tousy, jun., Cyrus Sprindle, James Nicholls, Solomon Booth, Oliver Tousy, Gideon Fisher, Stephen Beers, jun., N. Hays, Joseph Michin, Solomon M. Sackriden, James Monger, Homer R. Phelps, Joshua H. Brent, Gabriel North, John T. Moore, Philip Gabehart, Cyrenus Foote, Roswell Hodgkiss, Benijah Beardley, E. K. Granger, Henry Tyler, John B. Judson, Samuel Stephen, George Fost, Asa Tyler, Nathan T. Tyler, John S. Gano, Francis Dunlavy, John Sellman, Stephen Macfarland, George Gordon, Edward H. Stall, Thomas N. Still.

These depositions are made by persons residing in the States of Connecticut, New York, and Ohio.

About four o'clock the Senate adjourned.

TUESDAY, April 5.

Mr. ANDERSON, from the committee to whom was referred the bill making provision for the disposal of the public lands of the United States in the State of Tennessee, reported it with further amendments; which were read for consideration.

Case of John Smith.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of JOHN SMITH, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. SMITH attended, together with Messrs. Harper and Key, counsel on his behalf.

Mr. HARPER read the depositions of Joseph H. Brett, John T. Moore, Gabriel North, Erastus Root, C. Keiser, Isaac G. Burnett, David Zeigler, John Bradford, Jacob Broadwell, Jos. Van Horne, Samuel Hildige, Geo. Williamson, M. Williams, and William Goforth. Messrs. Van. Rensselaer, Jeremiah Morrow, Tallmadge, Bacon, and Davenport, of the House of Representatives, and Mr. Tiffin, of the Senate, were then examined, and attested to the general respectability of character of several of the witnesses from whom depositions had been received on the part of Mr. SMITH.

Mr. KEY then rose to show why the report of the committee should not be adopted, and after taking a legal view of the rules of evidence which should govern the admissibility of evidence in this inquiry, and arguing that the Senate could inquire into nothing which was indictable at common law, he proceeded to the facts of the case, and said:

Having now, sir, stated these objections against the present inquiry, and more particularly and more earnestly against the principles which the honorable committee have recommended to govern it, I gladly proceed to

discharge the remaining part of my duty, by submitting a few remarks upon the testimony exhibited upon this occasion. It will be readily admitted that, excepting Elias Glover, no witness deposes directly and positively to the guilt of the honorable member accused. Their testimony is wholly circumstantial, and I hope to be enabled to show, that from no circumstance they state can guilt be fairly inferred. But the chief question to be ascertained, the point on which this inquiry will be found wholly to turn, is the degree of credit which is to be given to the testimony of Elias Glover. I am much gratified, sir, in recollecting the importance attached to the evidence of this witness in the commencement of this proceeding, and the almost universal acknowledgment that Mr. Smith's fate depended upon the truth or falsehood of his testimony. We are most willing to rest it upon this issue; we could not ask a more favorable one than that which compels every man before he can believe in the guilt of the accused, to the necessity of first believing in the truth of Elias Glover, and this I now proceed to show is impossible.

The first question asked on these occasions, is, "What is the general character of the witness?" We have traced this person, sir, from his first setting out in life, have followed him into every place where he has lived, and put this question to his neighbors. How is it answered? At Newtown, Connecticut, where he first established himself, thirteen deponents declare him unworthy of credit; with some slight difference of expression, this is clearly and positively affirmed by them all. One of them, however, (Mr. Oliver Tousy, I believe,) states that he made particular inquiries of almost all the respectable persons in and about Newtown, and that he inquired of none but respectable persons; that, from the result of these inquiries, he is induced to believe that was a respectable jury taken from Newtown and Elias Glover sworn as a witness before them he would not be believed. It seems, sir, that he soon changed so disagreeable a situation. We next hear of him at Delhi, in Delaware County, New York. From this place, sir, we have produced to you the depositions of twenty-one witnesses, who all concur in a similar opinion of his infamy, using, if possible, still stronger language than the witnesses from Newtown. By what means can a character thus charged be defended? Can it be said that these men are selected, and are his enemies? They swear they are not. That they are not themselves credible? Many of them were, fortunately, known to the honorable members of the other House, who have told you they are respectable. Among them are the

chief judge and the associates, and the sheriff of the county in which he practised, of whom one is now a Senator of New York, and two of the others members of Assembly; nor can such testimony be outweighed by that which his father and his uncle have collected in support of his character. There are few men so infamous but that some persons may be always found to declare a good opinion of them, and what sort of persons these are who have said they never heard any thing against the reputation of Elias Glover, it may not be difficult to ascertain. Upon this subject, it is only necessary to call the attention of the Senate to the manner in which those depositions in New York are proved to have been taken by his uncle, David Beers, who is himself one of the deponents. Ezekiel K. Granger states that this man used every expedient to prevent the attendance of Mr. Smith's attorney; that he refused to examine any witness in his presence, and that nearly half of whom he did procure to depose, are the relations of Glover; a circumstance on which the deponents are entirely silent. In addition to this, he is proved by one of those persons to have altered and misstated his testimony. Surely his character is very far from receiving any support from depositions thus taken. We have also produced a record from Delaware County court, which, though it may not prove him guilty of forgery, yet contains evidence charging him with an act almost equally dishonorable. From this accumulating weight of disgrace, thus increasing with his progress in depravity, he again finds it necessary to escape, and wisely determines to fix upon a still more distant residence. The last two or three years of his life have been spent in the State of Ohio, and, during that period, I shall be able to show that he has reached a height of profligacy even beyond the promise of his former years. The numerous witnesses from Cincinnati, though not particularly questioned as to his general character, (being examined to impeach his credit on other grounds,) yet show the degree of estimation in which he is there held; and thus, sir, we flatter ourselves with having produced the most ample proof that truth is not to be expected from this witness; that he would not shrink from perjury, when prompted to accomplish a favorite object. That such an object was presented to him on this occasion; that the inducements to his crime were considerable, is obvious. We are informed by many of the deponents from Cincinnati, particularly by Mr. Burnett and Mr. St. Clair, that he had long felt and evinced the most malignant animosity towards Mr. Smith. The existence of this disposition in himself, and others associated with him in the same

dishonorable cause, is further evidenced by the base and unmanly means they have used during this inquiry. I allude, sir, to their refusal to give evidence for Mr. Smith, and then secretly sending their depositions to the Senate; conduct in every respect worthy of the friends of Elias Glover; and also to those anonymous slanders which have been forwarded (doubtless from the same source) to almost every honorable member of this House. Of these deponents, and the support their testimony attempts to give to the character of Glover, little need be said. I cannot suppose it possible the Senate will receive this evidence, or, if received, that any reliance will be placed upon it. The profligacy, however, of the principal one among them is so palpable and audacious that it deserves some little notice; I mean William McFarland, the friend to whom Elias Glover alludes as having been present when Mr. Smith acknowledged his participation in the conspiracy. This man, sir, has had the effrontery (after refusing to answer Mr. Smith's interrogatories) to send on to the Senate an affidavit in which he states that Elias Glover's deposition is substantially correct; yet he had been sworn at Richmond, and we have his affidavit, and again at Chilicothe before the grand jury, and we have a statement of his evidence. They afford the most direct contradiction of his present deposition that can be conceived. Unless Mr. McFarland then will condescend to tell us, how are we to ascertain which is true and which is false? As it now stands we have, in addition to his declarations to General Gano and Mr. Burnett, one or two of his depositions acquitting Mr. Smith, to set off against the one which accuses him. Of the other deponents I shall say no more than what appears from their own representation, (and nothing more harsh could well be said of them,) they are the friends of William McFarland and Elias Glover. To have obtained the enmity of men disgraced by such a friendship is no small honor to Mr. Smith.

However conclusive this proof of the general character of this witness may appear, it yet constitutes but a small part of the infamy with which we have overwhelmed him. We have shown this capacity for perjury, and the disposition he must have felt to exert it on this occasion. I now proceed to point out the actual commission of it, in the most wilful, premeditated, and repeated instances. This witness, it seems, appeared before a grand jury at Chilicothe, in January last, which body had the penetration to discern his falsehoods, though no testimony was produced to discredit him. One of the jurors, Mr. Ethan Stone, has stated to us in his deposition the substance of

his examination on that occasion, from his notes, which he tells us he was very particular in taking. His statement is also corroborated by General Gano and Colonel Armstrong, who were members of the same jury. We are thus informed that Elias Glover on that occasion declared "that he had never published or offered for publication any piece in ridicule of the measures taken by Government to arrest the progress of Burr's conspiracy." Of the falsehood of this assertion we have produced the most undeniable evidence.

The editor of the Western Spy, David L. Carney, deposes that Glover brought him such a piece which he refused to publish. Ephraim Morgan swears that he was present at the time, and confirms this statement. If Mr. Glover is disposed to dispute the point with these two witnesses, we will call a third, to whom, however objectionable, he must submit. This is no other than himself. He told Mr. Arthur St. Clair (as that gentleman states in his deposition) that "he had published one piece, ridiculing the measures taken to stop Burr, and had written another (which he offered to show him) which the printers had refused to publish." He again told the same to Mr. Jacob Burnett, and urged him to join in squibbing the measures of Government. Can anything be more complete and confounding than this detection? Let us view another instance. The same grand jurymen informs us that during his examination he declared, "that he never had any correspondence with Colonel Burr;" these are the words taken from Mr. Stone's notes. And yet he tells Captain Nicholls, whose deposition we have produced, that he had written to Burr, and that he daily expected to hear from him. In addition to this, the testimony of Mr. George Russell is before the Senate, who is personally known to several of the honorable members of this House, who declares that Glover actually gave him a letter to carry to Colonel Burr, with injunctions to burn it if he did not see him.

I might, sir, point out other instances of falsehoods equally gross, but it cannot be necessary to take a particular notice of each. I shall therefore only call the attention of the Senate to a circumstance which exhibits a number of them in one general point of view. He appears from his own testimony to have been the person who furnished Matthew Nimmo with his information relative to Mr. Smith's participation in the conspiracy. Now, the information he gave Nimmo should certainly agree with that which he now gives us in

his deposition. Yet they are essentially different, nay, even directly contradictory, as is obvious from comparing them.

But, sir, independent of all these circumstances, I would ask nothing more to discredit the witness than the internal evidence of falsehood which his deposition bears. What can be more incredible than the facts he states? Mr. Smith is an associate in Burr's conspiracy, and yet never commits an act which evinces the least participation in it, never affords it the least support, never endeavors to interest his friends and dependents in it, but would have remained wholly unknown and unsuspected but for his disclosure to Elias Glover; and this confidant, whom he thus highly trusts, was at that very moment, and before and afterwards, his open and irreconcilable enemy.

He further tells us that he received this communication "under the strictest injunctions of secrecy; that to divulge it on any occasion less pregnant with evil would reflect infamy and disgrace upon his character and conduct, and that he therefore balanced between his honor and his patriotism, before he could divulge it." Now, can Mr. Glover reasonably expect any one to believe this? And if we were thus to indulge him, how much reputation would he save by it? Does a man of character ever allow any circumstances, however "pregnant with evil," to induce him to receive a communication, promise to conceal it, and then divulge it? Where, sir, does he find a sanction for a doctrine so absurd and detestable? Does that sacred volume which he has dared to profane with his touch, and thus openly contemns, allow any such dispensation from the eternal and immutable laws which it awfully commands us on all occasions to observe? Is any such ridiculous exception to be there found, which shall justify a man in violating the plainest rule of morality and becoming a scoundrel for the good of his country? But even if this pretext could account for his disclosure to Nimmo, in November, it can be no pretence for his afterwards voluntarily and certainly unnecessarily reducing it to an affidavit in February. Some delay in making out this deposition might be necessary, from the nice balance which he tells us he was adjusting. With his honor in one scale and his patriotism in the other, it is not wonderful that it should take him a month or two to ascertain which of these two straws was the heaviest; but it is singular that his patriotism should not preponderate till all

symptoms of danger to his country had disappeared—till the conspiracy was completely defeated.

There are, sir, two other depositions relative to the credit of this witness which I had intended to notice. Mr. Longworth details to us a conversation held between him and Glover, early in February, and just after he had made his affidavit. Glover then told him that he had not “acted against Mr. Smith;” that “he thought him unjustly accused,” and believed “he had no share in the conspiracy.” In the April following, Dr. Lanier’s deposition informs us of an interview (at which he was present) between Mr. Smith and Glover. How strongly marked is the conduct of each on that occasion. In Mr. Smith we see the firmness of an innocent man, indignantly daring forth his slanderer, and in the other a soul as contemptible for its meanness as detestable for its vices, descending (if indeed such a creature can properly be said to descend to any thing) to the grossest falsehoods and most humiliating prevarications.

I have done, sir, with this witness. I fear I have detained the Senate unreasonably upon this subject. I therefore leave him to that contempt which I trust he will meet with here, and to that punishment which public justice will hereafter inflict upon him. For should he escape from this, I have no doubt it will be owing more to his own agility than to the crippled condition of our courts. Nor shall I have much apprehensions of his acquittal, even if he is allowed to plead that “he is possibly innocent.”

I now proceed to make a few hasty observations upon the circumstantial testimony offered by other witnesses in support of this accusation, and first by Peter Taylor. The circumstances principally relied on in the statement of this witness is the conversation which he details between Mr. Smith and himself, and particularly the charge which Mr. Smith, he says, gave him “not to go to a tavern, lest the people should sift him with questions.” Admitting this conversation to be correctly repeated, nothing can be more unfair and unreasonable than to infer from it that Mr. Smith was concerned in the conspiracy, or even acquainted with its object. May it not be more properly attributed to his knowledge of the public agitation, which Mr. Burr’s movements had excited, his belief that they were innocent, and his apprehensions that this agitation might be dangerously increased by Peter Taylor’s representation and exaggerations of Mrs. Blannerhasset’s alarm. There are various other motives equally pure to which this direction might

have been owing, and it would therefore be unjust to attribute them to a criminal one. It could not have arisen from any fears in Mr. Smith that this man would disclose any of the plans of the conspirators. He had himself already “sifted him with questions” and could learn nothing, and therefore could not have supposed that others would be more successful.

But, sir, this admission is fully as unreasonable as the conclusion attempted to be drawn from it. We do not impeach the character of Peter Taylor; we do not say that he has wilfully misrepresented this conversation, but we deny him that degree of intelligence, recollection, and accuracy, so essential to a witness who is to repeat a conversation with necessary correctness. Can this honorable House infer guilt from words, without very strong evidence that they are accurately related? The least variation, the suppression or addition of a syllable, may make the most material difference. May he not have misunderstood Mr. Smith? May he not have forgotten parts of the conversation, and be indistinct and confused in his recollection of it? We have, sir, among these depositions a most remarkable instance, in which two gentlemen, both respectable and intelligent, undertake to detail to us the particulars of one of Mr. Smith’s conversations, (I mean Col. Taylor and Dr. Sellman,) and their statements are directly contradictory. Let us now look for a moment at the deposition of this witness, and see whether it bears those marks of accuracy which should entitle him to attention. Besides that gross stupidity so observable in every sentence of it, there are several of the most palpable misstatements contained in it. First he tells us that Dudley Woodbridge was on the bank of the river when the boats left the island, after midnight, and yet that person and the man who slept with him, depose that he was not out of bed after 10 o’clock. Again he states, in his last deposition, that when he went to Mr. Smith’s they had never seen each other before, and yet on his examination at Richmond he had stated that Mr. Smith knew him; and this strange contradiction is made, although the statement of his former evidence, in the Richmond Enquirer, was but the moment before read over to him, and acknowledged to be correct. There is one other remarkable instance, which shows that he cannot even remember with any tolerable distinctness his own conversations. On the statement of his evidence at Richmond he tells us that when Blannerhasset and himself were returning to the island, after he had left Mr. Smith’s, he was urged by him to accompany him in this expedition, that he refused all the honors offered him, unless he should be

permitted to take his wife with him. Now, sir, he could have said no such thing to Blannerhasset, for his wife had been dead for a month or two; he himself admits in his subsequent deposition that she died in September, and this conversation took place late in October or early in November following.

It is totally immaterial to what cause these palpable misstatements are to be attributed; they essentially affect his accuracy as a witness, and show how little reliance is to be placed on this part of the evidence.

There are various other circumstances which have been collected by the malignant industry of Mr. Smith's enemies, in that strict scrutiny to which all his actions have been subjected, and these have been exaggerated and distorted till they were made to bear some suspicious appearances. Of these it can be necessary to say but little. I rejoice that Mr. Smith has been enabled to present so complete and satisfactory an explanation of them. Of his entertaining Colonel Burr at his house I shall say nothing, since if that fact merited consideration, it would equally criminate most of the respectable people in Cincinnati, and particularly Colonel Taylor himself, who informed us that he waited on Colonel Burr and invited him to dinner.

But it is said he corresponded with Colonel Burr; true, sir, but in what manner? Not in cipher, as it is well known the associates in this project made their communications to each other; or in any secret manner whatever. Mr. Smith immediately and publicly speaks of it. We have offered the depositions of many of the first characters in that country, to whom Mr. Smith showed these letters just after they were written; of one particularly who was present when he received Colonel Burr's answer from the post office, and to whom he instantly handed it. We have produced to you these two letters and they contain nothing criminal; nothing but what persons in their situation and with their views might be supposed to have written. Nor can there be the least pretence for supposing they were fabricated for the purpose of removing suspicions. For at the time they were shown by Mr. Smith he was suspected by nobody, nor had he any reason to suppose he ever should be.

He has been also charged with receiving and forwarding despatches from Blannerhasset to Burr. This circumstance is mentioned by Col. Taylor, as one which operated to Mr. Smith's disadvantage. Now, sir, he has shown the

nature of these despatches by the depositions of persons who were requested to convey them, and by others who saw them opened, and by many to whom Mr. Smith openly spoke of them. They contained a silk coat and a note from Blannerhasset requesting him to forward it to Mr. Burr.

Equally unreasonable were the conjectures formed from his having accepted and paid a draught of Colonel Burr's. To this circumstance we have offered every explanation of which it was susceptible. We have proved by various depositions that it is usual for persons travelling in that country to deposit their money in safe hands and afterwards draw for it, and we have clearly shown that this draught must have originated in that manner from Mr. Smith's mentioning it at the time. General Carberry informs us that about the time of Colonel Burr's departure, Mr. S. told him that he had left in his care a part of his baggage and a sum of money. All these circumstances, Mr. S., if guilty, would have endeavored to conceal; and yet it appears that the first information of them, and that too immediately on their occurring, is uniformly derived from himself. Neither can his guilt be inferred from his son's being the bearer of a letter to Blannerhasset's island, even if it were admitted (of which, however, there is not the least shadow of proof) that he knew the contents of the letter he carried. Mr. Smith has proved that he was then, and had been for some time, absent from home, and that he expressed strong disapprobation of his son's imprudence upon his return.

Another incident in this string of vague possibilities is his happening to go to Frankfort at a time when Colonel Burr was there. He has explained the motives of this journey. Mr. Kelly, Mr. Hart, and several other gentlemen depose to the business which occasioned it.

His absence from the United States at the time the indictment was found against him, is, I understand, also relied upon. If this indeed appeared to have been owing to any desire to avoid an investigation into his conduct, if he had sought to remain within the Spanish territory, and had been unwillingly brought forward to answer this charge, it would indeed have been a circumstance amounting to proof infinitely stronger than all which this inquiry has produced. But if his conduct was directly the reverse of this; if he was carried there by important and indispensable engagements; if, when there, informed of the indictment, he immediately relinquished his business, and took the most prompt and decided steps to return and face the

prosecution, and did so return, (of all which he has produced the most conclusive evidence;) then, sir, this circumstance not only ceases to afford any presumption of guilt, but clearly evinces his innocence.

Having now, sir, endeavored to show the futility of the testimony adduced to support this charge, it might be sufficient here to rest our defence of the honorable member accused. But, sir, though more may be unnecessary, I rejoice that more is in our power; that we have been enabled not only to destroy the force of the proof offered to criminate him, but to exhibit the most complete and direct evidence of his innocence. I am sensible, sir, that I have trespassed greatly upon the indulgence of this honorable Senate. I shall not, therefore, take that view of this part of the case which its importance deserves; but will only beg leave to suggest a few considerations which appear to my mind unanswerable, which will render all doubt upon this subject (if indeed a doubt yet remains) utterly impossible.

In the first place, to what but his innocence can it be attributed that such numbers of the conspirators knew nothing of his association with them? We have produced the depositions of several who appear to admit that they had been induced to participate in this enterprise, and they declare their ignorance and disbelief that Mr. Smith was in any way concerned in it. Nay, sir, let us look at the declarations of their chief, Colonel Burr himself. He has various communications with persons whom he was desirous to bring over to his views, many of which are detailed to us in the report of the evidence at Richmond. In these he makes the most flattering representations of his prospects, endeavors to show the adequacy of his means, the number and consequence of his adherents. Among these he never mentions Mr. Smith, though there was no man, in the whole Western country, the importance of whose co-operation would have been more obvious. Here is one striking instance of this, which I beg leave to mention. Lieutenant Jackson deposes that when Colonel Burr gave him the draught on Mr. Smith, he directed him to call on General Tupper, to whom he referred him for information relative to the objects of the enterprise. Now, sir, if Colonel Burr had known Mr. Smith as one of his associates, why should he have been silent on this occasion; why should he not have allowed Mr. Jackson to get his information from Mr. Smith, when he presented his draught, without proceeding to General Tupper?

All the other conspirators seem equally ignorant of Mr. Smith's participation. When Bollman and Swartwout communicated with General Wilkinson, in the most unreserved manner, they seem to know nothing of it; they give him no intimation that the army contractor, the very man who was supplying his troops with provisions, had any connexion with their schemes.

Let us even descend to Glover and McFarland; that these men were engaged in this expedition, after the proofs we have produced, cannot be questioned. And what are they able to say to criminate Mr. Smith?

If they were all living in the same place, associates in the same conspiracy, is it possible they would not have had frequent interviews? Would they not have had it in their power to produce some act, or at least some avowal to others, by which his guilt could be proved, beyond the possibility of denial? Yet we hear Mr. McFarland frequently acknowledging and twice even swearing that he knew nothing of Mr. Smith's connexion with it; and all that their malignant efforts have enabled them to collect, is one solitary conversation depending wholly upon the unsupported assertion of Elias Glover.

Thus, sir, it appears that if Mr. Smith was a party in this conspiracy, the persons from whom he most studiously concealed it were those who were associated in the same project. Neither are they more fortunate who were particularly engaged in watching the progress of this enterprise and ascertaining who were its partisans. General Gano states that he used various means to determine whether the reports relative to Mr. Smith were well founded, and he satisfied himself of his innocence. He also directed Major Riddle to assist this inquiry; that officer reported to him that he had frequent conversations with Mr. Smith, and had endeavored to ascertain whether he knew anything of Burr's plans, and was convinced that he did not. Even Colonel Taylor, with whom these suspicions were strengthened by the conversation relative to a disunion, which he thought he had heard from Mr. Smith, was yet so far from discovering any thing to confirm them in his inquiries, that he calls on Mr. Smith to aid him in procuring information, and frequently declares (as General Carberry's deposition informs us) that he did not believe Mr. Smith was an accomplice.

In the next place, sir, how can Mr. Smith's guilt be in any manner reconciled with his conduct in opposing the progress of the expedition. Major Martin, Dr. Stall, General Gano, Mr. Totten, and numerous other witnesses, prove that it was principally owing to Mr. Smith's exertions that any effectual support was rendered to the measures of Government. When the President's proclamation was received at Cincinnati, it seems there was no means of arming the militia. The orders to the keepers of the arsenal, to deliver out the public arms, had been neglected, and he persisted in refusing to deliver them without. At this juncture Mr. Smith, with that earnestness and decision which so strongly mark his character, crosses the river at midnight, offers his bond to Major Martin, in the penalty of \$10,000, to indemnify him; procures the arms, and delivers them to the officers; prepares barracks and supplies for the militia; furnishes one of his own boats, and in short makes every arrangement to obstruct the passage of the expected armament.

It may perhaps, sir, be here objected, that these circumstances rather prove that Mr. Smith then abandoned the enterprise than that he never participated in it. That the vigilant measures taken by Government alarmed him, and that therefore, hopeless of its success, he sought by a zealous opposition to escape detection. However plausible this may seem, the least reflection will show how unreasonable is this suspicion.

How does it appear that the situation of the conspirators was at this time more unpromising than at any former period? They had thus far proceeded without meeting any obstacles; their plans were arranged and ripe for execution; they were hourly expected to embark. And what was there so alarming in the measures taken to oppose them as to strike a panic into Mr. Smith and subvert his resolutions? The militia were called out it is true, but they were without arms. Their officers inform us that they could not even station a guard upon the river. I should rather suppose that this circumstance would have been considered as more auspicious than any thing he could have expected. Nor does it appear that this effect was produced in the minds of any of the party. For even at a subsequent period, and after the militia, by Mr. Smith's exertions, had procured arms, we find Captain Nicholls at Cincinnati still adhering to their views and far from despairing. Nay, even Elias Glover, (whose courage appears from Dr. Lanier's deposition to be about equal to his veracity,) and who doubtless was as ready as any one to

renounce his associates when he saw them sinking, is seen at the same period persisting in his adherence to them. He tells Captain Nicholls to hasten his departure lest the guard should stop his boats, declares that he will shortly follow, and informs him that he had sent off an express to the party at the island. There is one other circumstance that totally overthrows this suspicion. If Mr. Smith had thus not only deserted but opposed his associates, would it not have excited their resentment? And would they not have revenged themselves for his treachery by disclosing his participation, and showing that he was equally guilty with themselves?

It cannot be necessary to contrast this conduct with that which we might expect to find in Mr. Smith, if, most unfortunately for his country and for himself, he had really been concerned in this enterprise. It is well known that the circumstance which first excited the suspicion of Government were the unusual preparations made by Colonel Burr and his party on the Western waters. From these suspicions they would have been perfectly secure by obtaining the co-operation of Mr. Smith. His contracts for the supply of the army, and his engagements to prepare boats for the navy, would have enabled him to collect any quantity of provisions and materials, and place them in suitable situations without exciting the least attention: and whenever they were ready to act, he might in a moment have stopped the supplies of your armies, and suddenly directed all his resources to aid in the most effectual and fatal manner the objects of the combination.

Thus, sir, in short, it appears that Mr. Smith has not merely forborne from the commission of these acts, which if guilty it is almost certain we should have discovered in him, but has pursued a most decided and distinguished course of conduct, utterly unaccountable upon any other presumption than that of his innocence.

I will now, sir, conclude by adding to these considerations those which naturally result from the view which the testimony affords us, of Mr. Smith's character and situation in life, and the various honorable and lucrative employments committed to his trust. These alone, if properly considered, will be found more than sufficient to outweigh all the circumstances adduced against him. I will not undertake to point out the objects of Colonel Burr and his partisans, but am very willing to admit the correctness of the information collected by the honorable committee on this subject, and so eloquently detailed in their report. They are there

represented as having been only prevented by the “vigilance of Government and of faithful citizens under its direction from a speedy termination not only in war, but in war of the most horrible description, in war at once foreign and domestic;” that “the debauchment of our army, the plunder and devastation of our own and foreign territories, the dissolution of our national Union, and the root of interminable civil war, were but the means of individual aggrandizement, the steps to projected usurpation.”

Now, sir, is Mr. Smith the sort of man to whom conspirators, who were in their senses, would have proposed such a scheme as this? Would he have been solicited to join in the dismemberment of the Union, whose interest was so materially connected with its continuance, the profits of whose employment wholly depended upon it? Would he have been asked to join in “a war of the most horrible description,” who is represented as enjoying every domestic comfort in the bosom of a happy and numerous family? Would he be called upon to unite in a scheme of plunder and devastation, who had every reason to be satisfied with his present possessions, who had so much to risk and so little to gain from civil commotion? Would he have been called upon to make all these sacrifices to the madness of ambition who was already distinguished even beyond his wishes?

Surely, sir, this is the first time that robbers ever made offers of partnership to the man whom they were about to plunder—that incendiaries ever called upon him for assistance whose house was to be destroyed by their flames.

No man in the whole Western country would have been more certainly ruined by the success of this project than Mr. Smith. There is therefore no man from whom it would have been more studiously concealed. To a disposition of this sort I think it not at all improbable is to be in some degree attributed the circumstance of Colonel Burr’s stopping at his house. As Mr. Smith’s guest he would have it in his power to say just as much as he pleased of his plans, and no more. In such a situation he would be less liable to the importunity of inquiries.

Let us, sir, for a moment fancy ourselves present at a consultation upon this subject between Colonel Burr and his confederates at Cincinnati; and let us suppose that that gentleman had so far lost his usual discernment, had felt such confidence in his personal influence as to presume that he could

seduce Mr. Smith from his interest as well as from his duty. After inquiring about Major Kibby, (whom it seems he was anxious to see, and who is represented to be in distressed circumstances,) let us suppose that he mentions Mr. Smith. What would his associates, Glover and McFarland, say to this? Would they not fear, that as Mr. Smith was their enemy, he would be tempted to inform against them? Would they not also know that if Mr. Smith assented to the proposal he would hold his rank in the expedition much above them, and would have it in his power materially to affect their interests? Would they not at least have thought it highly dangerous to trust such a secret to a man so connected with the Government they were about to oppose? These considerations would instantly have dictated a most decided reply. They would have said “you can have no hopes of Mr. Smith, his interests are too obviously opposed to our designs; he is too well satisfied with his present situation to consent to the change we contemplate; he is too highly trusted and favored by the Administration. He is,” they would add, (repeating an expression used by Glover on a former occasion,) ““a damned army contractor and gunboat builder;’ he makes too much by the present system of things to be trusted with a scheme for overturning it. No, sir, from him our plans must be concealed; he is easily deceived; tell him a plausible story about your settlement of lands, show him your Washita grants; tell him his sons are fine, promising young men, and offer to take them under your patronage.” The force of these observations it would have been impossible to evade.

And, sir, whatever Colonel Burr’s designs may have been, to whom does it appear that he actually did communicate them? To what kind of men does he apply to procure partisans? Why, sir, like a celebrated character of antiquity, to whom he was long ago compared, it is always the discontented, the embarrassed, the turbulent, the idle, the ambitious and the enterprising. Nor does it appear that even to all these he fully explained himself. He had a variety of schemes suited to every taste, to every possible occasion. But among this mixed assemblage of characters, collected by these means, there is not one to be found who had not some strong and ruling passion to which he could successfully apply himself. Thus to the romantic enthusiasm of Dr. Bollman, he would expatiate on the glorious and benevolent attempt to liberate, enlighten, and exalt a nation of slaves. To the youthful heroism of Swartwout he would paint, in all their fascination,

“The plumed troop and the big wars,
That make ambition virtue!”

And turning from these he would address himself to such creatures as Glover and McFarland, and to them he would talk of plunder. But, sir, what motive could he expect to find in the breast of Mr. Smith that would prompt him to listen to a project that assumed any aspect of disunion, that discovered the least mark of treason, that bore even the most distant indications of “war and devastation?” What air-built castle could he picture to him to tempt him to overturn the fair and substantial fabric of his honors, the solid foundation of his happiness?

WEDNESDAY, April 6.

The PRESIDENT communicated a report of the Secretary of the Treasury, respecting roads and canals, prepared in obedience to the resolution of the Senate, of the 2d of March, 1807; which was read.

Case of John Smith.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

Mr. SMITH attended, together with Messrs. ROBERT GOODLOE HARPER and FRANCIS S. KEY, counsel on his behalf.

Messrs. RUSSELL and GARDENIER, Representatives from New York, were examined as to the credibility of several of the deponents on the part of Mr. Smith.

Mr. HARPER then rose and addressed the Senate, first, in a legal argument sustaining the views of his associate counsel; and then proceeded:

If, therefore, Mr. President, we had no defence, or only a weak one, on the facts in the case, I should insist that this prosecution, being for an offence cognizable by indictment, and resting on evidence which the law excludes, ought to be dismissed. Standing, however, as my client does, strong on the facts; holding in my hand abundant proof of his innocence, I

shall by no means rest his defence on this legal ground, impregnable as I deem it; but having entered in his name, and in my own, as one of the American people, this protest against a proceeding which I regard as a violation of our constitutional privileges, I now proceed to investigate the evidence adduced in support of the charges against Mr. Smith, and to contrast it with that whereby his innocence is completely established.

I am to premise that the charge against Mr. Smith is, that he was connected with Colonel Burr in the late conspiracy. This connection is alleged as the sole ground of expulsion; and it is attempted to be proved in various ways.

1. By the conversation stated by Elias Glover and McFarland.
2. By the facts stated by Peter Taylor.
3. By the conversation stated by Major Riddle.
4. By the conversation stated by Colonel James Taylor.
5. By Mr. Smith's journey to Frankfort, in 1806.
6. By the bill drawn by Colonel Burr, on Mr. Smith, in favor of Jacob Jackson.
7. By that drawn on him by Colonel Burr, in favor of Belknap.
8. By a supposed contradiction between Mr. Smith's statement respecting the settlement of the Washita lands, in his deposition before Matthew Nimmo, and the facts which appeared in evidence at Richmond. And
9. By a supposed similarity between the style of the conversation stated in Glover's deposition and that of Mr. Smith's own deposition before Nimmo.

By some of those proofs and circumstances, or by all of them taken together, it is contended that a criminal connection between Smith and Burr in the late conspiracy is established; and it is therefore incumbent on me to consider them all; which I shall proceed to do in the order in which they have been stated, and with as much brevity as the extent and variety of the matter will admit.

As to the conversation stated by Elias Glover, I admit that, if it did take place, it furnishes sufficient proof of a criminal participation by Mr. Smith,

in the enterprise of Colonel Burr, and sufficient ground for a vote of expulsion. We are, therefore, to show that Glover's deposition, even when bolstered up by the furtive skulking affidavit of his confederate, McFarland, is entitled to no credit. This we undertake, and unless we do it in a satisfactory manner, I admit that we fail in our defence.

And, first, we rely upon his bad character generally. To prove it, we trace him from Newtown, in Connecticut, the place of his birth and education, to Brookfield, and from thence to Delaware County, in the State of New York. Five witnesses at the first of those places, seven at the second, and twenty-one at the last, many of them proved to be men of note and character where they live, and none of them proved or even stated to be otherwise, have deposed that Elias Glover is a man of general bad character. Several of them add, that he is not entitled to belief on his oath. Now, let me ask, against what man of good character could so many of his neighbors and acquaintances be brought to give such testimony? The fact alone that so many men, who knew him in the places where he has resided, consider him as a man of bad character, affords plenary proof that he is so. These witnesses do not depose to particular facts, but they speak of his general reputation, which they state to be a bad one. This testimony is by no means rebutted by the depositions produced on behalf of Glover. The deponents state that they never heard any thing against his character. This may be true, and yet his character a very bad one. But, take these depositions in their most liberal construction, and what does the whole testimony amount to? Certainly to this, that one-half of his neighbors consider him as a knave, and the other half admit that, for any thing which they know, or have heard, he may be an honest man. Surely, this is too equivocal a reputation to entitle the ex parte deposition of its possessor to belief in a case of this nature.

It must further be remarked, Mr. President, that the bad opinion which these numerous witnesses express of Elias Glover's reputation, does not and cannot proceed from party feelings or political animosity; for the principal witnesses, and those who have spoken in the strongest terms, are proved to be of that political party to which Glover has taken so much pains to prove that he belongs. They, as well as Glover and McFarland, are proved to be most excellent republicans; and they have the advantage of being proved also to be men of good character.

If we pursue Elias Glover in his next and last emigration to Cincinnati, in the State of Ohio, we shall find that the bad character which he acquired in early life, attends him still in his riper years. Col. James Taylor, who was examined at the bar of the Senate, stated that there were two parties in Cincinnati, "one of whom spoke well of Elias Glover, and the other very unfavorably." These two parties are not the two political parties which divide our country. On the contrary, they both appear, with the exception of some very few individuals, to be composed of exceedingly good democratic republicans. What, then, were these two parties? One, I answer, was composed of that portion of the citizens of Cincinnati, who espoused the interests of Mr. Smith; and the other consisted of those who had united themselves with his persecutor, Glover. The first speak "very unfavorably" of Glover; and the last, as might be expected from his associates and coadjutors, speak well of him.

And who, let me ask, belong to the party which speaks very ill of this man? It must be answered, General Gano, General Carberry, Mr. Burnett, Mr. Stone, Dr. Sellman, and a number of others, who have been proved to be men of the first respectability in that part of the country. Has any such favorable account been given of those who speak well of him? Far from it. We know but little of them, and that little is very little to their honor. Some of them, when called on by Mr. Smith to give evidence in this case, refused to be examined. Some of them are proved to have been connected with Glover, in the enterprise of Colonel Burr. And McFarland, the chief of the party, was extremely active and zealous in obtaining recruits for that enterprise. When he and Glover found that the enterprise had failed, they took refuge, as is customary, in outrageous patriotism; became the zealous hunters-up and denouncers of treason; and, to use the language of Dr. Goforth in his deposition, attempted to lay the body of John Smith as a pedestal whereon to rebuild their own fallen reputations. Such men as these, no doubt, speak well of Glover. Be it so. But, while General Gano, Doctor Sellman, Mr. Burnett, and almost every other respectable man in the place, speak very ill of him, I shall take the liberty of contending that "*cælum non animum mutavit*;" that he has not changed his manners with his residence; and that he still merits and enjoys at Cincinnati that opprobrious distinction to which the achievements of his early life gave him a title.

But, Mr. President, it is not on the general bad character of this man, however clearly established, that we solely rely, for destroying his credibility. I shall next proceed to show, that he has been guilty of wilful and deliberate false swearing in no less than three instances.

Being interrogated before the grand jury at Chilicothe, whether he had ever written and offered for publication, a piece ridiculing the measures adopted by the Government for suppressing Colonel Burr's enterprise? he answered on his oath that he had not. He was, perhaps, not bound to answer, but he did answer, and answered in the negative. This is stated in the deposition of Ethan Stone, who was a member of the grand jury, and has been proved at your bar to be a man of very respectable character.

And yet, two printers, Samuel L. Browne and D. L. Carney, connected with Glover in politics, expressly swear that he did bring such a piece to them for publication, and that they refused to admit it, because of its tendency to bring those measures of the Government into derision and contempt.

Again: on being further interrogated by the grand jurors, he admitted that he did write such a piece, but that it was intended to ridicule the conduct of the officers who had been appointed to carry the measures of Government into execution, and not the measures themselves. Yet, Mr. Burnett swears that Glover confessed to him that he had written the piece for the express purpose of turning the measures of Government into ridicule, and offered it to him for perusal.

Here could be no mistake. Either Glover or the other witnesses have sworn to a falsehood. When their characters are contrasted with his, there can be no hesitation where to fix it.

He also swore, before the grand jury, that he had never corresponded with Col. Burr. This question, also, he was not bound to answer; but, to prevent suspicion, he did answer it in the negative—so says Gen. Gano; and yet George Russell, a man admitted to be respectable and intelligent, swears that, in the fall of 1806, Glover gave him a letter, to be delivered to Col. Burr, with directions to burn it if he did not see Burr. This proves that he did correspond with Colonel Burr, because the letter was too important to be delivered by Russell to any but Col. Burr himself.

And this testimony is supported by that of Captain Nicholls, who states, in his deposition, that when he was descending the Ohio, in the command of one of Colonel Burr's boats, Glover came on board of the boat, and advised him how to proceed with it, so as to elude the officers of Government; and yet this is the man who accuses John Smith of participating in the views of Col. Burr! This is the jealous patriot who swears that he communicated with Colonel Burr for no other purpose, but to discover his views and pervert them!

But, the general bad character of Glover, and the deliberate falsehoods, on oath, of which he has been proved guilty, are not all that we have to oppose to his testimony against our client. That testimony has been positively contradicted by his friend and confederate, McFarland. Glover introduces his account of Mr. Smith's conversation with him, about Col. Burr's plans and views, by stating that it took place in the presence of a friend, who accompanied him to Smith's house. It is fully proved that McFarland was his friend. McFarland, therefore, must have heard the conversation, if it ever took place, and he must have remembered it too, for it is impossible to believe that a conversation so interesting, so remarkable, from such a man as Mr. Smith, and on a subject which then so greatly agitated men's minds, could pass, in the presence of any man, without taking strong hold on his attention, and sinking deep into his memory.

Let us, then, hear McFarland on the subject of this remarkable conversation, in which Mr. John Smith developed the treasonable character of Col. Burr's enterprise, and confessed his own participation.

We first find him conversing with Gen. Gano, to whom, long after this conversation between him, Smith, and Glover, is stated to have taken place, he declared that he was wholly ignorant of Burr's plans, which could not have been the case had he heard such a conversation as Glover relates. He also stated to Gen. Gano, at the same time, that Glover's statement on this subject was incorrect; and he told another witness, Mr. Longworth, that he knew nothing of Col. Burr's plans, or against Mr. Smith; which he could not have said with truth, had such a conversation as Glover relates, taken place in his presence.

But all this it may, perhaps, be said, is mere conversation; and a man, when not on oath, may easily be supposed to deny a fact, when it tends to

implicate himself in guilt.

Let us, then, hear McFarland on oath. When examined at Richmond, on the trial of Col. Burr, though sworn to tell the whole truth, he says not one word of this most remarkable and important conversation. And lately, before the grand jury at Chilicothe, when interrogated as to this very point, he declared that he knew nothing of the matter—that he had some faint recollection of a conversation between Mr. Smith and Mr. Glover, on the subject of Colonel Burr's enterprise, but could recall to his mind none of the particulars. This fact, and also the admission of Glover and McFarland, that McFarland was the friend stated by Glover to have been present at this conversation, are proved by Ethan Stone, General Gano, and John Armstrong, three members of the grand jury, in their joint deposition of February 20, 1808.

Now, Mr. President, let me ask whether any man can believe that such a conversation took place, in the presence and hearing of Mr. McFarland; that such confessions and disclosures on this most interesting subject were made by Mr. Smith; and that McFarland had lost all recollection of them, when examined before the grand jury, in January last? I answer, that it is impossible; and that McFarland's testimony, therefore, amounts to a flat contradiction of Glover's on this point.

And let it be remembered, that when Mr. Smith, under the order of the Senate to take testimony for his defence, summoned this same McFarland to give evidence on these points, and put questions to him for the purpose of obtaining a full explanation, he positively refused to answer. I hold in my hand the summons, the proof of its service, the questions of Mr. Smith, and the magistrate's certificate of McFarland's refusal. This wretch, who now appears among the accusers of John Smith, when called upon to meet his intended victim face to face, and undergo the scrutiny of a public examination, shrunk like a villain and a coward from the investigation. Eager to destroy Mr. Smith, but not yet prepared to meet the terrors of direct perjury, his mind maintained a short and faint struggle between the desire of gratifying his malice and some remaining sense of shame; but it was short and faint, indeed. For, within a few days, his malice triumphed, and he made an *ex parte*, clandestine deposition, not only without notice to Mr. Smith, but carefully concealed from his knowledge, in which, in the teeth of all his former declarations and oaths, he declares that Glover's

statement is correct. And this deposition, conceived in malice and brought forth in perjury, is sent forward to this bar, to bolster up the accusation against our honorable client! What words can describe the mingled emotions of indignation and disgust which such hardened profligacy (fortunately but seldom exemplified) must excite in every virtuous mind!

I here dismiss McFarland, but I have not yet done with his confederate, Glover, whose testimony against my client is further contradicted by Matthew Nimmo, another of the actors in this black tragedy.

I hold in my hand an extract from Nimmo's communication to the President, bearing date the 28th November, 1806. This extract, which was furnished by Nimmo, and is proved to be in his handwriting, contains some information relative to Mr. Smith's connection with Colonel Burr; which, as it states, "was communicated by Colonel Burr, in a confidential manner, to the person from whom Nimmo received them." The person from whom Nimmo received these communications was no other than Elias Glover. This is manifest from Glover's deposition, made not long afterwards, on the 2d February, 1807, before this same Matthew Nimmo. Now, it will be found, on a comparison, that Nimmo's statement to the President, founded on Glover's communication, contradicts Glover's deposition in two or three essential points. In the communication to Nimmo, he alleges that he received his information, in a confidential manner, from Colonel Burr himself. In his deposition, he swears that he derived it from the conversation of Smith, held in the presence of McFarland. In the statement to Nimmo, he says that Mr. Smith had lately sent down the river considerable shipments for the use of Col. Burr; but in his deposition this most important fact is omitted. In the statement to Nimmo, it is said that "next week two of his (Smith's) sons descend the Ohio to join Burr's troops, and Mr. Smith follows shortly after." In the deposition, Mr. Smith is made to "express his regret that his engagements were such that he could not go immediately himself, which he would do, if the situation of his affairs would permit."

Strong as these contradictions are, we have still stronger behind. We have seen Glover's deposition contradicted by McFarland and Nimmo, two of his friends and confederates. We now introduce Glover himself contradicting his own deposition.

Let it be kept in mind, that the conversation stated in Glover's deposition took place in September, 1805. He swears that, in that conversation, Mr. Smith opened the criminal views of Burr, and his own participation. Now, hear what he said in February following on this subject to Mr. Longworth, one of those respectable witnesses whose testimony we have adduced.

Mr. Longworth, in a deposition made in the presence of Glover, who attended and cross-examined, after stating the substance of a conversation between Glover and himself, relative to Mr. Smith, in February, 1807, proceeds thus: "And, to the best of his (this deponent's) recollection, he (the said Glover) then declared, in express terms, that he believed Mr. Smith unjustly accused, and that he was not concerned with Burr in his expedition." Contrast this with the deposition of this same Glover, made February 2, 1807, a little while before the conversation with Longworth, for the purpose of criminating Smith, as an associate of Burr.

And James M. Lanier, another of the witnesses, tells us, in his deposition, that in April, 1807, Glover, when charged by Smith with having given information against him, at first denied the fact, and afterwards, when more closely pressed, confessed that he had given information, but declared that it was nothing of any moment, or capable of operating to the disadvantage of Smith, towards whom he expressed a friendly disposition. And yet, he had then made the deposition which is now relied on for producing the disgrace and ruin of Mr. Smith! Can it be possible that a tribunal composed of men with honorable feelings, will listen for a moment to the testimony of a wretch who thus fabricates in the dark an instrument of destruction, smooths his face to the smile of friendship while he is preparing the mortal stab, and solemnly denies his hellish machinations in order to lull his victim into a fatal security?

The falsehood of this accusation, independently of the direct proof of it which we offer, is rendered in the highest degree probable by the extreme enmity which Glover is proved to have borne towards Smith, and the active endeavors which he had used to injure him. General Gano informs us in his first deposition, that, as early as July 4th, 1806, Glover had abused Smith most virulently in a public oration. Francis Dunlavy states in his deposition, that, in August, 1806, Glover displayed "very great animosity against Mr. Smith." And Colonel Taylor, in his testimony at this bar, informed us that Glover was "extremely active" in the measures attempted for the injury of

Mr. Smith by a party in Cincinnati, in the autumn of 1806. Doctor Sellman, Stephen McFarland, George Jordan, and John H. Stall, furnish us in their depositions with a detail of those measures in which Glover was extremely active. Let us hear what they were.

A meeting of the citizens of Cincinnati was called for some public purpose, and was very numerously attended. Some resolutions were passed by a very large majority. There is a small, but noisy party in Cincinnati, calling itself "The Republican Society." Some of its members attended, and offered resolutions tending to criminate or vilify John Smith. They were indignantly rejected by a large majority. These zealous republicans, finding themselves out-voted, and being determined, as is usual, not to submit to the majority, when against them, resolved to make sure of their mark by calling clandestinely another meeting, to which none but such as were selected by them for the purpose, and furnished with tickets, should be admitted. The meeting was accordingly held the next evening in the upper room of a tavern, and an attempt appears to have been made, to pass the resolutions which the full meeting had rejected, and which would, no doubt, have been then palmed upon the public as the sense of the "people of Cincinnati"—for republicans love to speak in the name of the people. But the people, in this instance, chose to speak for themselves. They burst open the doors of the conclave, and defeated the scheme. But the most zealous of the patriots were not to be so repulsed. A few of them, and among the rest, the President, and Mr. Secretary Glover, made their escape, met in private, and actually passed their resolutions, which they forthwith published; taking care, at the same time, to suppress the resolutions which had been adopted at the full and public meeting, and of which Glover, as secretary of the meeting, had possessed himself.

Is it difficult to believe—indeed, is it not highly probable, that a man of Glover's principles and character, who has gone such lengths as these, to injure a person against whom he had conceived a resentment, would stop at a false oath, if likely to effect his purpose? And ought not testimony given under such circumstances, to be viewed with the utmost distrust?

Furthermore, can any thing be more improbable than that Smith should make such a communication to Glover—to Glover his enemy, his public traducer—who, in July, had abused him in a public speech; and in August, had displayed very great animosity against him? What motives for such a

choice of a confidant, in an affair on which his character, his fortune, and even his life, might depend? How does it happen, that a man of John Smith's understanding and prudence, passed over the long list of his respectable and tried friends at Cincinnati, and fixed upon Elias Glover, to whom alone to confide the most important secret of his life? A man with whom he had long been on very ill terms; of whom, as Mr. Isaac Burnett informs us in his deposition, he had long been in the habit of thinking and speaking very ill, and whom, according to the same gentleman, he was much surprised at seeing in his house! All this, it must be allowed, is passing strange; and it will certainly require more than the oath of Elias Glover to make us believe it.

Again: Why make this grave discourse to Glover, concerning Burr's plan? Was it to enlist volunteers? No! for Smith never appears to have mentioned the subject to any other person; and if he was in Burr's secrets, he knew that Glover and McFarland were already enlisted. That they were engaged, is proved beyond the least doubt. The evidence on this point is full and unquestionable. They were not only engaged, but very actively and zealously engaged. This, Smith, if he was also engaged, must have known. Why, then, make a grave and mysterious disclosure to two of his confederates, of the plans in which they were mutually embarked? Can any thing be more ridiculous than the idea of a conspirator making a formal disclosure of the conspiracy to two of his associates? This single consideration would be sufficient to prove that the story of this disclosure was invented by Glover, as a screen for his own guilt.

But how does it happen that Smith, in looking round for a confidant, did not think of his friend Kelly, his confidential agent, and the usual depository of all his plans and thoughts? Kelly, to whose character men of the first rank in Kentucky, and amongst them Henry Clay, lately a member of this House, have borne the most honorable testimony, tells us in his deposition, that the highest degree of intimacy and friendship subsisted between him and Smith, who wished to advance his fortune, and was very desirous of assisting him. Yet Smith communicated to him nothing of Burr's plan. Desirous as Smith felt of promoting Kelly's fortune, and well acquainted as he was with the benefits of a contractorship, he would hardly have failed to hold out to his friend the brilliant post of contractor-general, or paymaster to Burr's army; which, especially when the treasures of Mexico should once be occupied,

would have been so well adapted to Kelly's talents, and so fully adequate to all his desires. Smith, however, does nothing of all this; and he not only avoids all mention of these momentous and magnificent schemes to Kelly, but observes an equal silence to his friends, Gano, Longworth, Findley, and Sellman, while he singles out his persecutor and calumniator, Glover, as the chosen depository of this great secret, and very gravely communicates it to him and McFarland, with a full knowledge that they were, already, at least as well apprised of it as himself.

Mr. President, this tale refutes itself. It is impossible for any man of common sense to believe it. But, independently of external refutation, the communication stated by Glover to have been made by Smith, carries internal evidence of its falsehood, by the contradictions and absurdities wherewith it abounds. Can any one believe that a man of John Smith's intelligence and knowledge told the ridiculous story about the frigate which Mr. Somebody was building, or had completed, in the Southern States, to be employed in this expedition? What! An individual in this country build a frigate, to which so few fortunes are adequate? Mr. Alston, who is probably the person meant, though rich, is well known not to have the means of building a frigate, even were he disposed to expend his whole fortune in such an enterprise. And this frigate, moreover, was to be built in secret. Nobody was to see it; for otherwise, the building of it by an individual, so strange a thing, would have been a matter of notoriety, with which the newspapers would have rung, and which it would have been wholly unnecessary for Smith to communicate to Glover and McFarland, and ridiculous in the last degree to communicate confidentially. A frigate built by an individual, and built in secret! Can any one believe that John Smith, a Senator, and a man of information, could tell so absurd a tale? Sir, a frigate cannot be built in a dry-dock, although it may be kept there. It must be built openly. It must be seen. Its commencement, and its progress, would be as well known on the Ohio, long before it could be completed, as on the Potomac. And to represent John Smith, a Senator, and a man of sense, gravely telling such a tale to Glover, a lawyer, and McFarland, a judge, both men of some information, accustomed to read the newspapers, and therefore knowing the falsehood of the tale, is an absurdity so gross, that one is wholly at a loss to conceive how Glover, who, depraved as he is, by no means appears destitute of understanding, came to admit it into his fabrication. We can account for it only by a reference to the kindness of an

overruling Providence, which, for the protection of innocence, sometimes impels guilt to mar its own schemes, by a strange intermixture of folly with its wickedness.

This deposition presents another instance of the same kind, though not equally glaring. Glover swears that this communication was made to him by Smith, under the strictest injunctions of secrecy. And yet he had stated, in the beginning of the deposition, that the communication was made in the presence of a friend, who proves to be William McFarland. This is another instance in proof of the old adage, that “liars ought to have good memories.” Before Glover came to the end of his deposition, he forgot what he had said in the beginning, and thus fell into another of those providential contradictions by which the falsehood of made-up stories is often detected.

Reviewing, then, Mr. President, all these considerations—the bad general character of Glover, at all the places where he had lived; the repeated instances of wilful false swearing which had been fixed upon him; the contradiction of this story by his friends and confederates, McFarland and Nimmo, as well as by himself; his enmity to Smith, and Smith’s ill opinion of him; Smith’s silence on this subject to all his usual confidants and intimate friends; and the inherent contradictions and absurdities of the story itself, I think myself warranted in saying, that the credibility of Glover is completely overthrown, and that his testimony must be laid out of the case.

I come next to that of Peter Taylor, and here I feel myself greatly relieved, in being able to absolve him from the guilt of wilful false swearing. His character is said to be fair, and, for aught we know, is so. We are far from a wish to impeach it. But we shall show that in some of the minute circumstances which he relates, and which are adduced as grounds of suspicion against Mr. Smith, he probably mistakes, and that the others are satisfactorily explained.

In ascertaining what degree of credit is due to an honest witness, especially in relating, after a considerable lapse of time, minute facts, which derive their complexion from circumstances apparently trivial, it is proper, in the first place, to consider his education and habits of life, and to inquire how far they have a tendency to produce that accuracy and precision of conception and language, whereon the weight of such testimony almost wholly depends. Apply this rule to Peter Taylor. Admit him to be perfectly

honest in his intentions. But we find him to be an illiterate laborer, sometimes employed as a menial servant. Such a man is likely enough to have a distinct perception, and an accurate recollection, of such facts as he is accustomed to observe. But when he speaks of things out of the usual track of his business, his thoughts, and his observation; when he attempts, at such a distance of time, to relate very minute facts, in which he could not have taken any interest at the time; I ask, if we can implicitly rely on the clearness of his comprehension, or the exactness of his memory? Is it not highly probable that he may have misconceived at the time, or forgotten since, some of those circumstances, apparently minute, on which the character of the whole transaction frequently depends?

But if, in addition to this general reasoning, it should appear that the witness has, in relating other parts of this transaction, committed several mistakes, will it not be admitted that his recollection is too confused or imperfect to command our confidence or influence our decisions? This is the case with Peter Taylor. In his testimony, taken at Richmond, from which the part now used against Mr. Smith is extracted, he relates that, in October, 1806, Blannerhasset, on their return from Kentucky, pressed him to join Colonel Burr's expedition, and that he consented to go, provided he might take his wife and family; to which Blannerhasset did not consent. On his cross-examination, he states that his wife died in the September preceding. He also relates, in his direct testimony, that when the party left Blannerhasset's island he saw Dudley Woodbridge on the bank. And it is proved by Woodbridge himself, and by Morris B. Belknap, that Woodbridge was at that time in bed, and was not on the bank at any time during that night. These are small mistakes, but they prove that Taylor's recollection of minute circumstances, such as those which he details concerning Mr. Smith, cannot be relied on.

The first of these circumstances is, that Mr. Smith, on being informed that he was a servant of Blannerhasset, asked him to go up stairs. This, at first view, might have a suspicious appearance, as if Mr. Smith wished to make or receive some communications which required privacy. But when we learn that Mr. Smith had his office up stairs, where he usually wrote, and that he wished to write a letter by Taylor, the mystery vanishes, and the circumstance stands fully explained.

But he wrote a letter to Colonel Burr. No doubt, Mr. President, a letter from Mr. Smith to Colonel Burr, at that time, has in itself a suspicious appearance. But we are made acquainted with the contents of the letter, and the suspicion disappears. Instead of being a criminal correspondence concerning an enterprise in which they were mutually engaged, it is a letter informing Colonel Burr of the suspicions afloat concerning his plans and movements, and requesting an explanation, for Smith's own satisfaction. Nothing could be more natural than such a step, on the part of Mr. Smith. Colonel Burr had long been his acquaintance and friend, and recently his guest. He could not, therefore, be indifferent, either on Colonel Burr's account or his own, to the reports in circulation. These reports were founded on mysterious circumstances, which Mr. Smith supposed could be satisfactorily explained, and he wrote to obtain this explanation. No conduct could be more rational or more commendable. It was kind and candid towards his friend, and cautious towards himself.

The answer which he obtained was well calculated to quiet his alarms. His original letter is not in our power, but we have produced a copy of it. The answer, however, in the handwriting of Colonel Burr, is now in my hand. This letter is no after-thought; no subsequent contrivance for exhibition; for Mr. Broadwell has proved that he saw it delivered to Mr. Smith from the post-office. Let it be attentively read; let the situation of Colonel Burr and of Mr. Smith at that time be considered; and then let gentlemen candidly declare, whether they think that Mr. Smith, after receiving that letter, could regard Colonel Burr in any other light than that of an honorable man, indignantly repelling unfounded and injurious suspicions? [Here Mr. HARPER produced the original letter, the handwriting and authenticity of which were recognized by several of the Senators.]

But Mr. Smith inquired anxiously about the news, in the part of the country from which Peter Taylor had come. And what more natural, what more usual, than to inquire the news, especially in a time of alarm and apprehension? The operations of Colonel Burr were the subject of general conversation, and had excited no small alarm. The plot, whatever it was, appeared to thicken about Blannerhasset's island. Of course every one felt anxious to know what was going on at that place, and in its neighborhood. This circumstance, then, is of no moment; and the letter, the only ground of

suspicion, being fully explained, every thing is explained, except the last fact stated by Taylor, on which I will now bestow some attention.

Taylor states that Mr. Smith offered him something to drink, and “charged him not to go to any tavern, lest the people should be sifting him with their questions.” Sift him about what? Did Smith then suppose that Blannerhasset’s gardener and servant was possessed of the secrets of the conspiracy, which might be sifted out of him? Is it credible that so gross and absurd an idea could be entertained by a man of his understanding? Had he used precautions to prevent Blannerhasset himself from being sifted, there would have been some sense in it: but to suppose him afraid of the gardener’s being sifted about things, which if he knew them himself he must have been satisfied that the gardener could not know, is to impute to him more folly than those who charge him with a principal participation in Colonel Burr’s designs, would be willing to admit.

Will it be said that Smith was afraid of the gardener’s being sifted about the public occurrences in the island and its neighborhood, which a person in his situation might be supposed to know? I answer, why should he be so afraid? As those circumstances were notorious, the gardener could do no harm by telling them; and they would speedily be known at Cincinnati, whether he told them or not.

It is therefore impossible to suppose that Smith’s wish to keep Peter Taylor away from the taverns, if he really had such a wish, proceeded from any fear of disclosures which Taylor might make. It is much more probable that Taylor, whose recollection we have already found to be very imperfect, or to whom these little circumstances could not then have appeared to be of any importance, has fallen into a mistake in relating them, than that John Smith did so foolish a thing. He might, indeed, caution Taylor not to go to a tavern, for fear that he should get engaged in drinking, and delay his time—a thing which he knew was very likely to happen to a man in Taylor’s situation; and it is possible, that in order to keep him away, he endeavored to alarm him about something that might happen to him at the tavern. This matter, floating confusedly in Taylor’s brain, has at last assumed the form of this story about sifting, which has found its way into his testimony, and is now adduced to fix a charge of treason on John Smith.

And it is not a little surprising, if we are implicitly to believe Peter Taylor, that Mr. Smith, after having taken so much pains to keep him away from the taverns, for fear of his being sifted, should immediately have sent him to one to get his horse fed; thus exposing him, for the value of a gallon of oats, to the very danger from which he had just appeared so anxious to guard him. "He then showed me," says Taylor, "a tavern, and told me to go to get my horse fed by the hostler, but not to go into the house." Does not this prove that if Smith wished to keep Taylor out of the taverns, it was to preserve him from the temptation to get drunk and lose his time, and not to keep him out of the way of questions? Had the latter been his object, would he have sent this man to a tavern at all? Would he not have had the horse fed in his own stable, or sent him to the tavern by his own servant?

I here dismiss the story of Peter Taylor, Mr. President, presuming to believe that the only fact of any moment, the letter, is satisfactorily cleared up by the letter itself and Colonel Burr's answer; and that the other slight and trivial circumstances of suspicion are fully explained, or resolved into the confusedness and inaccuracy of Taylor's recollection. Certainly facts so doubtful in themselves, so inconsiderable, so capable of being misunderstood by the witness, ought not to have any weight in such a case as this.

The testimony of Major John Riddle comes next to be considered; in which he states that Mr. Smith told him that he knew more of Colonel Burr's plans than any other person in the State of Ohio, except one. Smith no doubt did, at that time, suppose that he knew a great deal about Burr's plans, for he had then received the letter in which Burr affects to explain them. It is not therefore surprising that he should make this remark to Major Riddle; but as Major Riddle was, at the time of this communication, the commander of a body of militia, stationed on the Ohio to oppose Burr's progress, it would have been most surprising if Smith, having a knowledge of Burr's real plan, had selected this officer as a person to whom to boast of it. This consideration discloses the true nature of Smith's communication to Major Riddle. He believed that he knew Burr's plans, and that they were innocent. He therefore told Major Riddle so; but had he really known them to be criminal, this officer was one of the last persons in the world to whom he would have disclosed his knowledge. Thus this casual communication to Major Riddle, which the malicious industry of Mr. Smith's enemies has

hunted up and adduced as a proof of his guilt, appears to be a most convincing proof of his innocence.

But Mr. Smith also told Riddle “that if Burr succeeded, he would prefer living at Cincinnati, to Philadelphia or New York, on account of business.” Succeeded in what? Why in the innocent plans, which Smith had just before told Riddle that he understood better than any person in Ohio, but one. These plans, as explained by Colonel Burr to Mr. Smith, were to form a strong and numerous settlement on the Washita, and in case of a Spanish war to invade Mexico, under the authority of the Government. And Mr. Smith, without more aid from the imagination than men usually obtain in such cases, might have brought himself to believe that in case these plans should succeed, they would give rise to a vast trade between the country on the Ohio, and the new settlement or conquests; that Cincinnati would become the centre of this trade, and that he, by reason of his connections and situation, would be able to obtain a large share in it. This might have been an airy speculation, but it was certainly an innocent case; for it is manifest that the plans on the success of which it was bottomed were innocent plans. Such Smith, at that time, supposed Burr’s plans to be; or he would not have made his knowledge of them a subject of conversation with Major Riddle.

That Major Riddle himself viewed the matter in this light, is evident from his conduct. He was stationed on the river, with the command of a detachment of militia, and had orders from his superior officer, General Gano, to collect as much information as possible respecting Colonel Burr’s plans and associates, and to report this to his General. Of this we are informed by a deposition of General Gano himself; who also states that Major Riddle did report to him, but made no mention of this conversation with Mr. Smith, nor alluded to Mr. S. in any manner. This conversation, therefore, must have been on the whole of such a nature, or accompanied by such circumstances, as to make it appear perfectly innocent to Major Riddle; who, otherwise, must have communicated it as matter of suspicion at least to his commander. Had we enjoyed the opportunity of cross-examining Major Riddle, these circumstances, and the rest of the conversation, would no doubt have been recalled to his recollection, and fully explained by him. In an ex parte deposition they have been forgotten, or omitted as unimportant—an additional and very striking example of the

importance of the privilege of being confronted with the witnesses against us, and of the danger of admitting any species of ex parte testimony.

I come now, Mr. President, to the testimony of Colonel James Taylor, who represents Mr. Smith as having, in a conversation with him and others at Cincinnati, expressed opinions favorable to a separation of the Union.

It is to be recollected that Dr. Sellman, the brother-in-law of Colonel Taylor, and a warm friend of the present Administration, was also present at this conversation. This clearly appears from Dr. Sellman's deposition of February fifteenth, 1808, compared with the testimony of Colonel Taylor. Dr. Sellman has stated this conversation with great accuracy: and he represents Mr. Smith as having not even expressed an opinion, much less a wish that the Union would be dissolved, but merely as having repeated the opinions of a writer, under the signature of the Querist, who had advocated a separation. Dr. Sellman tells us that there were five or six persons present, none of whom however he names, except Mr. Smith and Colonel Taylor. Let us take his own words:

“After attending some time to the conversation, I noticed that a reference was occasionally made to a publication, or publications, in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions, or those contained in that publication; for I was not present at the commencement of the conversation, though it did appear to me to be a detail of the opinions set forth in that publication. As it is now impressed on my mind, I believe, to more fully satisfy myself, I asked a question. Nor can I perfectly remember whether I intended the question particularly for Mr. Smith, or for both the gentlemen; but I believe it was intended for Mr. S. ‘Do you expect or apprehend an early separation of the Union?’ To which Mr. S. replied, ‘Not in my lifetime; and I hope, or pray to God, I may never live to see it, whether it takes place sooner or later.’ This declaration being perfectly satisfactory to me, I paid little or no attention to the conversation, and afterwards, I believe soon afterwards, left the place. I did not hear Mr. S., or any person present, advocate a separation of the Union; nor have I ever before or since that time, heard Mr. S. advocate a separation of the Union.”

Thus, then, we see, sir, that these two witnesses—men of equally fair and respectable character, and equal intelligence—differ entirely in their manner of understanding this conversation, in which they both took a part. Colonel Taylor understands Mr. Smith to have advocated a separation, and Dr. Sellman declares that he did not advocate it, but merely repeated the arguments of the Querist, and expressed his hope that a separation might never take place, and that, if it did, he might not live to see it. Now let me ask whether this contradiction, between two witnesses equally entitled to credit, does not leave the matter at least in doubt? Do not the scales hang in equilibrium? And in this state of doubt, can you decide in the affirmative? Does not the matter remain precisely as if there were no proof on either side; and can you decide affirmatively in the absence of proof? Is it not a fair and rational, as well as legal, presumption, that a man is innocent till his guilt appears; and can you say that Mr. Smith’s guilt appears, when the only witness against him is contradicted by a witness of equal credit?

But I go further, Mr. President. I contend that every presumption derived from the nature of the case, and the circumstances and situation of the

parties, is in favor of the statement made by Dr. Sellman. In the first place, it appears that Dr. S.'s attention was particularly drawn to the subject, and that he asked a question for the express purpose of ascertaining whether those gentlemen spoke their own sentiments, or merely repeated those of the writer. It is not therefore at all probable that he would forget, or so widely mistake, a fact, to which his attention was so strongly attracted. Had Mr. Smith advocated a separation, as is now supposed by Colonel Taylor, Dr. Sellman could not possibly have been in doubt on the subject, and his question would have been useless and silly.

Secondly, we find Dr. Sellman very accurate and positive in his recollection of Mr. Smith's answer. It is impossible to suppose him mistaken in a point which interested him so much, and must have made so strong an impression on his mind. This answer of Mr. Smith is utterly inconsistent with the statement of Colonel Taylor; for it is incredible, that after having advocated a separation to Colonel Taylor and General Findley, he should immediately, and in their presence, deprecate it to Dr. Sellman as a misfortune, which he hoped, if it must befall us, he should not live to see.

Thirdly, as Dr. Sellman was warmly opposed to a separation, it is most certain that his attention must have been very strongly arrested, and indeed his indignation excited, by such a conversation as Colonel Taylor attributes to Mr. Smith; which could not have escaped his attention, or so soon have been effaced from his memory.

It appears, in the fourth place, that there were several other persons present at this conversation. Dr. Sellman says five or six, though he does not name any of them. Colonel Taylor says that General Findley was present. Now let me ask, if such sentiments had been expressed, in such a company, by a man holding Mr. Smith's situation in the Government, would they not have attracted great attention, and given rise to much conversation? Would not the matter, in all probability, have come to the ears of some of those persons in Cincinnati who have been so active and persevering in collecting testimony against Mr. Smith? And would not some of those who heard this conversation, beside Colonel Taylor, have been called on to testify?

Again: Why should Mr. Smith, on this occasion alone, have made himself the advocate of dismemberment? Had he been disposed to preach this

doctrine, in the hope of making converts, would he have confined his exertions to this one time and place? There is no evidence, nor even accusation of his having broached the subject any where else; and if he had done so, it could hardly have escaped notice. Had he been a promoter of separation, would he have addressed himself solely to those persons whom he must have known to be most averse from it; or would he not have chosen for his hearers the weak and ignorant, who were most likely to be affected by the usual arguments in favor of such a measure?

All these difficulties are reconciled by supposing, with Dr. Sellman, that Mr. Smith merely repeated, without approbation, the opinions of the Querist; and that Colonel Taylor misunderstood him as stating his own opinions and wishes. He might even have gone further, and have expressed an opinion or apprehension of his own, that the Union would one day separate. That such a speculative opinion, or rather fear, is entertained by many among us, who most ardently deprecate the event, is notorious; and we find, from General Carberry's testimony, that Colonel Taylor himself is of this number. He told Gen. Carberry that he thought the Union would separate in twenty years, and Gen. C. reproved him for fixing even an imaginary period to its duration. It does not follow from this that Colonel Taylor wished for a separation; and, surely, what he innocently thought and expressed, as a matter of speculative opinion, or of fear and dread, Mr. Smith may have innocently thought and expressed in the same manner. That Colonel Taylor should mistake the nature and extent of these expressions; should understand them as arguments in favor of separation, is far more probable, than that Mr. Smith should have advanced such arguments, at such a time, and in such a company. When to this strong probability we add the positive testimony of Dr. Sellman, I cannot but confidently hope that it will remove every doubt on the subject. Had Mr. Smith advocated a separation of the Union at such a time, it would no doubt have justified strong suspicions of his being connected with the plans of Colonel Burr, which probably had dismemberment, in part at least, for their object. But I humbly trust, Mr. President, that the charge, without impeaching the integrity of so respectable a witness as Colonel Taylor, has been completely disproved.

The next circumstance alleged against Mr. Smith, as evidence of a connection with Colonel Burr, is the visit which he paid to Frankfort, in

Kentucky, in the autumn of 1806. This has been supposed to be a visit to Colonel Burr; but the testimony which we have adduced shows most satisfactorily, that it was a journey on public business. To this point our evidence is full and complete. Mr. Smith, then contractor for the army, was called on for very large supplies, on account of the additional force called to the Sabine. He found, on inquiry from his agents in Kentucky, whose depositions we have produced, and who are proved to be men of character, that purchases could be made there on very advantageous terms, for cash. He was not in cash, and therefore resolved to try whether he could sell or discount bills on Philadelphia. The best prospect of making this operation to advantage, and indeed the only prospect of making it at all, was with the Insurance Company at Lexington, which acts as a bank and exchange office. He accordingly went to Lexington for that purpose. On his arrival there, he heard, for the first time, as is fully proved, that Colonel Burr was on his trial at Frankfort, where most of the directors of this Insurance Company were attending the trial. He then resolved to go to Frankfort, for the purpose of sounding them on the subject. He arrived there in the evening, and stopped at a tavern, where he soon learned that Colonel Burr also lodged. In the course of the evening, he paid a short complimentary visit to Colonel Burr, saw some of the directors, learned from them that his object of selling or discounting bills could not be accomplished, and early next morning set out on his return home. All these facts are satisfactorily proved. I will not recapitulate the testimony, which is fresh in the recollection of the honorable members. But, I ask, what is there criminal or suspicious in this transaction? Surely, it would be a waste of time to employ it in the refutation of such a charge.

The next point to which I am to call the attention of this honorable House, is the bill drawn by Colonel Burr on Mr. Smith, in favor of Lieutenant Jackson. The drawing of this bill is adduced as a proof of connection between Colonel Burr and Mr. Smith. It admits of most satisfactory explanation in two different ways.

In the first place, it is notorious that Colonel Burr, in order to increase the number and the confidence of his partisans, was in the habit of representing himself as being connected with, and supported by, many persons, whose names he supposed would add some credit and weight to his enterprise; and who are known to have opposed his schemes, instead of being engaged in

them. Of this, the case of Commodore Truxton is a striking instance. In this case, we find that Colonel Burr was very desirous of engaging Mr. Jackson in his enterprise. Jackson was reluctant and doubtful. Mr. Smith was a man of note and consequence, whose name might well be supposed to have much influence on the mind of a youth like Jackson; and to draw a bill on him, for an object connected with the enterprise, was an indirect, but very significant mode of telling Jackson that he was engaged. To artifices of this kind, we know that this unhappy man had constant recourse. He, no doubt, sometimes deceived himself; but he very often attempted to deceive others, in hopes of drawing them into those schemes which have plunged him into irretrievable ruin.

Secondly, we know that Colonel Burr, when he set out from Cincinnati on his journey down the river, left a sum of money in the hands of Mr. Smith. This is proved to be usual with persons travelling in that country, and may have been done by Col. Burr, from motives of convenience, or with a view of giving himself the appearance of a connection with Mr. Smith, by drawing on him. But it was done. The money was in Mr. Smith's hands. Colonel Burr had drawn for it, in favor of Belknap, and he could not have known that Belknap's bill had been accepted, or would be so, before Jackson's should be presented. He had drawn in favor of Belknap, for his own use. He might, therefore, well have supposed that the money was still in Mr. Smith's hands, and that he had a right to draw for it.

But, in whatever way we account for his drawing this bill, it was his own act; an act which he had no right to do, beyond the money left by him in Mr. Smith's hands. To bring this act home to Mr. Smith, and make it evidence against him, it must be shown that he had given Colonel Burr authority to draw. In other words, had agreed to supply him with funds. Drawing the bill is nothing more than a declaration by Colonel Burr; and this declaration cannot affect Mr. Smith, unless he authorized it previously, or confirmed it afterwards by paying the bill. Colonel Burr drew a bill on me for \$1,500, which I had not authorized, and declined to accept. Because Colonel Burr thought fit to take this step, am I, therefore, to be considered as engaged in his schemes? Surely, his mere declaration cannot be allowed to criminate Mr. Smith. If it could, how extensively would the principle operate! How many of the best men in the country would be implicated!

There is another circumstance which strongly confirms the view which we give of this subject. When Colonel Burr directed Jackson to call on Smith with the bill, he does not tell him to apply to Smith for any information concerning his plans. On this subject, he referred him solely to General Tupper. So says Jackson, expressly. But why to Tupper, rather than Smith? Smith was a much more important man than Tupper; and if engaged in the scheme, was quite as capable of giving him information. He would have given it much sooner, too, for Tupper lived at Marietta, and Smith at Cincinnati; where Jackson, in his journey up the river, would first arrive. Why, then, I say, direct the application to Tupper, rather than to Smith? Sir, the reason is obvious. Colonel Burr, though he might have been willing to insinuate, by drawing the bill, that Mr. Smith was engaged, knew very well that he was not; and that, if he should direct Jackson to call on him for information, it would lead to detection. This fact alone proves, more strongly than a thousand witnesses, the innocence of Mr. Smith. Witnesses may misunderstand, forget, or prevaricate; but facts like this lay open the hearts of men, let us into their inmost thoughts, and speak a language which we can neither misunderstand nor disbelieve.

As to the bill drawn by Colonel Burr on Mr. Smith, in favor of Belknap, which Mr. Smith paid, and which forms the next head of accusation, I beg leave to read to the Senate the testimony of General Carberry. He states that, some time before the date of this bill, Mr. Smith informed him that Colonel Burr, finding it inconvenient to carry his money with him, when he went down the Ohio, left it at Cincinnati in the care of Mr. Smith; a circumstance which the same witness proves to be usual with persons travelling in that country, and on which it is impossible to lay any stress: for every body must admit that had the money been left for any improper purpose, Mr. Smith would have kept the knowledge of it to himself, instead of communicating it as he did to General Carberry. The bill drawn in favor of Belknap, and paid, might of itself, standing alone, furnish some ground of suspicion against Mr. Smith, as tending to show that he was in the habit of supplying Colonel Burr with funds; but when it comes to be connected with the deposit of money, which is proved by General Carberry, it is completely explained. For nothing was more natural than that Colonel Burr, having left his money with Mr. Smith, should direct it to be paid to a person to whom he owed it, or who was to employ it for his benefit.

I come now, Mr. President, to the seeming contradiction between the statement of Mr. Smith, and the testimony taken at Richmond on the trial of Colonel Burr, upon which I understand that some stress is laid. I say the “seeming contradiction,” because I feel confident of being able to show clearly that no real contradiction exists.

Mr. Smith, in his deposition before Matthew Nimmo, states that Colonel Burr, early in September, 1806, spoke of the settlement of his Washita lands. By the testimony given at Richmond in the trial of Colonel Burr, by Lynch, from whom those lands were purchased, it appears that the contract was not made with Colonel Burr till after the time when Mr. Smith states this conversation to have taken place. Hence it is inferred that Colonel Burr could not have spoken to Mr. Smith of his Washita lands.

But is it forgotten that Colonel Burr was in the habit of speaking of these lands as his, and of his intention of settling them, long before the period assigned by Mr. Smith for this conversation? This appears from the testimony of Commodore Truxton, delivered at Richmond on the same trial. He states, that in the summer of 1806, before Colonel Burr set out for the Western country, he spoke of his Washita lands, and of his plan of settlement. This he did either because he had then made an informal contract for those lands, and therefore considered them as his, though the formal contract of sale was not then made; or because he had then contrived this disguise for his projects, and merely made use of it to cover his real design, from Smith and others with whom he thus conversed. In either case he would speak of the land as belonging to him. Indeed, this whole argument against Mr. Smith rests on the idea that Colonel Burr cannot be supposed to have said any thing that was not true. Mr. Smith states that Colonel Burr spoke of his Washita lands, at a time when those lands in fact were not his. Therefore Mr. Smith must have stated an untruth. I believe that gentlemen will not, on reflection, find this argument very solid.

One more point, Mr. President, and I shall conclude an argument, by which I fear this honorable body has been, as I certainly have, very much fatigued.

It is said that there exists a strong similarity between the deposition of Elias Glover, and the statement made by Mr. Smith himself, on oath; whence it is inferred that the deposition must be true. I must confess that I

have not been able to discover this similarity; but if it really exist, it may be easily accounted for. Mr. Smith's statement was sworn before Nimmo, on the sixth of January, 1807. Nimmo, it appears, kept a copy, for on the next day he certifies a paper as being a true copy of the deposition sworn to before him by Mr. Smith. This he could not have done, unless he had kept a copy, with which to compare this paper. On the second of February following, Glover made this deposition, before the same Matthew Nimmo. Now we know that Nimmo was the confidential friend and adviser of Glover; and we may very easily conceive that, before Glover prepared his deposition, he had been indulged by his friend with a perusal of the copy of Mr. Smith's, and that to give the greater air of truth to this tale, he imitated the language as much as he could, and followed the statement of facts, as far as would suit his purpose.

Again: It is very probable that Nimmo wrote the deposition of Glover; and that, having Smith's deposition on the same subject fresh in his recollection, he fell insensibly into the use of the phrases. This is known frequently to happen. Or the resemblance may be merely accidental. And surely a resemblance between some phrases of these two depositions, which may have proceeded from accident, or from design in Nimmo or Glover, is very weak ground for inferring the truth of facts so utterly improbable as those stated by Glover, and so strongly contradicted by the great mass of testimony which we have produced; among which are the declarations of Glover himself, and the oath of his friend and confederate McFarland.

Having now, Mr. President, reviewed all the grounds on which the charge against Mr. Smith is rested; having, as I presume to hope, satisfactorily explained all the objections which have been urged against him; and presented all the facts fairly, and as clearly as was in my power, to the view of this honorable House; I am far from intending to trouble it with any arguments of mine on the subject. The enlightened individuals who compose it are much more capable than me of drawing the proper inferences from the testimony which has been laid before them, and on which they have bestowed a most patient and laborious attention: and to their judgment I cheerfully, and I may be permitted to say confidently, submit the cause of my client. They will doubtless bear in mind, that in this cause is involved his honor, dearer to him than property or even life; and that in pronouncing their decision they ought to be guided by testimony, and

not by conjecture; by the light of truth, and not by the dark and deceptive glimmerings of suspicion.

When Mr. HARPER had concluded, the consideration of the subject was further postponed.

FRIDAY, April 8.

Case of John Smith.

The Senate resumed the consideration of the first report of the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, as an alleged associate of Aaron Burr.

A short conversation arose on the course of proceeding, some diversity of opinion existing as to the propriety of deciding on the report generally, or on the resolution of expulsion with which it concludes. When on motion of Mr. FRANKLIN, it was agreed, without a division, to proceed to the consideration of the resolution, as follows:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States; and that he be therefor, and hereby is, expelled from the Senate of the United States.

Mr. ADAMS then rose and addressed the Senate, and after replying to the legal views presented by the defence, went on to say—

I have now finished my remarks upon that part of Mr. Smith's defence, which rests upon the supposed irregularity of the proceedings which have hitherto been sanctioned by the Senate, on this investigation, and upon objections against the principles maintained in the report of the committee. The question on the facts remains still to be discussed.

What, then, is the evidence of Mr. Smith's participation in the conspiracy of Aaron Burr?

Since the resolution now under consideration was first offered to the Senate, the state of the evidence has very considerably changed; in some respects favorably to Mr. Smith's defence; in others, to my mind, more inauspiciously. The testimony of Elias Glover, I consider as totally discredited; but since the deposition produced by Mr. Smith to the committee, with his answers to their queries, I gave very little credit to that witness, even before the accumulation of evidence against him, which Mr. Smith has since obtained, and recently exhibited to the Senate. Even then I thought the testimony of Glover could be of very little weight, otherwise than as it was confirmed by that of others. With the same exception, I now give it no credit at all. Stripped of the confirmation which it may receive, from admitted circumstances, from other testimony, and from Mr. Smith's own acknowledgments, I consider the case as if no affidavit of Glover belonged to it.

But if the credit of Elias Glover has been annihilated, that of Peter Taylor has been beyond all controversy confirmed. In his answers to the committee, Mr. Smith denied almost all the material facts, (and material in the highest degree they are,) attested by Peter Taylor, respecting him, on the trials at Richmond, and he declared his belief that he could prove, by witnesses of the first respectability, his want of character as a man of truth and veracity. Since then, Mr. Smith has had the fullest opportunity to cross-examine the man himself, and to take testimony to his general character. And what is the result? The general character of Peter Taylor has risen purified from the furnace. In every witness of whom the question was asked, he had found a panegyrist. One or two mistakes of circumstances perfectly immaterial to Mr. Smith, or to any other person implicated, have been discovered in a lynx-eyed scrutiny of his testimony at Richmond; and the candor with which he instantly acknowledged them, and the firmness with which on Mr. Smith's inquiries, he persevered in asserting all the important facts of his narrative, have given to his evidence a much greater weight than it could claim before. So decisive indeed is it, that Mr. Smith's counsel now solemnly admits those facts which Mr. Smith had as solemnly denied in his answer; and argues with his usual ingenuity to dispel their effect.

Of Colonel James Taylor, the testimony has been in one respect counteracted, and in another much strengthened. His character was so well

known, and so universally respected, that no attempt could be made to assail it, other than on the basis of a supposed mistake. This mistake, Mr. Smith, in his affidavit, made before he left this place, asserted that he expected to prove by General Findley; the only third person in hearing, according to Colonel Taylor's statement, when the conversation, occasioned by the *Querist* occurred. Mr. Smith returns without the deposition of General Findley; but in its stead he brings a deposition of his friend Dr. Sellman, and also a private letter to him from the same Dr. Sellman, intimating that General Findley could not confirm Colonel Taylor's testimony; but with a broad insinuation that General Findley would not give that deposition in favor of Mr. Smith, which he ought, for fear of losing his office. On the fact of this particular conversation, then, we must balance the weight of testimony apparently contradictory. It is barely possible that the conversations mentioned by the two witnesses, were not the same, but held at different times; and as evidence seemingly variant between two persons of character, ought always, if possible, to be reconciled, perhaps the fair and candid construction would be that. If, however, it was the same conversation, we must be reduced to the necessity of choosing which of the two witnesses has been most correct in his recollection. I cannot but consider the express testimony of Colonel Taylor, confirmed by the silence of General Findley, as that which is best entitled to our belief. Colonel Taylor, we know, was on this occasion a most reluctant witness; he had been the friend and intimate acquaintance of Mr. Smith; his principle obviously was to say as little as possible, consistent with his obligations to speak the truth. The impressions on his mind did not stand singly upon his judgment; he had compared them with those of General Findley, and by that comparison had found them confirmed. They had not slumbered upon his memory for a length of time, so as to lose their distinctness. He had communicated them to the Secretary of State in his letter of the 13th of October, 1806, written a very few days after the conversation was held. An extract of this letter is in evidence before us, and it tallies exactly with Colonel Taylor's testimony given to the committee and before the Senate. The impartiality of Colonel Taylor, his candor, his tenderness for Mr. Smith, the excellency of his general character, and his appeal to the recollection of another respectable witness in confirmation of his own, all combine to give his testimony the highest claim to our belief. With Dr. Sellman I have no personal acquaintance, and can, therefore, speak of him only upon the

evidence exhibited here on this occasion. He appears at least, in the character of a very ardent partisan of Mr. Smith. In the newspapers transmitted to us, I see his name at the foot of several very violent publications, which have not been read, but which show that fifteen months ago he had in some sort staked his own character upon the reputation of Mr. Smith. A number of depositions concur to prove that he, in company with a man who has since been convicted of an atrocious robbery, was at the head of a party who burst open the doors, and broke in upon a meeting of private citizens assembled to pass certain resolutions unfavorable to Mr. Smith, and threatened them with a coat of tar and feathers. The insinuation in his private letter to Mr. Smith, against the fair fame of General Findley, bears no distinguishing features of an ingenuous mind. I cannot believe that General Findley, a man of honorable consideration in society, holding an important public trust, could have been actuated by such unworthy motives in declining to contradict Colonel Taylor's deposition. Could he have done it consistently with truth, he had every inducement that could operate upon generous feelings to do it. His contradiction would not have impaired the reputation of Colonel Taylor. It would not have induced a probability that he was mistaken. But to Mr. Smith it was of the first importance—his reputation in the world, his seat in the councils of the nation, the comfort of his life, the peace and happiness of his family, were all at stake, and called in the most imperious manner for the testimony of a man, who, by merely declaring that he had understood his meaning differently from the witness appealing to him, might have removed from him the burden of this imputation. It is impossible to believe that he was deterred from such an act of signal justice, by the base and contemptible fear of losing his office.

But, in addition to the evidence exhibited before the departure of Mr. Smith from this place, a multitude of new depositions are now produced; most of them obtained by himself, for the purpose of his own exculpation, and two or three furnishing strong additional circumstances against him; even those which he brings for his own discharge, have disclosed a fact of the highest import, in my estimation, very unfriendly to his defence. I mean his studious avoidance of appearing before the grand jury at Frankfort, in Kentucky, on the second complaint against Burr, in December, 1806. From the fullest consideration which I have been able to bestow upon the whole mass of this additional testimony, I have not discovered in it any ground sufficient for the rejection of this resolution. I still am convinced that it

ought to pass. The most material of all the witnesses, to demonstrate that conduct of Mr. Smith, which, in my mind, imposes upon the Senate the necessity of coming to this decision, is *himself*. It is the coincidence between his course of conduct and that of Mr. Burr; his own tardy acknowledgments; his own alternate denials and admissions; his own consciousness of participation in unlawful proceedings, and the testimony of his own witnesses, which constitute the most irresistible evidence against him. The other witnesses and the circumstances of the times, chiefly serve to corroborate and elucidate, what he and his witnesses show, in feeble characters, and indistinct obscurity.

To exhibit this coincidence of conduct between Mr. Smith and Mr. Burr, in that light of which it is susceptible, it may be necessary, Mr. President, to review the transactions of Col. Burr, in relation to these projects, from the time when he descended from that chair, in which you now sit, until the arrival of the President's Proclamation at Cincinnati, on the 13th of December, 1806; and to compare the conduct of Mr. Smith, contemporaneous with the several events of public notoriety, and with the facts testified by the witnesses, in the volume of evidence taken at Richmond, and transmitted to Congress by the President of the United States, with the purposes and views of Mr. Burr, at the several stages in the progress of this conspiracy.

On the 3d day of March, 1805, the term of Mr. Burr's career as Vice President of the United States expired. How long, before that time, he had been revolving in mind his designs upon the western division of the Union, we need not inquire; but that they were then entirely new, there is every reason to believe. It is known to many, perhaps to all the members of this body, who were in the Senate at the time, that Mr. Burr, during that period, paid a very studied attention, and professed a peculiar respect to Mr. Smith. Very soon after this, in the spring, summer, and autumn of 1805, Mr. Burr was traversing the Western States and Territories, down to New Orleans, busily engaged in making every preparation possible, at that time, for the campaign of the ensuing year; even then we find, from a great variety of testimony, that Cincinnati, Mr. Smith's place of residence, was a spot where a great portion of Mr. Burr's exertions had been made; even then, from the depositions produced by Mr. Smith, it appears that a Western empire, with *Cincinnati* for its capital, had been fully disclosed to William McFarland.

This importance of Cincinnati may serve to explain Mr. Smith's observation to Major Riddle, that, if Burr succeeded, he would prefer living at Cincinnati, rather than at Baltimore or Philadelphia.

In the winter of 1805, Mr. Burr returns, to spend his time at this place, and at Philadelphia. Here it was that he made his overtures to Mr. Eaton, from whose testimony I must ask your permission, sir, to read two or three extracts, showing how far his projects were then matured:

“Col. Burr now laid open his project of revolutionizing the territory west of the Alleghany; establishing an independent empire there—New Orleans to be the capital, and he himself to be the chief; organizing a military force on the waters of the Mississippi, and carrying conquest to Mexico.”

“He stated to me that he had in person (I think the preceding season) made a tour through that country; that he had secured to his interests, and attached to his person, the most distinguished citizens of Tennessee, Kentucky, and Territory of Orleans; that he had inexhaustible resources and funds; that the army of the United States would act with him; that it would be reinforced by ten or twelve thousand men from the above-mentioned States and Territory.”

“He mentioned to me none, as principally and decidedly engaged with him, but General Wilkinson, a Mr. Alston, who, I afterwards learned, was his son-in-law, and a Mr. Ephraim Kibby, who, I learned, was late a captain of rangers in Wayne's army.” “Of Kibby, he said, that he was brigade major in the vicinity of Cincinnati, (whether in Ohio or in Kentucky, I know not,) who had much influence with the militia, and had already engaged a majority of the brigade to which he belonged, who were ready to march at Mr. Burr's signal. Mr. Burr talked of this revolution as a matter of right inherent in the people, and constitutional; a revolution which would rather be advantageous than detrimental to the Atlantic States; a revolution which must eventually take place; and for the operation of which the present crisis was peculiarly favorable; that there was no energy, to be dreaded, in the General Government, and his conversations denoted a confidence that his arrangements were so well made that he should meet with no opposition at New Orleans, for the army and the chief citizens of that place were ready to receive him.”

Such, then, was the plan of Mr. Burr, and such, by his declarations, the state of his preparatory measures in the winter of 1805-'6; and I have read the part of his statement relative to Major Kibby, (and I mention it now, lest I might hereafter forget it,) because it may serve to explain what Mr. Smith said to Major Riddle just after the arrival of the President's Proclamation at Cincinnati; that he (Smith) knew more of Burr's plans than any man in the State of Ohio, except *one*. Here, it seems, there was one man, who knew them very sufficiently; and it appears, by the depositions produced by Mr. Smith, that William McFarland also knew a great deal of them.

Let us follow Mr. Burr to Philadelphia, and notice some particulars of his conversation there with Commodore Truxton, in July, 1806. I shall read from the Commodore's testimony only those parts which may serve best to connect the chain of events, and to show the consistency of Burr's purposes. He had previously, in the winter, talked with that gentleman about land speculations, but in July, 1806, "he observed, (says the Commodore,) that he wished to see, or to make me (I do not recollect which) Admiral; for he contemplated an expedition into Mexico, in the event of a war with Spain, which he thought inevitable. Mr. B. then asked me if I would take the command of a naval expedition. I asked him if the Executive of the United States was privy to or concerned in the project. He answered me emphatically that they were not. I told Mr. Burr that I would have nothing to do with it." "Mr. Burr observed that, in the event of a war, he intended to establish an independent Government in Mexico; that Wilkinson, the army and many officers of the navy, would join. I replied, that I could not see how any of the officers of the United States could join."

"Mr. Burr asked me if I would not write to General Wilkinson, as he was about to despatch two couriers to him. I told him that I had no subject to write on, and declined writing."

This conversation was about the last of July; and I must now recur to one or two passages in the famous ciphered letter of Gen. Wilkinson. In the copy I have before me, it has no date,^[51] but the formal letter of introduction, which Mr. Swartwout carried with it, is dated 25th July, 1806. It was, then, written on or near the same day when Mr. Burr had his last conversation with Commodore Truxton.

This letter indicates that Mr. Burr was on the point of departure for the execution of the enterprise, which it declares he had actually commenced; that detachments were to rendezvous on the Ohio, 1st November, and to move down rapidly from the falls on the 15th of November, with the first five hundred or one thousand men, in light boats, constructing for that purpose.

It adds: "Burr will proceed westward, first August, never to return; with him goes his daughter; the husband will follow in October, with a corps of worthies."

Finally, the letter contains also this passage: "Already are orders to the contractor given to forward six months' provisions to points Wilkinson may name; this shall not be used until the last moment, and then under proper injunctions."

Whether Mr. Burr did actually leave Philadelphia on the 1st of August, as his letter announces, I am unable to collect from any of the testimony that has fallen under my observation; but on the 21st of August he had reached Pittsburg; and there he invited himself to dinner the next day with Col. Morgan, in a manner precisely similar to that in which he so shortly afterward invited himself to pass five or six days at the house of Mr. Smith. At Colonel Morgan's, he dined and lodged one night. I shall not recur specially to the remarkable testimony of Colonel Morgan and his son, for it must be fresh in the recollection of every one who hears me. I shall barely notice that, during his short visit here, he broached all his doctrines respecting the imbecility of the present Administration, and the right, the interest, and the provocations which the Western people had to separate them from the Atlantic States. He was here commencing that mode of operation for effecting the dismemberment of the Union, which, in his subsequent letter of the 26th October to Mr. Smith, he states to be the only mode in which that object could be accomplished. His experiment did not commence in the right place. His attempt to tamper with men of honor and sentiment, met the reception it deserved. He left the house before breakfast the next morning.

On the 1st of September he had descended the river and was upon Blannerhasset's island; and, on the 4th of the same month, appeared in the newspaper, at Marietta, the first number of the *Querist*, which was followed

by two or three more. I have been unable to obtain a copy of these papers, but the substance of their contents is well known. Their object was to prepare the minds of the people, in that part of the country, for a separation from the Atlantic States; they dilated upon all the topics so familiar in the mouth of Mr. Burr; and so much were they identified with his doctrines, that Dr. Wallace, one of the witnesses at Richmond, with whom Burr had conversed on these subjects in the summer of 1805, declares that, on his first perusal of these papers, he drew from their internal evidence the conclusion that the ideas were Burr's, and the language Blannerhasset's. Blannerhasset was, indeed, the writer, and precisely at the same time and immediately after, was ranging the country with the activity and spirit of a recruiting officer—promising the plunder of banks at New Orleans and of Mexican mines—settling the hereditary succession of the fancied Crown; and teeming with embassies and empires.

On the very same day that the first number of the “Querist” appeared at Marietta, the 4th of September, Mr. Burr, by the pencilled note, invites himself to the house of Mr. Smith, in Cincinnati, where he is hospitably received and entertained five or six days. During this time, he spends an evening at William McFarland's, where he holds exactly the same kind of conversation about the impotence of the Government, the rights and wrongs of the Western country, and their inducements to separate from the rest of the Union. About the 10th of September he leaves Mr. Smith's; proceeds to Lexington, in Kentucky, where he arrives and concludes his contract for the Washita lands, before the close of that month.

Mr. Smith, in his answers to the queries of the committee, (an answer which he offered to make upon oath,) says that, on this visit, Colonel Burr tarried with him five or six days, and then progressed on his journey: for what he next adds, I must refer to his own words:

“But he did not disclose to me ANY object he had in view. Meanwhile the voice of suspicion and jealousy was raised against him, and although I knew as little of his objects in visiting the Western States as either of you, still, as I had entertained him in conformity to the customs in which I was reared, and according to my own sense of propriety, I felt uneasiness and jealousy in consequence of these reports.”

The character of Colonel Burr is now generally well understood; and, when combined with the circumstances I have just mentioned, and with others which I am about to mention, it is difficult to conceive that his visit to Mr. Smith at this time should have been made without design. For the projects he contemplated, and which he was then attempting to carry into execution, Mr. Smith was a man of the very first importance. As a Senator of the United States, it is obvious how useful his services might become, in his attendance here, during the session of Congress. As a contractor for building gunboats, and for supplying the army with provisions, he could, without exciting suspicion, and without danger of detection, be of the greatest use in performing the same services, and furnishing for Mr. Burr the same kind of supplies. As a man of influence and consideration in the State to which he belonged, his aid in propagating the doctrines of disunion, and in contributing to the accomplishment of that end, were not less desirable. The motives of profit and of distinction which might be held up to his expectations, were of a nature as persuasive upon a mind, which could be as susceptible of receiving them, as those of making Truxton an Admiral, or Eaton a General. Is it, then, credible that, while Burr was proceeding upon his business, with all the activity and energy of his character; while his boats were building and his provisions collecting; while he was obtruding almost upon every stranger and transient acquaintance, that he found in his way, the opinions which were suitable to his purpose—while Blannerhasset was filling the newspapers with rebellion, and engaging men for war, under his standard—is it credible, I say, that Burr should have solicited entertainment under the roof of Mr. Smith, and obtained it, for five or six days, without so much as intimating to him any one of his purposes? Is it credible that, in the course of that visit and in the intimacy between the parties, which the whole transaction so strongly implies, amidst the violent suspicions with which Mr. Burr, even then, was notoriously surrounded, there should never have occurred to the friendly solicitude of Mr. Smith a single inquiry which would have led to a disclosure, real or pretended, of the object of Mr. Burr's visit, and of his progress through the Western States? Should this be deemed, under all these circumstances, a credible thing, I then ask, how Mr. Smith's asseveration that Burr did not then disclose to him ANY object he had in view, is to be reconciled with Mr. Smith's affidavit of 6th January, 1807, in which he

says, "Burr did then speak to him about his project of settling a large tract of his Washita lands."

It is one of the peculiarities attending Burr's conduct, through the whole of his conspiracy, that he had always an ostensible object, to serve as a mask to the real design. One of the difficulties and inconveniences of this method of transacting business is, that in exhibiting the purpose, which is meant only for show, it is apt to be materially variant from itself at different times. It is often variant, not upon trivial incidents, with which the best human memory cannot be accountable for perfect accuracy, but upon the most essential part of the story. It is inconceivable to me, that, at that precise period of Mr. Burr's experiment upon the Western States, he should thus have been, at his own desire, the guest of Mr. Smith, five or six days, without making to him any communication of his real views, while he was so liberally disseminating them to others far less intimate to his acquaintance, and far less important to his purposes—and when we find Mr. Smith's own narrative, upon this very point, so variant from itself at different times, how can we suppress the belief that the real story was not that which could safely be told?

The conversation to which Colonel James Taylor attests, occurs within a very few days after the departure of Mr. Burr from Mr. Smith's house, at this period. The subject of that conversation was the separation of the States. Mr. Smith takes pains to circulate that *Querist*, which was to scatter the seeds of disunion throughout the Western country. Mr. Smith adopts its arguments as his own; and adds others of the same tendency to assist its effects. Mr. Smith contends that these doctrines, however obnoxious then, *in less than two years would become* ORTHODOX. Is there no knowledge and participation in Burr's projects on the face of these expressions? We are told they were speculative opinions; and we hear complaints that a man should be held accountable for his political speculations. But when speculative opinions are associated with military preparations, and a formidable enterprise in the very process of execution, then, sir, they assume a very different complexion from that of free and legitimate discussion. Speculative opinions, at all times, have such an influence upon practice, that I hold it not very justifiable in a man vested with public trust, to speak in terms of approbation, of a dismemberment of this Union, upon any contingency, or at any distance of time. We ought to deprecate this greatest

of all possible calamities, for our posterity as well as for ourselves. Yet, I acknowledge, that even these dangerous opinions, when merely speculative, may be expressed without evil intentions, and ought not to draw the weight of public censure upon the person using them, in the form of a decision of this body. It is the time, the occasion, the circumstance, upon which this speculative opinion was divulged, which display it as evidence of Mr. Smith's participation in Burr's conspiracy against the Union.

We have followed the course of events until the close of September, about which time Blannerhasset follows Mr. Burr into Kentucky. In the course of that and the following month, the preparations and conversations of both these personages, the numbers of the *Querist*, and certain publications of an opposite character, which appeared in another newspaper, called the *Western World*, had roused the suspicions, the anxieties, the resentments of the people in that part of the Union, to the highest degree. About the 20th of October, Mrs. Blannerhasset found it necessary to despatch Peter Taylor from the island, into Kentucky, for the purpose of warning Burr that he could not, with personal safety to himself, return to the island. Taylor was to go first to Chilicothe, then to Smith's, at *Cincinnati*; and there he was to be told where Burr and Blannerhasset were to be found. At this time it was no longer safe to inculcate the disunion of the States. The people there, I thank God, were not to be deluded by Mr. Burr's mode or by any other mode of effecting a dismemberment. They were true to themselves and to their country. The public odium had arrived at such a pitch, that it might not be advisable for Mr. Smith to appear so intimate with Burr, as to know where he was to be found, and it might also be necessary for him to have the ostensible object of Mr. Burr's purposes ascertained. For, although he says that, when Burr was with him in September, he had talked about the settlement of the Washita lands, yet, at that time, the purchase was not made.

This view of the state of things at that time will explain the particulars of Peter Taylor's testimony. When he arrives at Mr. Smith's, and inquires for Burr and Blannerhasset, Mr. Smith answers, that he knows nothing of either of them. That Taylor must be mistaken; that was not the place; but finding Taylor to be Blannerhasset's servant, he tells him, "he expected they were at Lexington, at the house of a Mr. Jourdan." Now, sir, what does this denial, in the first instance, that he knew any thing of them, and this pointing so

precisely afterwards to the very house where they were to be found, indicate? The counsel for Mr. Smith says, that Taylor was sent there for Mr. Burr's greatcoat; nothing of that appears in the evidence. But, from Taylor's declaration, it appears that he was sent there to ascertain where Burr and Blannerhasset were to be found; that Mr. Smith, at first, denied knowing where they were, and afterwards told him the very house in Lexington where he was to go for them. As the sole object of Taylor's going to Mr. Smith, was to inquire where Burr and Blannerhasset were, and as, before he left the house, Mr. Smith gave him a letter for Burr, under *cover*, to Blannerhasset, it is impossible to doubt the correctness of Taylor's testimony in that respect; that Mr. Smith told him where to go. The inference is irresistible. This accurate knowledge where they were, and this express denial of that knowledge to a man whom he supposed a stranger, is a proof that, even then, Mr. Smith knew much more than he was willing to avow.

The remainder of Peter Taylor's story, so far as it respects Mr. Smith, all concurs to establish the same fact. Mr. Smith's anxious inquiries for the *news*; for what was passing; for what was *said*, about General Wilkinson; the charge to Peter Taylor not to go to a tavern, lest he should be sifted with questions; and, finally, the letter, professedly to Blannerhasset, but enclosing one to Mr. Burr, all combine to exhibit a state of mind agitated and alarmed, studious of concealment, and fearful of detection.

Above all, consider the inquiry, what was *said* about General Wilkinson. What could have associated, in a mind utterly ignorant of all Burr's projects, inquiries about Wilkinson with the then situation of Burr and Blannerhasset? Recollect the passage of the ciphered letter: "Already has the contractor orders to furnish six months' provisions at the points Wilkinson shall name; this shall be used only at the last moment, and then under proper injunctions."

Mr. Smith has, at one time, denied all the material facts attested by Peter Taylor; and he attempted to disgrace his character; so little has he been borne out by his own evidence, now produced, that he formally admits the very facts he had denied. The same course has been pursued with regard to Colonel James Taylor's testimony. Sir, this treatment of the witnesses is not calculated to inspire confidence in the solidity of Mr. Smith's defence.

Unfounded attacks upon the character of a respectable witness, not only confirm, but aggravate the weight of his testimony.

If, however, the testimony of Peter Taylor needed confirmation, it would be found in the substance of the letter itself, of which he was the bearer, and of the answer to that letter. To these two documents I now ask the particular attention of the Senate. The letter is dated 23d October, 1806, and says: "I beg leave to inform you that we have, in this quarter, various reports prejudicial to your character. It is believed by many that your design is to dismember the Union; although I do not believe that you have any such design, yet I must confess, from the mystery and rapidity of your movements, that I have fears, let your object be what it may, that the tranquillity of the country will be interrupted, unless it be candidly disclosed, which I solicit, and to which, I presume, you will have no objection."

Now, what is the solicitude manifested in this letter? It is not so much that Mr. Burr's object should be declared, *not* to be the dismemberment of the Union. It asks for something which may be *told*, to prevent the tranquillity of the country from being interrupted. And it very explicitly intimates what must be *denied*.

It is an answer of a very peculiar kind which appears to be wanted; an answer contained in the letter itself. A voucher is wanted to deny the project for dismembering the Union; and to speak with certainty of the ostensible object. This was the settlement of the Washita lands. Mr. Smith, in one of his narratives, says that Burr had talked with him on this subject in September before; but the purchase of the lands was not then concluded. It was uncertain whether that could now be spoken of as the professed purpose, and Mr. Smith's letter was well adapted to obtain that certainty.

Mr. Burr's answer appears perfectly to have understood the object of these inquiries. Much has been said by Mr. Smith about the apparent *frankness* and *candor* of this letter, and on this document he relies, with great emphasis, as a complete justification of all his subsequent confidence in Mr. Burr. To me, sir, it bears a very different aspect. Considering it in the light of an answer to the solicitude of a man altogether unconscious of Mr. Burr's real designs, and aware of the extremely suspicious appearances in which the conduct of Mr. Burr was involved, this answer appears to me

calculated for any thing rather than to restore confidence. To manifest its real character, let us attend to some of its most remarkable passages. Mr. Burr says:

“If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it. I never harbored or expressed any such intention to any one, nor did any person ever intimate such design to me. Indeed, I have no conception of any mode in which such a measure could be promoted, except *by operating on the minds of the people*, and demonstrating it to be their interest. I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you have heard from me in public companies, at Washington and elsewhere, *and in which I think you concurred.*”

At this passage there are the following notes by Mr. Smith:

“J. Smith has heard Colonel Burr and others say, that in fifty or a hundred years, the Territory of the United States would compose two distinct Governments.”

I return to the letter:

“I have no political view whatever. Those which I entertained some months ago, and which were communicated to you, have been abandoned.”

Here is another note by Mr. Smith:

“J. Smith presumes that Mr. Burr refers to an invitation to settle in Tennessee, of which he heard him speak.”

The letter proceeds:

“Having bought of Colonel Lynch four hundred thousand acres of land on the Washita, I propose to send thither, this fall, a number of settlers—as

many as will go and labor a certain time, to be paid in land, and found in provisions for the time they labor—perhaps one year. Mr. J. Breckinridge, Adair, and Fowler, have separately told me that it was the strong desire of the Administration that American settlers should go into that quarter, and that I could not do a thing more grateful to the Government. *I have some other views, which are personal, merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish. If these projects could any way affect the interests of the United States, it would be beneficially; yet, I acknowledge that no public considerations have led me to this speculation, but merely the interest and comfort of myself and my friends.*”

And, finally, there is the following marginal admonition:

“It may be an unnecessary caution, but I never write for publication.”

Thus you see, sir, that the design of separating the States is denied in terms explicit, as Mr. Smith’s letter had desired; but, with how much regard to truth, this volume of evidence at Richmond has sufficiently proved. The purchase of the Washita lands is announced to have been completed. Thus far, the answer is precisely such as the letter seemed to ask; but all the rest is darkness and oblivion. The caution against publication was itself not naturally suited to inspire confidence. It seems to say, You may show this letter, but you must not publish it. The other allusions are so obscure—so unintelligible—that Mr. Smith has found it necessary to make them clear by explanatory notes. There is a reference to former conversations on the subject of a separation of the States, in which Mr. Smith is *reminded that he concurred* with the sentiment which Mr. Burr had expressed. Mr. Smith’s note intimates that this refers to opinions about the separation of the Union in some fifty or a hundred years. But, if Burr’s speculations in public companies postponed to so distant a date the event, which he was projecting, to Eaton, to the Morgans, to Blannerhasset, to McFarland, and Glover, he had been urging the propriety of their accomplishment at a much earlier day. And from the testimony of Colonel James Taylor, it would seem that the concurrence of sentiment for which Mr. Burr refers to the consciousness of Mr. Smith, extended no less to the practical projects than

to the speculative opinions of Burr—to the separation of the States within five or two years rather than to the dismemberment of the next century. The mode, says Mr. Burr, for promoting such a measure would be by operating on the minds of the people, and demonstrating it to be their interest. Now this was the very mode in which Mr. Burr and Blannerhasset under him had been attempting to promote the measure. Burr had been so operating at Cincinnati the year before this. And William McFarland at least had persuaded, that Cincinnati was to be the capital of the Western empire. He had been so operating all the way at least from Pittsburg, in August, and until he left Cincinnati in September, only six weeks before these letters were written. The *Querist* was one of these instruments of the *mode* for operating upon the minds of the people. And when the *Querist* first appeared, Mr. Smith had expressed his approbation of its contents. Is not this the sort of concurrence to which Mr. Burr alludes rather than that of speculating upon the destinies of a future age? The rest of the letter is equally obscure. Mr. Burr's abandonment of a project for settling in Tennessee requires the explanation of a note from Mr. Smith; and that note is conjectural. Mr. Burr has some other views, merely personal, which he can only communicate *personally*. If they could affect the interests of the United States, it would only be beneficially; but they were prompted by no public considerations, but merely for the interest and comfort of himself and his friends.

Mr. President, I ask again the attention of the Senate to this remarkable sentence. Did Mr. Smith, on receiving the letter, understand this sentence, or did he not? If he did, where is the whole defence which he has now set up? If he did not, was this paragraph calculated to inspire his confidence? Was it calculated to remove suspicions? Projects which could only be *personally* disclosed! Projects which might affect the interests of the United States! Projects prompted by *no public* considerations! but merely by personal interest for himself and *his friends*! And was this to remove suspicion from the mind of a Senator of the United States? Was this an answer to calm anxieties and restore confidence? Is not the very language of it suspicious? Equivocal? Ambiguous? I ask every member of this Senate to put the question to himself. Had you been at that time in the midst of the scene of Burr's operations, and had you received such an answer to a letter of solicitous inquiry, would it not have increased instead of allaying your alarm? Would you not have seen in this paragraph a concealment suspicious

in itself—darkened still further by expressions of dangerous import and of doubtful legality? Strange indeed must be the texture of that mind to which this answer could restore unqualified confidence in the writer!

But, sir, if Mr. Smith had seen nothing in this letter to startle confidence, instead of composing it, was there nothing in the course of public events at that time, which might and should have aroused him to more than suspicion? Mr. Burr's letter was dated on the 26th of October; within ten days from that time, that is, on the 5th of November following, the District Attorney of the United States in Kentucky filed a complaint against Mr. Burr, for a violation of the laws of the United States, in setting on foot an expedition against Mexico, which complaint I beg leave to read—

“J. H. Daviess,^[52] attorney for the said United States, in and for said district, upon his corporal oath, doth depose and say, that the deponent is informed, and doth verily believe, that a certain Aaron Burr, Esq., late Vice President of the United States, for several said months past hath been and is now engaged in preparing and setting on foot, and in providing and preparing the means for a military expedition and enterprise within this district, for the purpose of descending the Ohio and Mississippi therewith, and making war upon the subjects of the King of Spain, who are now in a state of peace with the people of the United States, to wit: on the province of Mexico, on the westwardly side of Louisiana, which appertain and belong to the King of Spain, a European prince, with whom the United States are at peace.

“And said deponent further saith, that he is informed, and fully believes, that the above charge can, and will be fully substantiated by evidence, provided this honorable court will grant compulsory process to bring in witnesses to testify thereto.

“And this deponent further saith, that he is informed, and verily believes, that the agents and emissaries of the said Burr, have purchased up, and are continuing to purchase large stores of provisions as if for an army, while the said Burr seems to conceal in great mystery, from the people at large, his purposes and projects: and while the minds of the good people of this district seem agitated with the current rumor, that a military expedition against some neighboring power is preparing by said Aaron Burr.

“Wherefore, said attorney, on behalf of said United States, prays that due process issue to compel the personal appearance of the said Aaron Burr in this court, and also of such witnesses as may be necessary in behalf of the said United States; and that this honorable court will duly recognize the said Aaron Burr, to answer such charges as may be preferred against him in the premises. And in the mean time, that he desist and refrain from all further preparation and proceeding in the said armament within the said United States, or the territories or dependencies thereof.”

It will be remembered that on this complaint a grand jury was summoned, and on the 8th of November discharged, because Davis Floyd, whom the attorney deemed a material witness, and whom we now know to have been one of Mr. Burr’s principal associates, was absent. We all know what the effect of this transaction was here. Certainly not of inspiring *confidence* in those who were *ignorant* of Mr. Burr’s real designs.

No, sir! The confidence which this abortive attempt to bring Mr. Burr to justice inspired, was in himself and associates. He wrote immediately to Blannerhasset not to apprehend any danger from this prosecution, (which his friends then and so long after called a persecution,) but *delay* in the settlement of the lands; and one fortnight after—that is on the twenty-third day of November—we see him again at Cincinnati, making the promised personal and confidential communication to Mr. Smith, which he had not dared in a letter of 26th October to commit to paper—and no wonder; for it is a complete and unquestionable acknowledgment of the identical crime for which Mr. Burr had been summoned into court at Frankfort, not twenty days before, and discharged merely from the failure of a witness to attend. But it is not merely a confession of *that* guilt, it imports much more; and the very terms used by Mr. Smith, relating it, in his affidavit of 6th of June, 1807, show that he understood it as importing more. Mr. Burr tells Mr. Smith, that his design “is not dishonorable, or *inimical* to this Government;” he “repeated that his object was *not hostile to the people of the United States or dishonorable to himself*,” and that he would be “the *best neighbor this country ever had*.” Whether the design was honorable or dishonorable, Mr. Smith should have judged for himself. That it was not inimical to this Government, there was little reason for him to believe, when coupled with those boiling resentments which overflowed from the lips of Mr. Burr in the

very act of making this acknowledgment: "In this Government he had been persecuted, shamefully persecuted, and he was sorry to say that in it all private confidence between man and man seemed to be nearly destroyed." And in this state of temper, Mr. Burr "ventured to tell Mr. Smith that if there should be war between the United States and Spain, he, *Burr*, should *head a corps of volunteers, and be the first to march into the Mexican provinces*; if peace should be preserved, which he did not expect, he should settle his Washita lands, and make society as pleasant as possible."

And this is the communication which *added strength* to Mr. Smith's confidence in Mr. Burr! This is the communication upon which Mr. Smith engaged his two sons to go as Burr's associates!

The attack upon Mexico was to be *in case* war should take place between Spain and the United States. But is it possible, sir, that a man of Mr. Smith's understanding should *at that time*, and under these circumstances, have given an instant of credit to that shallow pretence? If Mr. Swartwout, one of Burr's acknowledged associates, was ashamed of pretending to rely on this tale of contingent war, and frankly told the grand jury at Richmond that they were to attack Mexico, to be sure, in case of a war with Spain; but if there had been *no* war *he* was ready to forget the law of the United States against such expeditions. If Commodore Truxton, a private citizen, smarting under the injuries which he conceived he had suffered from the Administration, even in July, while the project was but in prospect, and not in actual execution, made his first and emphatical question, whether the Government of the United States was acquainted with it, and on being informed that they were not, instantly refused to have any concern with it; let me ask, whether in the last days of November, while Burr was persevering in his preparations, after having been brought before a judicial court upon the very charge, and dismissed solely because a witness was absent, *a Senator of the United States*, receiving this communication from Burr himself, could possibly be the dupe of this pretence? Whether his first question ought not to have been that of Commodore Truxton: Is the Executive of the United States informed of your designs? Is it possible, sir, that this disclosure of the intended Mexican invasion could confirm the confidence of Mr. Smith, when it was the very thing for which the district attorney not three weeks before had entered the complaint against Mr. Burr, before the court of the United States competent to try that offence? Is it

possible that Mr. Burr's confession of his guilt should have been the confirmation of Mr. Smith's confidence? Yes, sir; so far as relates to the misdemeanor—to Mr. Smith's participation in the project for invading Mexico—his own affidavit on the 6th of January, 1807, is evidence, which, in my mind, nothing can control. His engagement of his two sons to Mr. Burr, admits neither of denial nor of jurisdiction.

About ten days after this, on the second and third of December, Mr. Smith goes to Cynthiana, Frankfort, and Lexington, to purchase provisions, and to sell bills of exchange. Here he accidentally sees again Mr. Burr. He finds that Mr. Burr is for the second time charged, and now before a grand jury, with that very offence of preparing an expedition against Mexico, which in his confidential communication to Mr. Smith he had explicitly avowed. And Mr. Smith, by the testimony of three of his own witnesses, hurries away from the scene to avoid being subpœnaed as a witness, declaring that he knows nothing on the subject that could either criminate or justify Mr. Burr. The first of these witnesses is Kelly, Mr. Smith's confidential agent and storekeeper at Cynthiana; of whose character as a man of uprightness and veracity, the most respectable attestations are produced. After stating the motive of Mr. Smith's going to Cynthiana, and thence to Lexington, Kelly's deposition, produced there by Mr. Smith himself, proceeds thus:

“He returned and informed me that on his arrival at Lexington he understood that the principal men with whom he wished to transact business, were at Frankfort; that he was also informed that a prosecution, the second time, was commenced against Colonel Burr, and he (Smith) was told, that if it was known he was in the State, he would be subpœnaed as a witness; that he told his informers he would not put them to the trouble to summon him, if he had a fresh horse he would go on there immediately; finding he could not see the men he wished to see, he started for Frankfort; that on his arrival there he inquired for Major Morrison, I think he said, in two or three public houses, but could not find him; that he was informed the investigation into Burr's conduct before the grand jury was delayed for want of General Adair, who was said to be a principal witness against him, and that in all probability proceedings would be stayed for several days, and as he (Smith) could not be detained so long from his business, particularly

as he *knew nothing that would either criminate or exculpate Colonel Burr*; that if his testimony could be of any benefit either way he would have stayed with pleasure, but as *he was entirely ignorant of any of Burr's political views*, he conceived to stay there for no purpose would be doing injustice to his private as well as public concerns, and therefore, as he was not summoned, he started away early next morning.”

Mr. Jourdan's deposition, after relating Mr. Smith's applications to him respecting the bills of exchange, says—

“The conversation then turned on the pending trial of Colonel Burr; and I mentioned that I had been called on as a witness; and observed that Burr had also been at your house; and was it known that you were in this place, that you would also be called on. You said you was willing; *that you knew nothing of the business*; but, as you could not get your business accomplished here, that if you had a fresh horse you would go to see Major Morrison, and save them any trouble of subpoenaing you.”

The deposition of Joseph Taylor is to the same effect; that Mr. Smith denied all knowledge of any thing which could operate either for or against Mr. Burr.

Now, sir, how was the fact? Was Mr. Smith thus ignorant? It seems to me that he was not. The disclosure which on the 23d of November, he himself has sworn Mr. Burr had made to him in confidence, was knowledge of the most decisive character on the question before the grand jury; was knowledge which, had Mr. Smith been even a private citizen, he was bound in duty to have gone and related to them. Admitting that even Mr. Smith could have believed that Burr intended the Mexican invasion only in case a war should break out; still the preparations he was making were unlawful; still he was guilty of the very charge made against him then before the grand jury; and had confidentially avowed the object to Mr. Smith. Had Mr. Smith gone before that grand jury, and told them, from the lips of Mr. Burr, what the affidavit of 6th January, 1807, declares upon oath; that grand jury, instead of dismissing Mr. Burr as they did, with commendation and applause, would have been bound, with the oath of God upon their consciences, to find a bill against him. The confession of Mr. Burr

unquestionably brought him within the operation of the statute upon which he was prosecuted, and I cannot but attribute to Mr. Smith's studious avoidance of attending upon that grand jury, all the unfortunate, and I may say calamitous consequences which have befallen this nation, from the failure of bringing Burr to justice at that time. Had he then been indicted, on Mr. Smith's testimony alone, he must have been convicted. The alarms, the agitations, the extraordinary and irregular stretches of power at New Orleans, which have distressed every free and patriotic heart, would have been needless; would have been prevented. The progress of that pernicious enterprise would have been arrested there. The whole judicial authority of the United States would have been laid prostrate before the wiles of conspiracy. There would have been no trial; no occasion for a trial at Richmond; treason would have been nipped in the bud, and Mr. Smith himself would at this day have been here, in the full enjoyment of his reputation, with his consciousness of having rendered a service of the highest importance to his country. But, sir, unfortunately for him; unfortunately for us; unfortunately for his country, he had engaged his two sons to Mr. Burr. He could not testify against Burr without condemning himself, and he shrunk from the presence of the grand jury.

Ten days after this the President's proclamation and Governor Tiffin's orders for the militia to be called out, both arrived on the same day, the 13th of December, at Cincinnati; and from that time Mr. Smith's exertions to carry into effect the orders both of the General and State Governments were characterized with great and extraordinary zeal. But even then he writes to the Secretary at War a narrative not exactly conformable to that afterwards contained in the answer to the committee; in the answer Mr. Smith declares repeatedly that all his *doubts* and *suspensions* about Mr. Burr had been removed by his open-hearted, candid letter of 26th October. In the letter to the Secretary of War, he speaks of himself as harboring so strong suspicions on Burr's subsequent visit to Cincinnati in November, as then to have *asked* him *pointedly* if any object he had in view justified the suspicions that prevailed about him, and that from Mr. Burr's apparent candor in answering this question he (Smith) entertained no doubt of him. Now, this apparent candor was an acknowledgment of the very same undertaking which the President's proclamation called upon the people to suppress. The proclamation had no reference to the part of Burr's project which aimed at the dismemberment of the Union—it was the intended invasion of Mexico,

which it extended the arm of the nation to restrain—the very expedition upon which Mr. S. had engaged his two sons.

How was it possible that this disclosure of an unlawful design could have restored the confidence and received the countenance of Mr. Smith? It is this, with the circumstances attending it, and which I have noticed, that render Mr. Smith himself the most material of all the witnesses against him. The letter, I have shown, contained little to remove, and much—very much—to excite suspicion. The avowal of the intended march to Mexico was an avowal of guilt. Mr. Smith does not pretend that Mr. Burr hinted to him that the design was approved by the Government. The bitterness with which he spoke of the Government was surely, of itself, an indication to the contrary. Did not Mr. Smith know that this was an unlawful enterprise? Could he have been ignorant of this before? The first prosecution in Kentucky must surely have given him sufficient notice of that. Before he engaged his two sons, ought he not to have inquired how the Washita settlement was to be made?—how the same preparations could be transformed, at pleasure, from purposes of war to purposes of agriculture?—how the same men and the same things could possibly be applied to the invasion of one country and the settlement of another?—by what magic they were to beat their swords into ploughshares, and their spears into pruning-hooks? Even Peter Taylor—the stupid Peter Taylor, as Mr. Smith has pronounced and his counsel endeavored to prove him; even Peter Taylor—when Blannerhasset attempted to engage *him* for the Washita settlement, inquired what kind of *seed* they should carry with them; nor would he be satisfied with Blannerhasset's evasions of this question, but urged him with it until he forced out the whole project—the Mexican empire—the royal diadem of Mr. Burr—and the dismemberment of the American Union! Peter Taylor was, indeed, as Mr. Smith says, a gardener. He certainly cannot, in point of understanding, be compared with Mr. Smith; yet, even he could bethink himself of the articles which would be suitable for his agency in a settlement of lands; even he could discern the difference between garden-seeds and gunpowder. And yet, Mr. Smith, a Senator of the United States—a settler in a new country—a confidential and intimate friend of Mr. Burr—engaged his two sons for an amphibious expedition of settlement or war, without putting a single question to ascertain how these schemes of contrariety could be reconciled together—without one single inquiry which could lead to a colorable pretence of right for the warlike part of the plan—

preparations for war—levying of troops! Was a Senator of the United States to wait for the President's proclamation to learn the unlawfulness or the danger to the liberties of the country of such enterprises, undertaken without public authority? Was he yet to learn that the power of making war and of raising soldiers has been deemed by the people of this nation of such magnitude and danger that they would not intrust them to the Executive authority, but have expressly and cautiously reserved them exclusively to the representatives of the nation assembled in Congress? And, until the declaration of war by Congress, he surely knew that every preparation of expeditions to invade the territories of a neighboring sovereign, was, even in the incipient stage of beginning and setting on foot, in direct violation of the laws of the land. The pretence that it was to be pursued only in case war should take place, did not make it at all more lawful, but made it, if any thing, more dangerous. Suppose, sir, that war had been declared, was it for Aaron Burr to say who should *head* corps of volunteers, or who should be *the first* to march into the Mexican provinces? Entertaining the opinion that I do and then did of Mr. Burr, I should have considered it as one of the greatest misfortunes which could have befallen the United States, even if they were at war, to have had such a man as him at the head of their armies. Nor can I consider it but as highly unbecoming in a member of the National Legislature to have given him countenance in this project of forcing himself upon the Government of the Union as the General of an army for the invasion of Mexico. It was encouraging and aiding a violation of the constitution in its vital principles; it was setting an example more to be dreaded by the people of the Union than the most formidable foreign war. And of all this Mr. Smith himself is the self-accusing witness. All the other witnesses are but in confirmation and aggravation of these decisive facts. Some of them indicate circumstances of very strong suspicions that Mr. Smith's participation was much earlier and much deeper. Others strikingly demonstrate that he was acting under a consciousness of unlawful engagements; and all concur in producing upon my mind the conviction that this resolution ought to pass.

Mr. President, I have discharged a painful obligation. No discussion has ever devolved upon me, as a member of this body, in which I have taken a part with more reluctance than in this. Until these transactions occurred, there was perhaps not another member of the Senate in whose integrity I more confided: and but for this, there is none whom I should more readily

take by the hand as a friend and a brother. I trust, sir, that I feel as I ought for his personal situation on this occasion, as well as for the interests and the feelings of his family. I am sensible, and have never lost sight of what is due from me to him as members of this Assembly. But there is also a duty to the character and reputation of this body; a duty to the State whose representation on this floor has been in part intrusted to him; and a duty to the whole nation whose public servants we are. In the discharge of these duties, I have felt myself compelled to submit these observations to the Senate, and with these I shall conclude.

When Mr. ADAMS had concluded, on motion of Mr. GILES, the further consideration of the subject was postponed until to-morrow.

The Senate resumed, as in Committee of the Whole, the consideration of the amendments reported by the select committee to the bill, entitled "An act concerning courts martial and courts of inquiry;" and, after progress, adjourned.

SATURDAY, April 9.

Case of John Smith.

Agreeably to the order of the day, the Senate took up the resolution reported by the committee, appointed on the 7th of November last, to consider the subject, to wit:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States; and that he be therefor, and hereby is, expelled from the Senate of the United States.

Mr. HILLHOUSE.—The cause before the Senate has been so fully heard, and so ably discussed, that it was my intention to have given a silent vote, had not the gentleman from Massachusetts (Mr. ADAMS) declared in so pointed a manner that even voting on the resolution would sanction the

report of the committee which accompanied it; a report containing principles which I can never sanction by my vote; principles which go to discredit all our criminal tribunals, and those rules of proceeding and of evidence which govern the decisions of courts; rules which alone can shield innocence, and protect an accused individual against a Governmental prosecution, or the overwhelming power of a formidable combination of individuals, determined on his destruction—principles which would plant a dagger in the bosom of civil liberty.

I do, most fully, agree with the gentleman from Massachusetts, that the Senate for the purpose of exercising their censorial power of expulsion, have cognizance of the case before us. That, for that purpose, they have cognizance of all crimes and offences, and are not bound to wait for the proceedings of the courts of common law. I further admit, that the same degree of evidence is not necessary to justify an expulsion of a member, as to convict him before a court and jury. For example, on a charge of treason, two witnesses are necessary to a conviction. On such a charge, I should not hesitate to expel a member on the testimony of a single witness of irreproachable character. What I insist on is, that the evidence admitted must be legal evidence, and such as would be admissible in a court of law; not *ex parte* depositions, hearsay evidence, or surmises founded on mere conjecture or suspicion.

Were I, in deciding this case, to be governed by political or party considerations, I should incline to vote in favor of the resolution on your table. But, when we reflect, that agreeing to the resolution is to disrobe a Senator of his honor, to doom a fellow-citizen, an amiable family, and an innocent posterity, to perpetual infamy and disgrace, party and political considerations ought not, cannot influence the decision. Impartial justice and testimony, alone, must govern, and I flatter myself will govern, every member of this Senate in the vote he is about to give.

Elias Glover, having volunteered in giving his deposition, when no accusation existed, was to be considered rather an accuser than a witness. An *ex parte* deposition, taken under such circumstances, could not by me be considered as evidence, on a question of expulsion, had not the accused member and his counsel agreed to its admission, by which I was bound to consider it as evidence. And in my mind it is so material, that if the force of it had been destroyed by counter-testimony, I must have voted for the

resolution before us. But I have listened with pleasure, for it always gives me pleasure when a person accused can prove his innocence, to the evidence adduced, which has completely done away the force of Glover's deposition. The gentleman from Massachusetts admits, and every member who has spoken seems to agree, that no reliance can be placed upon it. I shall therefore lay that out of the case; as also the other evidence attempting a direct proof of a participation in Aaron Burr's conspiracy, as in this also I fully agree with the gentleman from Massachusetts that it amounts to very little. It is the conduct and confessions of Mr. Smith by which his guilt is endeavored to be established; and when such talents and eloquence as are possessed by the gentleman from Massachusetts are brought to bear upon, and are urged with so much energy and force against an individual accused of being concerned in plots and conspiracies against the Government of his country, charges peculiarly calculated to excite jealousy and suspicion, innocence itself could hardly expect to escape. After hearing his able and eloquent argument, I was much gratified by the motion of the gentleman from Virginia (Mr. GILES) to postpone. I wished for one night to consider the subject; I was not then prepared to make a reply.

The gentleman from Massachusetts has relied on the conversations, confessions, and conduct of Mr. Smith to prove his guilt, but he does not take the whole conversation and confession together; and it is a rule of law, always admitted, and never to be departed from, that when the confession of the party is taken, the whole must be taken together; and not to make out proof of guilt, by selecting different detached parts, leaving out other parts that go to explain what otherwise might appear criminal. A strict adherence to this rule will leave little of evidence, or even ground of suspicion of guilt in this case. If all Mr. Smith's conversations and confessions are taken together, there can remain little doubt of his innocence.

The first circumstance in Mr. Smith's conduct which is laid hold on, and on which the gentleman from Massachusetts has built his argument to establish his guilt, is, that Mr. Smith has confessed that in September, 1806, he gave Aaron Burr a hospitable reception under his roof, for four or five days; that he afterwards saw him again at Cincinnati and in Kentucky. What was there suspicious in all this? Who was Aaron Burr? And what was the situation of Mr. Smith in relation to him, that extending to him the rights of hospitality should excite suspicion, and fix the imputation of crime? Aaron

Burr was a man who had stood high in the confidence of the people of the United States—a man who had been associated with the present Chief Magistrate, and had received an equal number of the votes of the electors for President—a man who had been by the voice of his country placed in the second office in the nation—a man who for four years filled the chair you now occupy, and presided over this Senate with impartiality and dignity; and in a manner to command universal approbation. So great was the ascendancy which he had acquired in this body, that towards the close of his term of service, a bill was passed granting to him for life the privilege of sending and receiving letters and packets through the mail free of postage, a privilege which had never been extended to any but a President of the United States and Mrs. Washington. So great was the confidence of a majority of the Senate in Aaron Burr, as to produce an unusual zeal, no doubt a laudable zeal, for passing the bill. It was pressed in an unusual manner; and we were called to a decision when he was himself in the chair; he who could almost look down opposition. Under such circumstances it was painful to oppose the bill; and nothing but a strong sense of duty could have impelled any one to make opposition. The yeas and nays on the Journal^[53] will show how great a portion of the Senate, of which number was Mr. Smith, had so high a confidence in Mr. Burr. At that time I had no more suspicion than the majority of Colonel Burr's having any treasonable designs; though in opposition to the bill, I did state it as a possible case, that a Vice President, ambitious of rising to the first office in the nation, and meeting with disappointment, might become disaffected, and engage in treasonable plots to overturn the Government, and avail himself of his privilege and the mail to circulate his treason into every corner of the Union. The bill was arrested in the House of Representatives.

The Senate also adopted the following:

“Resolved, unanimously, That the thanks of the Senate be presented to Aaron Burr, in testimony of the impartiality, dignity, and ability with which he has presided over their deliberations; and of their entire approbation of his conduct, in the discharge of the arduous and important duties assigned him as President of the Senate.”

I was happy on this occasion to unite in what I considered a just tribute of applause for his conduct as President of the Senate.

This was the close of Aaron Burr's political career; this was the last public office he sustained in the nation, and from that time, till Mr. S. received the pencilled note asking for the hospitality of his house for a few days, it was not publicly known that he had done any thing to take off the impression which his official conduct as Vice President, and those public acts of the Senate, had made. Under these circumstances, and considering the intimacy and friendship which had been contracted while they were associated in the same political body, the Senate of the United States, what could Mr. Smith do? What did his early impressions, all the habits of his life, and the honorable feelings and sentiments of a gentleman, imperiously demand of him to do? The answer will be anticipated; he could no otherwise than extend to him the rights of hospitality, receive and treat him as a gentleman. Had he been an entire stranger he could not have done otherwise, without being considered as having disgraced his native State, for he was born in Virginia, so famed for hospitality, not only to friends, but to strangers. Had Mr. S. done otherwise than he did, would he not have been disowned as unworthy to be called a Virginian? This act of hospitality and politeness is now considered as a crime, which is to fix indelible disgrace on Mr. S. and his family.

The next thing relied on is, that Mr. S. being informed of the projects and schemes of Mr. Burr, concealed them. The gentleman from Massachusetts has told us that, if Mr. S. had come forward and testified before the grand jury of Kentucky, Burr would have been convicted, and his treasonable plot, which has done so much mischief, arrested. The disclosure which Mr. S. states to have been made to him, (and there is no proof on the subject but what comes from himself) is as follows—viz: Colonel Burr said to him, "Mr. Smith, my object in a few months will be disclosed; you will not find it dishonorable or inimical to this Government. I feel superior to the mean artifices which are ascribed to me; calumniators I do not notice, for as fast as you put one down, another will rise up. This much I will venture to tell you, if there should be war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces; if peace should be preserved, which I do not expect, I shall settle my Washita lands, and make society as pleasant about me as possible."

Now I ask, Mr. President, was there any thing criminal, was there any thing unlawful in all this? Was there any thing to excite suspicion that Aaron Burr was engaged in a treasonable plot to sever the Union, or invade the territory of a friendly power, in amity with the United States? Was it not, on the contrary, expressly said not to be dishonorable or inimical to the Government? Was there any reason to suppose our Government would not, in the event of a war with Spain, accept the services of a corps of volunteers; when the policy seems to have been to rely on volunteers; and laws have frequently passed calling for, and authorizing the employment of such force? The evidence of Mr. S., had he appeared before the grand jury, instead of criminating Colonel Burr, must have operated in his favor; for to have headed a corps of volunteers under such circumstances would have been laudable. Has Mr. S. ever manifested any unwillingness to disclose what he knew of Burr's projects? On the contrary, has he not always done it freely, when there was a fit occasion, not only to his friends but the officers of Government?

But the gentleman from Massachusetts has compared the case of Mr. Smith with that of Commodore Truxton, and stated that upon Burr's disclosing his plans to the latter, he was asked this all-important question—"Is the Executive of the United States privy to or concerned in the project?" This, says he, ought to have been the conduct of Mr. Smith; this would have been his conduct if he had been an innocent and an honest man. I little thought that Commodore Truxton's deposition would have been resorted to in this case; a deposition which had not been read, a deposition not taken on the trial in the presence of Mr. Smith, nor in any way relating to his case. It must be an uncommon zeal that could have induced any one, possessing the legal knowledge of the gentleman from Massachusetts, to have resorted to that as evidence. But, sir, the answer to this is plain. Mr. Burr did not go as far with Mr. Smith as with Commodore Truxton, otherwise Mr. Smith would probably have asked him the same question. But so much reliance having been had on Commodore Truxton's deposition to prove Mr. Smith's guilt, on the score of omissions, as well as of what he has done, I must be permitted to read a part of that deposition: it is in these words, viz:

“About the beginning of the winter of 1805-6, Colonel Burr returned from the Western country and came to Philadelphia. He frequently in conversation mentioned to me certain speculations in Western lands. These conversations were uninteresting to me, and I did not pay much attention to them. Colonel Burr requested me to get the Navy of the United States out of my head, as he had something in view, both honorable and profitable, which he wished to propose to me. I considered this as nothing more than a desire to get me interested in land speculations. These conversations were frequently repeated; and some time in the month of July, 1806, Colonel Burr observed that he wished to see me unwedded from the Navy of the United States, and not to think any more of those men at Washington. He observed that he wished to see or to make me (I do not recollect which) admiral; for he contemplated an expedition into Mexico, in the event of a war with Spain, which he thought inevitable. He asked me if the Havana could not be easily taken in the event of a war. I told him that it would require the co-operation of a naval force. Mr. Burr observed, that might be obtained. He pursued the inquiry as to Carthagená and La Vera Cruz; what personal knowledge I had of those places, and what would be the best mode of attacking by sea and land. I gave my opinion very freely. Mr. Burr then asked me, if I would take the command of a naval expedition. I asked him if the Executive of the United States was privy to or concerned in the project. He answered me emphatically, that they were not. I asked him that question because the Executive had been charged with a knowledge of Miranda’s expedition. I told Colonel Burr that I would have nothing to do with it; that Miranda’s project had been intimated to me, and that I had declined any agency in those affairs. Mr. Burr observed that, in the event of a war, he intended to establish an independent Government in Mexico; that Wilkinson, the Army, and many officers of the Navy, would join. I replied, that I could not see how any of the officers of the United States could join. He said that Gen. Wilkinson had projected the expedition, and that he himself had matured it; that many greater men than Wilkinson were concerned (or would join); and thousands to the westward.”

Mr. President, notwithstanding Colonel Burr had gone much farther in communicating his plans and projects to Commodore Truxton than he had done to Mr. Smith, and notwithstanding those insinuations of weaning him from the Navy, forgetting those men at Washington, &c.,—which must have

excited suspicion in the mind of a man of Commodore Truxton's discernment, that Colonel Burr's project was unlawful, and not known to or approved by the Government—yet Commodore Truxton, in whose honor and integrity I have the highest confidence, did not put the question which the gentleman from Massachusetts relies on so much, and approves so highly, as evincing his integrity; and for not asking which Mr. Smith is to be suspected of a participation in guilt. It was when Colonel Burr asked Commodore Truxton directly if he would take the command of a naval expedition, and not till then, that he put the question. Had Colonel Burr asked Mr. Smith to engage supplies of provisions, gunboats, arms or men, for his expedition, then, and not till then, could it be expected that Mr. Smith should have asked such a question; so far from saying any thing to excite Mr. Smith's suspicions, Colonel Burr had expressly declared his object was not dishonorable or inimical to this Government. That Commodore Truxton was dissatisfied with the Administration appears by his answer to a question of Mr. McRae in the same deposition, viz: "Were the remarks which he made on your relation to the Navy, calculated to fill your bosom with resentment against the Government? A. My bosom was already full enough, but certainly Colonel Burr spoke in concert with my feelings."

General Eaton's deposition has been introduced under like circumstances, and for the same purpose as that of Commodore Truxton. He testifies that:

"During the winter of 1805-'6, I cannot be positive as to the distinct point of time, yet during that winter at the city of Washington, Colonel Burr signified that he was organizing a secret expedition, to be moved against the Spanish provinces on the south-western frontiers of the United States, I understood; under the authority of the General Government. From our existing controversies with Spain, and from the tenor of the President's Address to both Houses of Congress, a conclusion was naturally drawn, that war with that country was inevitable. I had then just returned from the coast of Africa; and having been for many years employed on our own frontiers, and on a foreign coast still more barbarous and obscure, I knew not the extent of the reputation which Colonel Burr sustained in the consideration of his country. The distinguished rank which he had held in society, and the strong marks of confidence which he had received from his fellow-citizens,

gave me no right to doubt of his patriotism. As a military character, I had been made acquainted with him, but not personally; and I knew none in the United States in whom a soldier might more surely have confided his honor, than in Colonel Burr. In case of enmity to this country, from whatever quarter it might come, I thought it my duty to obey so honorable a call as was proposed to me. Under impressions like these, I did engage to embark in the enterprise, and did pledge my faith to Colonel Burr. At several interviews, it appeared to be the intention of Colonel Burr to instruct me by maps and other documents, of the feasibility of penetrating to Mexico. At length, from certain indistinct expressions and innuendoes, I admitted a suspicion that Colonel Burr had other objects. He used strong expressions of reproach against the Administration of the General Government; accused them of want of character, want of energy, want of gratitude. He seemed desirous of irritating my resentment by reiterating certain injurious strictures cast upon me on the floor of Congress, on certain transactions on the coast of Africa, and by dilating on the injuries which I had sustained from the delays in adjusting my account, for moneys advanced for the United States; and talked of pointing out to me modes of honorable indemnity. I will not conceal here that Colonel Burr had good grounds to believe me disaffected towards the Government.”

Here, Mr. President, we find that General Eaton also was deceived, so completely deceived as to engage himself in the enterprise. Here is also evidence of the estimation in which Aaron Burr was held at Washington, the seat of the General Government, where Congress were assembled, and Mr. Smith was attending as a member of the Senate, the forepart of the year 1806, the very year when Mr. Smith is to be suspected of a crime, for extending to Colonel Burr the rights of hospitality: nor does General Eaton suspect the views and projects of Colonel Burr to be unlawful or improper, until he began to use strong expressions of reproach against the Administration. General Eaton was also a man dissatisfied with the Administration.

It is asked how it was possible for Colonel Burr to have been so long with Mr. Smith and not have disclosed to him his plans, as he had done to others. The reason is obvious; Commodore Truxton was dissatisfied with the Government, and full of resentment; he was, therefore, the man most

likely for Aaron Burr to apply to, expecting, no doubt, to engage him in his projects; to him he would be likely to communicate his sentiments and feelings with freedom. Far otherwise was the case of Mr. Smith. He was enjoying the sunshine of the Government; he was going on in the full tide of prosperity; his fellow-citizens had bestowed on him the highest honors in their gift. He was a Senator of the United States; the Administration had extended to him their patronage and favor, by giving him contracts for supplying the army, and building gunboats, lucrative employments. Aaron Burr could not expect to engage this man in any treasonable plot against the Government, until he should have made him willing to sacrifice all his honors and all his prospects; and to make the communication without engaging him, was to defeat all his prospects; knowing that Mr. Smith could have no possible wish for a change, he would be the last to whom he would dare to make a disclosure of his projects. There were reasons, and strong reasons, why he should wish to preserve the confidence of Mr. Smith, which made it important to him to be on good terms with him, so long as he was attempting to blind the eyes of the people, and make them believe he was acting in concert with the Government; to do which, there could not have been a more ready expedient than to take up his lodgings at the house of the contractor for the army of the United States, and to appear to possess his confidence. All his art, all his address, therefore, would be made use of to deceive Mr. Smith, and make him believe his views and projects were fair and honorable. This will fully explain the appearance of confidence which seems to have existed between Mr. Smith and Colonel Burr, as well as their correspondence, previous to the President's proclamation.

The gentleman from Massachusetts thinks the story about the settlement of the Washita lands so ridiculous and the disguise so thin, that Mr. Smith must have seen through it, and known that Aaron Burr's projects were unlawful; and from that circumstance draws presumption of guilt. Is it surprising that Mr. Smith in his situation, and with the information he possessed, should believe this story, when a gentleman of Commodore Truxton's discernment, and after having had a much more full development of Colonel Burr's views and projects, believed it, and which in his deposition he affirms to be the fact? In answer to the following question, put by Colonel Burr, "had you reason to doubt my intention to settle lands?" Commodore Truxton answered, "If there was no war, I took it for granted that was your intention." Nor is it so astonishing as the gentleman seems to

think it, that Mr. Smith should consent to let his two sons go with Colonel Burr. It is the wish of every parent to see his children well established; and what is more profitable, or promises a more advantageous and certain establishment, than the settlement of new lands? People are generally induced very readily to believe what they wish, and is it at all surprising that Mr. Smith should be easily induced to think well of a project which was proposed to benefit his own sons? Surely his participation in Aaron Burr's treason cannot be presumed from such circumstances.

The conduct of Mr. Smith from the first moment that official information was given to the people of the United States, that Aaron Burr's projects were treasonable or unlawful, was such as, instead of exciting suspicion of his being an accomplice, merits the applause of his country. Not like a timid traitor, affrighted at the rustling of a leaf, did he endeavor to conceal the intercourse and correspondence between him and Aaron Burr; or like a bold traitor attempt to defeat the measures adopted to counteract the project and arrest the culprits; or to paralyze exertion by casting ridicule upon them, as did that prime patriot Glover, the accuser of Mr. Smith? No, sir, the day after the President's proclamation arrived, he writes a letter to the Secretary of War informing him of the substance of Aaron Burr's communication to him. He finds that the militia called into service on this occasion, were destitute of arms, and unable to obtain them from the public stores of the United States, though application had been made for that purpose by the commanding officer; and that without arms they could render no service. He goes in the night to the keeper of the arms, and endeavors to persuade him to deliver them out, who still refused, though shown the President's proclamation, without an order from the Secretary at War; fearing he might lose his office for acting without orders. Under these circumstances, this same John Smith, charged with being an associate of Aaron Burr in this very treason, pledged his own private obligations for ten thousand dollars to indemnify the officer for delivering out the arms. This was done, not after Aaron Burr was arrested, or there was a prospect of the project's being defeated; but immediately, on the first alarm excited by the President's proclamation, and the spirited and patriotic exertions of the State of Ohio.

The gunboats which Mr. Smith was building, and which his accusers have intimated were intended for Colonel Burr, were afterwards carried down the river to New Orleans and delivered to the order of General

Wilkinson; and all the provisions purchased by Mr. Smith appear to have been fairly and promptly delivered to our army; not a man—not a musket—not a barrel of flour—not a single article of provisions of any kind—or any thing that could aid or comfort Colonel Burr in his expedition, has ever been furnished to him or any of his agents. How then has Mr. Smith participated in the treason of Aaron Burr? I find no evidence of the fact. I can discern no reasonable ground to suspect any such participation.

The testimony of Colonel Taylor, whom I deem a man of honor and truth, furnishes one other ground from which a presumption is attempted to be drawn to implicate Mr. Smith. He says that in conversing with Mr. Smith about certain political publications in a newspaper, signed the Querist, in which a division of the Union and a separation of the Western from the Atlantic States was advocated, he understood Mr. Smith to advance those sentiments as his own. Mr. Smith says he only described them as the sentiments of the writer. Suppose Colonel Taylor's recollection to be correct, what crime was there in advancing mere speculative opinions, or expressing his sentiments on that or any other subject, provided he violated no law. Are we not in a free country, in which it is lawful to speculate on the science of government as well as any other? If that privilege be denied, ours will no longer deserve the name of a free country. But is it not possible that Colonel Taylor may be mistaken? How often do we find conversations which take place among friends misunderstood and incorrectly stated! Every day's experience shows us that even in public debate, in this Senate, the observations of gentlemen are so misstated as to require explanation. But Dr. Sellman's deposition removes all doubt; he says, and he is admitted to be a man of good character, that he understood Mr. Smith only to have repeated, not his own sentiments, but those of the Querist. Dr. Sellman testifies:

“The first persons I approached were Mr. John Smith and Colonel James Taylor. After attending some time to the conversation, I noticed a reference was occasionally made to a publication or publications that had appeared in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions, or those contained in that publication, for I was not present at the commencement of the conversation, though it did appear to me to be a detail of the opinions set forth in that

publication. As it is now impressed on my mind, I believe, to more fully satisfy myself, I asked a question. Nor can I perfectly remember, whether I intended the question particularly for Mr. Smith or both of the gentlemen, but believe it was intended for Mr. Smith. Do you expect or apprehend an early separation of the Union? To which Mr. Smith replied, not in my lifetime; and I hope and pray to God I may never live to see it, whether it takes place sooner or later.”

Here can be no mistake; so far from engaging in a treasonable plot to sever the Union, he deprecated such an event in the most solemn manner. Where then is the evidence whereon we can ground so important a vote as that which shall adopt the resolution on your table? A vote which is to disrobe a Senator of his office and of his honor? Nothing but jealousy, that jealousy which frequently attaches itself to a charge of treason and conspiracy, and must in this case have taken hold of the mind of the gentleman from Massachusetts, could have induced a belief that there was evidence to prove on Mr. Smith a participation in the conspiracy of Aaron Burr. That master of the human heart, Shakspeare, says—

“——Trifles, light as air,
Are, to the jealous, confirmations strong
As proofs of holy writ.”

The truth of this is remarkably verified in the case before us. Is there not some reasons to apprehend that there has been too great a disposition to convert suspicion into proof? Ought we not to be on our guard when it is proved that there has been a powerful combination of men, calling themselves a republican society, to ruin Mr. Smith, the individuals of which, when called before a magistrate to testify, declare that they are bound to secrecy by a solemn obligation to the society, which is paramount to their oath, when sworn as witnesses, and which will not admit of their disclosing any facts, or their proceedings, any farther than they are permitted to be made public by the society? And in sundry of the depositions on your table they have accordingly refused to answer questions, and in some instances to testify at all. Such a society disgraces the name of Republican, by acting on principles tyrannical and oppressive.

Mr. GILES.—Mr. President: I am called upon as a member of this Senate to pronounce an opinion upon the following resolution:

“Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefor, and hereby is, expelled from the Senate of the United States.”

A declaration upon this subject ought not to be made but upon the most attentive examination of the evidence produced in the case, and the most mature deliberation thereupon. The sentence to be pronounced is important to the justice of the United States; but more particularly so to the reputation of the person accused; it will have also an inseparable influence upon that of his family. To him and them its effects are all-important. The resolution solemnly and unequivocally asserts, that John Smith, &c., participated in the conspiracy of Aaron Burr. Before I can make this assertion, I must have some evidence of the fact. I must acknowledge, that upon the most attentive examination of all the papers, and the most respectful attention to all the arguments in the case, I have not been able to discover any satisfactory evidence of that fact. Yesterday I paid great attention to the eloquent, dignified and candid observations of the gentleman from Massachusetts (Mr. ADAMS), both as to the jurisdiction of the Senate to inquire into this case, and the evidence exhibited in support of the charges against the accused. The gentleman from Massachusetts, I am perfectly convinced, has been influenced in the whole course of this inquiry by the purest and most laudable motives; and I think he is justly entitled to the thanks of the Senate for the judicious conduct he has recommended to be pursued. I perfectly concur with that gentleman in opinion, on the point of jurisdiction; and upon a retrospect of the whole proceedings of the Senate, I am happy to say, that it appears to me the best course for the purposes of justice has been pursued that could have been devised in the novel and difficult case presented for consideration. A liberal indulgence has been given to the accused to procure testimony in his defence; and the witnesses implicated have been protected from injury, by requiring that they should have notice

of the time and place of taking all depositions affecting their credibility. The only ground of difference in opinion between the gentleman from Massachusetts and myself is, in the interpretation of the evidence in the case. I shall state the points of difference between us upon this subject, without any other argument than what may be necessary to explain the reasons of this difference.

The first point of difference relates to the declarations of Aaron Burr. From these declarations, although general in their nature, and in no instance made in relation to the accused, inferences of guilt are attached to him. In almost every case, to apply the declarations of one man to the condemnation of another, would not be a just rule of evidence; in this case, it would be peculiarly unjust. Because it is well known that Burr was in the constant habit of making misrepresentations in relation to other persons, and that he was influenced by a particular motive in doing so. He appeared to consider that as one of the most effectual means to enhance the importance and promote the success of his enterprise. If his declarations are to be admitted as evidence against other persons, they would apply to some of the most respectable citizens of the United States as well as to the accused, which it is not pretended would be just or correct in relation to them; and I can see nothing in his observations bearing on the case of Mr. Smith, that would not apply with a greater force against others, who are neither implicated nor suspected. I therefore put Burr's declarations entirely out of the case, and disregard all inferences drawn from them.

The next point of difference between the gentleman and myself, arises from a suggested inconsistency between the letters, the affidavits, and the answer of Mr. Smith. I have paid particular attention to these papers, connected with the remark made by the gentleman, and am unable to discover the inconsistency suggested. They appear to me to be substantially the same. The remark was, that in one of these papers Mr. Smith states, that Burr did not disclose to him any of his objects; in another he admitted that he did disclose to him his object of settling his Washita lands. The remark which occurs to me in reply is, that Mr. Smith merely states an immaterial fact in one paper, which he omits in another, as unnecessary. In this I see neither contradiction nor inconsistency. But the real explanation of this incidental circumstance will be found in the papers themselves. The one omitting the fact in question, in speaking of the objects of Burr, evidently

alludes to the unlawful objects of which he has since been accused, and which did not comprehend the settlement of the Washita lands. This circumstance, therefore, must in any point of view be deemed trivial unless connected with some other of more importance; and according to my explanation of it of no consequence at all. I would here remark, that the fact asserted in the resolution, is susceptible of the clearest and most certain proof, and is of such a nature, that if Mr. Smith had committed it, it would be scarcely possible for him to escape detection by positive proof. I am therefore not satisfied to form my opinion on trivial circumstances, particularly when so easily and naturally susceptible of explanation, consistently with innocence. Mr. Smith's own conduct is the sole criterion by which he ought to be judged. If this standard should once be departed from, and questionable incidents resorted to, instead of obtaining truth, we shall probably fall into error.

The gentleman from Massachusetts and myself, in our consideration of this case, concur in the entire exclusion of the testimony of Elias Glover and all the papers connected with it. We, in one respect, however, differ on this part of the subject. He read and relied upon the deposition of Major Riddle forwarded by Glover, which I exclude from all consideration—not because I know any thing injurious to the character of that gentleman; nor because I conceive the contents of the deposition incapable of explanation, consistently with the innocence of Mr. Smith; but on account of the manner of taking, and presenting it to the Senate. This deposition with others appears to have been taken and forwarded by Elias Glover, for the purpose of implicating Mr. Smith. They were taken without notice, and in the absence of Mr. Smith, although I believe he was at the time of taking them in the same town where they were taken. Some of these witnesses had been summoned to testify in his favor and in his presence—part of them refused to attend, part of them attended and refused to answer all questions put to them by Mr. Smith. I consider this conduct as such a departure from every thing that is just, fair, and honorable, and an evidence of such an incorrect state of mind in relation to Mr. Smith, that I do not think they are entitled to the respect of evidence in the examination of his case; I therefore exclude them altogether.

I consider this conduct as disrespectful to the Senate, and, on the part of Glover, altogether inexcusable. Because, when the Senate were informed

that Mr. Smith intended to attempt to discredit the evidence of Glover, they imposed a positive condition on him, that Glover should have reasonable notice of the time and place of taking all depositions for that purpose; thus manifesting a laudable tenderness for his reputation, which he has strangely repaid in this disrespectful attempt upon the fairness, justice, and candor, of their proceedings. I cannot forbear making one more observation on the conduct of Elias Glover; he appears, throughout the whole of the depositions taken by him and in his presence, to endeavor to cover his own misconduct by enlisting in his favor the party feelings which he presumes to attribute to the Senate; thus he has invariably asked, whether he was not a zealous Republican, and firm supporter of this Administration? I consider this conduct as an unjustifiable and indelicate attack upon the justice and candor of the Senate, whilst it furnishes a poor apology for his own aberrations from the truth; it has a tendency, and must have been intended, upon a question of guilt or innocence, to draw the Senate from the immutable principle of justice and truth, *as the standard of trial*; and to substitute, in their stead, the dangerous touchstone of party sensibility. I have had too long experience of the correct motives which actuate the Senate in all their deliberations, to feel any apprehensions, in the present case, from these unfortunate attempts; but it is time the world should know that they are improperly applied, when addressed to the Senate of the United States.

Having candidly stated the impressions upon my mind made by the portion of the papers just alluded to, and the observations of the gentleman from Massachusetts thereupon, I will now proceed to examine the other papers more relied on by him, and entitled to more respect as evidence. The course the gentleman pursued was fair and candid, and well calculated to give a correct view of the conduct and object of the accused; I shall, therefore, pursue the same course, which was to take the facts in their chronological order. The first fact, in relation to Mr. Smith's conduct, to which our attention has been called, was on the 4th of September, 1806. On this day Burr, having previously addressed a note of invitation to Mr. Smith, presented himself at Mr. Smith's house, where he was hospitably received and entertained, until the tenth of the same month. Burr had, before this time, been at Blannerhasset's Island, where it is probable, in concert with Blannerhasset, certain pieces, under the signature of the Querist, were written; and, about the time of Burr's leaving the island, were published.

The object of these pieces evidently was to make an experiment upon the disposition of the Western people, as to the separation of the Union, then certainly in the contemplation of Burr. It was an object near his heart, and, no doubt, deemed all-important to the success of his ambitious views. Mr. Smith states that this subject was never mentioned by Burr to him during his stay at Mr. Smith's house, from the 4th to the 10th of September. The observation made upon this part of the evidence is, that it is strange that Burr should not have mentioned this subject, under the peculiar circumstances of the case. I concur perfectly in the observation. I think it strange that Burr should not have mentioned the subject; but am I to infer that he did mention it, merely because it is strange that he should not have mentioned it? Is its being strange that it did not happen, evidence of the fact that it did happen; particularly, when there is no other evidence of the fact, but all the evidence upon that point is against the fact? I will here make an observation, of a general nature, which has had great weight with me in forming my opinion upon the whole merits of this case. It is, that it does not appear, from any part of the evidence, that Burr deemed it prudent, at any time, to disclose his illicit objects to Mr. Smith; or that he ever considered Mr. Smith as a safe depository of his secrets. This want of confidence in Mr. Smith, for his illicit objects, is discernible in many parts of the evidence, and this consideration alone lessens the presumption of Burr's making the separation of the Union a subject of conversation whilst at Mr. Smith's house. Burr, also, would naturally be cautious and reserved upon that subject, until the experiment, then about to be made on the people, should disclose itself, and some certain estimate be formed of its effects. Again, sir, whilst Mr. Smith has solemnly sworn that such conversation did not take place, and there is no evidence whatever to show that it did—there are other circumstances strongly supporting his assertion. It is known that Burr generally disclosed his plans to persons unfriendly to the Administration, and feeling strong excitements and irritations against it. He considered such persons only fit for his purposes. In this, however, much to the honor of American citizens, he was mistaken. But he had no reason to believe Mr. Smith was a person of this description. Very far otherwise. For, independent of Mr. Smith's general attachment to the Administration, he held the dignified station of Senator, and a profitable contract under the Government: Burr had no reasonable expectation that Mr. Smith was ready to abandon these certain advantages for the uncertain prospects arising from

Burr's wicked and visionary projects; and, of course, would be cautious of making such an unpromising attempt; one which, if it failed, would subject him to certain and instantaneous detection. Another strong circumstance in favor of this conclusion, is derived from Burr's letter to Mr. Smith, of the 20th of October, 1806. One of the expressions alluded to, is the following: "I have never written or published a line on this subject, (the separation of the Union,) nor ever expressed any other sentiments than those which you have heard from me in public companies at Washington and elsewhere, and in which, I think, you concurred." Here is a direct reference to this subject, but it is not intimated that any conversation took place at Smith's house in relation to it, but "in public companies at Washington and elsewhere." As far, therefore, as mentioning the conversation as happening at other places, and omitting it as having happened at Mr. Smith's house, upon a recent visit there, can go, it serves to show that such conversation, in all probability, did not take place there, and leaves a very strong inference in favor of Mr. Smith's statement. Am I, then, to infer a fact of guilt against all these circumstances in favor of innocence? My mind is incapable of making such an inference. It would be, to convert the rules of the evidence of facts into improbable grounds of inducing suspicions—error, not truth, must be the consequence of such substitution.

The next evidence in point of time from which some circumstances of suspicion are inferred against Mr. Smith, is the testimony of Colonel James Taylor. To this evidence I concur with the gentleman from Massachusetts in paying great respect, because it was given with intelligence, candor, and circumspection, highly honorable to Colonel Taylor. The substance of his testimony is, that some short time after the 10th September, and after the pieces under the signature of the Querist had been published, and become the subject of general conversation, being in company with Mr. Smith and others, in Cincinnati, the sentiments avowed in those pieces became the subject of a particular conversation, in which, according to the impressions made on his mind, Mr. Smith advocated a separation of the Union; and he thought, not only delivered this opinion, as an opinion recommended by the Querist, but as his own. I differ in several important respects with the gentleman from Massachusetts as to the true explanation of this testimony, taken in connection with other evidence, bearing irresistibly upon the same point. In the first place, it is to be ascertained whether Mr. Smith really did express this opinion in the sense imputed to him by Colonel Taylor, or

whether Colonel Taylor is not mistaken in that respect? And, in the next place, whether, if he did so express himself, it was done with any mischievous intent?—both these circumstances being necessary to constitute a criminal act. I am strongly inclined to think, indeed I am almost perfectly satisfied, that Colonel Taylor is mistaken in this particular point of his evidence. There is part of Colonel Taylor's own evidence, which furnishes strong considerations for caution in interpreting the rest. The candor and circumspection observed by the deponent, in this particular point of evidence, is so honorable to him, that I beg leave to present it to the Senate in his own words. After answering many questions put to him by Mr. Smith, Colonel Taylor concludes his evidence with the following voluntary observation: "I beg leave further to state, that Mr. Smith has generally been viewed as a friendly, benevolent, worthy man, and his family, (consisting of an amiable wife and daughter, and several very promising sons,) have been considered entitled to, and held a place in the first circles of society in our quarter."

What could have induced Colonel Taylor to make this observation upon closing his evidence? There is no doubt, sir, it was intended as a caution to the Senate in the interpretation of other circumstances, although related by himself. It evidently arose from a consciousness that those circumstances were vague and uncertain, and that his impressions of them might be mistaken. It was the spontaneous conviction of an amiable mind, laboring under an impression that innocence might become the victim of its own honest misconceptions. I will now state my reasons for the conviction that Colonel Taylor was mistaken in supposing that Mr. Smith spoke of the separation of the Union as an opinion of his own, and not as the opinion inculcated by the Querist.

The opinions expressed in the Querist had not only become the subject of general conversation, but were the subject of that particular conversation. Mr. Smith probably recited these opinions in an unguarded manner; and from that circumstance, it was not unnatural that Colonel Taylor's impressions might have been formed. This appears from the deposition of Doctor Sellman, who was present at the same conversation; and swears expressly that he was induced to put this question to Mr. Smith, most probably from the unguarded manner of expressing himself: Are these your own opinions, or those expressed from the Querist? To which Mr. Smith

replied, they were the opinions of the Querist, and not his own opinions; and added, that he deprecated a separation of the Union, and hoped to God never to live to see the day when that event should take place. Here is the positive evidence of Doctor Sellman to the particular fact in question; whereas Colonel Taylor speaks of the impression made on his mind by the whole tenor of the conversation. Colonel Taylor must therefore be mistaken, or Doctor Sellman wilfully forsworn. Would it be proper to make this presumption against Doctor Sellman? Who is Doctor Sellman? A gentleman of irreproachable character; the friend and brother-in-law of Colonel Taylor; and, I believe, the friend of the Government and of the Administration. Doctor Sellman does not stop here; he swears that he is in habits of intimacy with Mr. Smith, and that he never did, before or since that period, hear Mr. Smith express any opinion in favor of a separation of the Union, but has often heard him express opinions directly and positively against it. Does Colonel Taylor contradict this statement? No, sir, but confirms it. He also swears that he never heard Mr. Smith express that opinion at any other time before or since. Now, sir, as Colonel Taylor himself states that the pieces signed the Querist, were the subject of the conversation in question, and that he never before or since that time, heard Mr. Smith express analogous opinions with those of the Querist; and when Doctor Sellman swears positively, that during that particular conversation, he put the identical question to Mr. Smith, Are you speaking your own opinions, or those of the Querist?—and that he unequivocally answered, not his own, but those of the Querist; and also swears positively that he never did, before or since that time, hear Mr. Smith express analogous opinions to those of the Querist, but often the reverse—would it not be a strange perversion of the rules of evidence to say, that on that particular occasion alone, he expressed opinions in direct hostility with those expressed during the whole course of his life, both before and afterwards? But this is not all. This case furnishes evidence still more conclusive, if possible, in favor of my interpretation.

If Mr. Smith had been in the habit of expressing this opinion, would not the zeal, the activity and the intelligence of Elias Glover and his associates, have discovered and communicated it? Men who, not content with the most inveterate accusations and persecutions against Mr. Smith, in their individual capacities, have formed clubs, and at length associated themselves in a corporate character under the imposing name of the

Republican Society, for that and other purposes. After their profusion of other charges, which they could not substantiate, is it to be presumed that they would have omitted this charge, if it had been true, and thus could have substantiated it? Their not having made, is almost conclusive proof with me that it did not exist. But further, what does General Carberry say upon this subject? That he is in habits of intimacy with Mr. Smith, and that he never heard him express a sentiment in favor of the separation of the Union, but often the reverse. That he did, however, on one occasion, hear Colonel James Taylor express an opinion, in company with several persons, that a separation of the Union would take place at some distant time, say ten or twelve years. And upon his asking Colonel Taylor, after retiring from the company, if he did not think it imprudent to express that opinion, even speculatively, Colonel Taylor admitted that he thought it was, and made some patriotic observations on the occasion.

This leads me to examine the second question in relation to this point. Even admitting that Mr. Smith did express the opinion attributed to him by Colonel Taylor, *as his own*, was it done with any criminal intent? I am satisfied it was not.

I cannot help remarking here, that I do not concur with the gentleman from Connecticut, (Mr. HILLHOUSE,) who seemed to intimate that there was nothing criminal in expressing speculative opinions in favor of a separation of the Union. In my opinion, if the expression of that speculative opinion be accompanied with an intent to gain proselytes, and thus to effect the object, it is highly criminal; because it is an opinion tending directly to subvert the Constitution and Government of the United States, and to attempt that object in any way, I deem highly criminal. What is treason but speculative opinions against the fundamental principles of the Government, accompanied with an attempt to carry such opinions into effect by force?

The only difference, therefore, between these offences, consists in this: that the criminal object in the one case is to be effected by force; in the other by persuasion. But I do not believe that Mr. Smith could have any such object in view. To whom was this conversation addressed? To gentlemen of the first respectability—known to be firm friends of the Government. To Colonel Taylor, to General Findley, to Dr. Sellman, &c., &c. Could Mr. Smith presume for a moment that he could make proselytes of gentlemen of this description? Could he suppose that they were fit

objects to be used in illicit enterprises? Certainly not. Does either of them state that he made any attempts of this kind? Certainly not. Is there any other instance of his having expressed any opinion in favor of a separation of the Union during the whole course of his life? Certainly not. This is the only solitary instance of such an expression that has been adduced or pretended. Is there any criminal intent ascribed to Colonel Taylor for the expression of a similar opinion to General Carberry? Certainly not. What rule of evidence is applicable to Mr. Smith which is not applicable to Colonel Taylor? Is it just to condemn one man for the expression of an opinion, when the expression of the same opinion by another does not even subject him to suspicion? From all these circumstances I am satisfied, first, that Mr. Smith did not express the opinion in favor of the separation of the Union, in the sense attributed to him by Colonel Taylor; and, in the next place, if he did, it was not expressed with any criminal intent. The next evidence, in point of time, from which inferences are drawn injurious to Mr. Smith, is the testimony of Peter Taylor. It relates to circumstances which took place at Mr. Smith's house on the 23d of October, and shortly afterwards. The first observation made in relation to this point is, that Mr. Smith, in his answer, states that Peter Taylor is a man unworthy of credit, for several reasons mentioned by him, and that he was incorrect in his evidence in the recital of several incidental circumstances; whereas it is said that Peter Taylor is a man of fair character, though ignorant and uninformed, and that his testimony is unimpeached. I readily admit that Mr. Smith's impressions in relation to Peter Taylor's character are more unfavorable than are warranted from the state of the evidence before the Senate; but this is not wonderful, when all circumstances are considered. When it is considered that a deadly wound to Mr. Smith's character was apprehended by him to be about inflicted by Peter Taylor's evidence, which consisted principally in the recital of incidental circumstances, in some of which he was evidently mistaken; when all the knowledge Mr. Smith had of him was, that he was one of Blannerhasset's servants, and presumed to be both ignorant and uninformed, it is not wonderful that Mr. Smith should have entertained a worse opinion of him than he merited; but I see nothing criminal in this misconception. It was a perfectly innocent and natural one.

I readily also admit that, in general, Peter Taylor's character for truth and veracity stands unimpeached, although it must at the same time be admitted that he was mistaken in some of the many incidents he relates; and in one

very remarkable instance, to wit: forgetting the death of his wife, which happened about six weeks before, he mentions a circumstance of making a further provision for her support. I mention this, however, not for the purpose of having an injurious influence upon the general course of his evidence, but merely as a caution against paying too much respect to the episodes or the incidental circumstances mentioned by witnesses, and particularly by him. Inferences of guilt ought very cautiously to be drawn from such sources. But I see nothing in the material and substantial part of Peter Taylor's evidence but what is perfectly consistent with Mr. Smith's innocence, and, in my judgment, tends strongly to support it. As this evidence has been very much relied on to criminate Mr. Smith, let it now be critically examined in a spirit of justice and impartiality. Peter Taylor's evidence is substantially as follows: During the month of October, Mrs. Blannerhasset having become very much alarmed for the safety of her husband, in consequence of the resentment of the people in the neighborhood against him, produced by the pieces under the signature of the Querist, which he acknowledged himself to be the author of; and believing that Burr had instigated him to that conduct, dispatched Peter Taylor, her gardener, in quest of Blannerhasset, with a letter, requesting that he would return to the island, and would prohibit Burr from again returning thither. Being uncertain where Blannerhasset might be, but presuming he would be found with Burr, she directed Peter Taylor to search for him, first at Chilicothe, and if he should not be found there, at Cincinnati, and to inquire at the house of John Smith, storekeeper. In pursuance of these instructions, Peter Taylor being unsuccessful in his search at Chilicothe, arrived at Mr. Smith's house in Cincinnati on the 23d of October. When Mr. Smith came out to him, he inquired for Burr and Blannerhasset: his object, he states to be, to see if Mr. Smith could give any account of them. Mr. Smith first told him that he had mistaken the place; that they were not there, and he knew nothing of them. But upon telling Mr. Smith that he was one of Blannerhasset's servants, and was sent in quest of him by Mrs. Blannerhasset, Mr. Smith took him up stairs to a chamber he was accustomed to write in, to write a letter to Mr. Blannerhasset, and told him they would probably be found at Mr. Jourdan's in Lexington, Kentucky, where it appears from his evidence that Mrs. Blannerhasset originally intended that he should go, if he should not find Blannerhasset before he should arrive there, &c. From these circumstances, strong instances of guilt

are deduced against Mr. Smith. Making allowances for the eccentricities of Peter Taylor's recital, and the inaccuracies of some trivial incidents, which appear to me very obvious, I see nothing at all improper or unnatural in Mr. Smith's conduct. Upon Peter Taylor's first inquiry, Mr. Smith supposed he was mistaken in the place. Was not this supposition very natural, when probably Blannerhasset never was at Mr. Smith's house at all, and Burr had left it the 10th of September preceding, nearly six weeks before that time, and certainly was both mysterious and rapid in his movements? But when Peter Taylor tells Mr. Smith that he was going in quest of Blannerhasset, with a letter from Mrs. Blannerhasset, to Lexington; then Mr. Smith tells him he will probably find them at Mr. Jourdan's—the place where it is probable Burr told him he should take his lodgings—and proposed to send a letter to Blannerhasset by the witness, which he immediately wrote and gave to the witness; during which time there was some very common, and, in my judgment, very immaterial conversation, between Mr. Smith and the witness, perhaps not very accurately related. So far, certainly, this transaction cannot be deemed criminal; but the letter addressed to Blannerhasset covered one to Burr, and upon its being presented to Burr, who was found at Lexington before Blannerhasset was, Burr premising that it contained one addressed to him, opened it, and found that he was right in his conjecture. This circumstance is said to be extremely suspicious, and from it an improper connexion between Colonel Burr and Mr. Smith is inferred. I readily admit, that in itself it is a suspicious circumstance; and if the evidence stopped here, it might be difficult to account for it without some grounds for the inference of such connection. But I consider the evidence upon this point complete and positive, and that there is nothing left to inference. In the first place, it should be recollected that Peter Taylor was in quest of Blannerhasset with a letter for him from his wife; the presumption, therefore, was, that he would find Blannerhasset before he did Burr; and if so, he would not find Burr at all, because his object would be answered, and his journey at an end. This circumstance, no doubt, induced Mr. Smith to put his letter to Burr under cover to Blannerhasset; but as Burr, contrary to Mr. Smith's expectation, was first found, why did he open the letter to Blannerhasset, upon the presumption that it contained one for him? Although I think this circumstance of no importance, as the letter itself is before us, I will yet state my impressions respecting it. Burr probably knew that Blannerhasset was an entire stranger to Mr. Smith; he therefore thought

it improbable that Mr. S. would write to him; Burr could also discover, by feeling the letter, that it contained an enclosure, and as he had but recently abused Mr. Smith's friendship and hospitality, and knew of the unfavorable impressions on the public mind against every one who had confided in him in any way whatever, it is but natural to conclude he conjectured that Mr. Smith had availed himself of the opportunity by Peter Taylor of writing to him upon that subject. But why are explanations of this circumstance called for? Why indulge suspicions respecting an object, when the object of such suspicions is itself before us? Why infer an improper connection, when the evidence of the real connection, or the object of the correspondence itself, is before us? This will be found in the identical letter written by Mr. Smith to Mr. Burr, and delivered by Peter Taylor. Let us discard inferences, and attend to the contents of the letter, and see if there is any thing criminal in them. The authenticity of this letter is admitted by all.

No. 21.

J. Smith's Letter to A. Burr, 23d October, 1806, sent by Peter Taylor.

CINCINNATI, Oct. 23, 1806.

DEAR SIR: Having an opportunity of writing a line by one of Blannerhasset's domestics, I beg leave to inform you that we have in this quarter various reports prejudicial to your character.

It is believed by many that your design is to dismember the Union. Although I do not believe that you have any such design, yet I must confess, from the mystery and rapidity of your movements, that I have fears, let your object be what it may, that the tranquillity of the country will be interrupted, unless it be candidly disclosed, which I solicit, and to which I presume you will have no objection.

I am, dear sir, your most obedient servant,

JOHN SMITH.

Colonel BURR.

I differ more from my honorable friend from Massachusetts, upon the interpretation of this part of the evidence than upon any other, and think his inference more unreasonable and improbable. He seems to admit that the letter itself contains nothing criminal, but infers a criminal intent in writing it. He supposes it to have been the effect of an arrangement previously concerted with Burr to divert and deceive the public attention, and seems to consider it a masterpiece of diplomatic skill; and thus he ascribes to Mr. Smith the character of consummate duplicity. I think the character of this transaction is just the reverse. I think it the letter of a plain, unsuspecting, deluded man. It should be observed, that it is scarcely possible that such an arrangement should have been made between Burr and Mr. Smith as is presumed; because, at the time Burr left Mr. Smith's house, neither of them could have been apprised of Peter Taylor's mission. He was sent by Mrs. Blannerhasset, without the knowledge of either of them, in consequence of circumstances which had taken place after Burr had left the island, as well as Mr. Smith's house; circumstances which Mr. Burr could not have wished

or expected, and, therefore, could not be presumed to have taken precautions against them; nor can it be presumed that Mr. Smith could have availed himself of an opportunity of which he was not apprised, in a moment, without a minute for deliberation, to contrive and execute such a plan; nor could Burr have been furnished with any clue to his object, if he had. It would, indeed, have been a *chef d'œuvre* in the diplomatic art; it would have been beyond the skill of the Prince of Benevento himself; nor, could Mr. Smith have been made competent to it by his most diligent attention as the Prince's pupil for three months, being about the time, in the course of Mr. Smith's whole lifetime, in which he is presumed to be completely converted from a plain-dealing, honest man, into the prince of intriguers and negotiators. Human nature is not capable of such a conversion, if it wished it; Mr. Smith could not, if he would, have thus metamorphosed his own character. The inferences of the gentleman, therefore, are strained, unnatural, and scarcely possible. If we give the letter its common and natural import, it is perfectly innocent, if not laudable. Mr. Smith, doubtless, felt some uneasiness at the general resentment displayed against Burr, and might apprehend it would be applied to him in consequence of having hospitably entertained Burr at his house; and, believing Burr to entertain no dishonorable views, he very naturally and properly wrote to him to disclose his objects, that he might tranquillize the public mind respecting them. But inferences are made from Burr's letters, in reply, unfavorable to Mr. Smith. I differ entirely with the gentleman from Massachusetts, in the interpretation of the contents of that letter. This letter, being in reply to Mr. Smith, is such a material part of the evidence, that I wish to present it entire to the Senate:

"A. Burr's answer to John Smith, Oct. 26, 1806.

"LEXINGTON, Oct. 26, 1806.

"DEAR SIR: I was greatly surprised and really hurt by the unusual tenor of your letter of the 23d, and I hasten to reply to it, as well for your satisfaction as my own. If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it; I never harbored or expressed any such intention to any one, nor did any one ever intimate such design to me. Indeed, I have no conception of any mode in which such a measure could be promoted, except by operating on the minds of the

people, and demonstrating it to be their interest. I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you may have heard from me in public companies at Washington and elsewhere, and in which I think you concurred.^[†] It is a question on which I feel no interest, and certainly I never sought a conversation upon it with any one; but, even if I had written and talked ever so much of the matter, it could not be deemed criminal.

“But the idea, I am told, which some malevolent persons circulate, is, that a separation is to be effected by force; this appears to me to be as absurd and as unworthy of contradiction, as if I had been charged with a design to change the planetary system. All the armies of France could not effect such a purpose, because they could not get here; and if they could get here, they could not subsist, and if they could subsist, they would certainly be destroyed.

“I have no political views whatever; those which I entertained some months ago, and which were communicated to you, have been abandoned.
^[‡]

“Having bought of Colonel Lynch four hundred thousand acres of land on the Washita, I propose to send thither this fall a number of settlers, as many as will go and labor for a certain time, to be paid in land and found in provisions for the time they labor—perhaps one year. Mr. J. Breckenridge, Adair, and Fowler, have separately told me that it was the strong desire of the Administration that American settlers should go into that quarter, and that I could not do a thing more grateful to the Government. I have some other views which are personal merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish; if these projects could any way affect the interests of the United States it would be beneficially, yet I acknowledge that no public considerations have led me to this speculation, but merely the interest and comfort of myself and my friends.

“This is the first letter of explanation which I have ever written to any man, and will probably be the last. It was perhaps due to the frankness of your character, and to the friendship you once bore me. I shall regret to see that a friendship I so greatly valued must be sacrificed on the altars of calumny.

“Be assured that no changes on your part can ever alter my desire of being useful to you; and pray you to accept my warmest wishes for your happiness.

“A. BURR.

“It may be an unnecessary caution, but I never write for publication.

“Hon. JOHN SMITH.”

NOTES in the handwriting of Mr. Smith.

[†] Mr. J. Smith has heard Colonel Burr and others say that, in fifty or a hundred years, the territory of the United States would compose two distinct Governments.

[‡] Mr. J. Smith presumes that Mr. Burr refers to an invitation to settle in Tennessee, of which he heard him speak.

The first observation made by the gentleman from Massachusetts, upon the contents of this letter was, that it appeared wonderful to him that this letter should have reinstated Burr in Mr. Smith's good opinion, after some doubts of his views had been excited in Mr. Smith's mind, by the general clamor of the country against him. The impression produced upon my mind, by observing the contents of this letter, is just the reverse. I think the letter written with great art and address, and well calculated to produce the effect on Mr. Smith's mind which he states it did produce, the restoration of Burr to his confidence. To form a just opinion on this point, it should be recollected that Burr had previously insinuated himself into Mr. Smith's confidence, and that Mr. Smith was not at that time apprised of his illicit objects; because, at that time, they were not generally disclosed; and because, it appears, from several passages in the letter itself, that Burr had not disclosed them to Mr. S. Since Burr's objects have been generally known, we may find passages in the letter obscurely pointing toward them. Of this description is the one referred to by the gentleman from Massachusetts. Speaking of the separation of the Union, Burr writes:

“Indeed, I have no conception of any mode in which such a measure could be promoted, except by operating on the minds of the people, and demonstrating it to be their interest.”

The very mode, says the gentleman, which he was then pursuing. This is very true, but of that it is certainly not in proof that Mr. Smith had any knowledge; and this letter serves to demonstrate, in connection with many other circumstances, that he had not. But, in the very next sentence, Burr proceeds:

“I have never written or published a line on this subject, nor ever expressed any other sentiments than those which you may have heard from me in public companies at Washington and elsewhere.”

And immediately preceding it, he thus writes:

“If there exists any design to separate the Western from the Eastern States, I am totally ignorant of it; I never harbored or expressed such intention to any one, nor did any person ever intimate such design to me.”

Now, sir, take these sentences together, and let any candid mind say, circumstanced as Mr. Smith was, in relation to Burr, whether it was not perfectly natural for him to draw the conclusions he did? Whether these sentences do communicate to Mr. Smith any illicit object on the part of Burr? Whether they do not contain a denial of any intention or effort on his part to effect a separation of the Union? To my mind they do. I am not, therefore, surprised that Mr. Smith drew the inference from them which he did; and I should have been much surprised, indeed, if, from them alone, he had drawn any inference of improper views on the part of Burr. I said there were passages in this letter, which furnished the strongest presumption that Mr. Burr had not communicated his illicit objects to Mr. Smith. Let me now call the attention of the Senate to some of them. After speaking of his intention to settle the Washita lands, Burr writes thus:

“I have some other views which are personal merely, and which I shall have no objection to state to you personally, but which I do not deem it necessary to publish; if these objects could in any way affect the United States, it would be beneficially,” &c.

If Burr had already communicated his views to Mr. Smith, why should he say in this letter, "I shall have no objection to state to you personally;" certainly if he had already stated them, this profession would not only have been unnecessary, but foolish. Burr again writes:

"This is the first letter of explanation which I have ever written to any man, and will probably be the last. It was, perhaps, due to the frankness of your character and to the friendship you once bore me. I shall regret to see that a friendship I so greatly valued must be sacrificed on the altars of calumny. Be assured that no changes on your part can ever alter my desire of being useful to you; and I pray you to accept my warmest wishes for your happiness."

Here follows the postscript:

"It may be an unnecessary caution, but I never write for publication."

From the whole tenor of this letter the real connection between Mr. Smith and Burr may be easily discerned; but it is particularly demonstrated by these last sentences. In them the real state of Burr's mind may be clearly seen. They discover a man conscious of having abused the unguarded confidence and misplaced friendship of another, which he was about to lose by the public exposure of his views. They display despondency and regret at the circumstance, and attempt to make a miserable atonement by a renewal of professions. They demonstrate, too, that there was no participation in the conspiracy. In further corroboration of these conclusions, it ought not to escape notice that, on Burr's next visit to Cincinnati, he took lodgings at a tavern, and avoided Mr. Smith's hospitality, which would, doubtless, have been still open to him; he having been more successful in regaining Mr. Smith's confidence by the artful letter written by him, than he had expected. This I believe to be the plain, obvious, and natural import of this letter. To suppose that it was the effect of a preconcerted arrangement between Burr and Mr. Smith, and intended to disguise the real connection between them, would be a strained, improbable, unnatural supposition, and, therefore, in my judgment, ought not to be relied upon in any case, but especially not upon a question of guilt

or innocence. The postscript of the letter itself furnishes another strong presumption against this conclusion. The next circumstance, in point of time, from which inferences injurious to Mr. Smith are drawn, happened on the 2d or 3d of December, at Frankfort, in Kentucky. At this time and place, Burr was attending on the court upon his second trial. Mr. Smith was drawn thither by business, when a short interview took place, between himself and Burr, very immaterial in its objects or consequences. The ground of crimination deduced from this circumstance, is, that Mr. Smith did not voluntarily attend the court as a witness against Burr, and testify to the disclosures which Burr had made to him upon his last visit to Cincinnati. Mr. Smith stated, at the time, his willingness to attend, but believed he knew nothing relevant to the ground of charge against Burr.

The gentleman from Massachusetts differs from Mr. Smith in opinion on this point, and conceives that if Mr. Smith had attended that court, and disclosed what he has since disclosed, in relation to Burr's last communications to him, it would have been sufficient for Burr's conviction. I differ entirely from the gentleman on this point. All that we know relative to Burr's disclosure of his views, at that time, is furnished by Mr. Smith himself. What was disclosed, it would probably be best to take from Mr. Smith's own words:

“The candor discovered in the above-recited letter, (of October 26, 1806,) inspired my confidence, and when he made his second visit to Cincinnati, in November last, he disclosed his plan fully to my view, as I thought, which added strength to my confidence. He being about to take leave of me, observed: ‘Mr. Smith, my object in a few months will be disclosed; you will not find it dishonorable or inimical to this Government. I feel superior to the mean artifices which are ascribed to me; calumniators I do not notice, for as fast as you put one down, another will rise up. This much I will venture to tell you, if there should be war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces; if peace should be preserved, which I do not expect, I shall settle my Washita lands, and make society as pleasant about me as possible. In this Government I have been persecuted, shamefully persecuted, and, I am sorry to say, that in it all private confidence between man and man, seems to be nearly destroyed.’ He showed me a deed for a

large tract of land on Red River, and said, ‘if I would consent to let my sons go thither, he would provide well for them,’ to which I gave consent, though I never communicated it to my eldest son until last Saturday, the day on which he returned from Marietta, and not till he expressed a disinclination to co-operate with Colonel Burr’s object, till he knew whether it was hostile to the Government of the United States or not. Colonel Burr told me, further, ‘that very many of his friends, in different parts of the United States, would remove and settle with him, and that he would be the best neighbor this country ever had,’ and repeated ‘that his object was not hostile to the people of the United States, or dishonorable to himself;’ and, further, ‘that, in a few months, many of his enemies would be proud to call him their friend.’”

What is here disclosed? Two objects only. The first to settle his Washita lands; the second, in the event of war with Spain, to head a company of volunteers, and be the first to march into Mexico. What was the charge against Burr? A misdemeanor, by beginning and setting on foot a military expedition or enterprise against a nation with which the United States were at peace, &c. Would this evidence have had any tendency towards supporting this charge? Certainly not. Spain had nothing to do with the settlement of the Washita lands, and with respect to the contemplated military expedition into Mexico, it was to be undertaken only in the event of war, and of course could be no violation of a law which forbids such enterprises, only against nations with which the United States are at peace. The evidence, therefore, could not support the charge; and whether such enterprise in time of war would have been lawful or not, would have depended upon the circumstance of the partisan’s acting with or without a commission from the United States, but the gentleman from Massachusetts remarks that this pretended condition, upon which the expedition against Mexico was to be undertaken, was too thin a disguise to impose upon the most credulous or ignorant. I will here admit that I always thought it a very thin disguise; but did every body think so, and particularly before Burr’s other views were disclosed? It is known that many men of the first talents were deceived by this disguise long after this period. It was urged by many as a substantial ground of defence in favor of Burr, during the whole course of his trial at Richmond, and many adhered to it, even after the trial was over. Why is it expected that Mr. Smith particularly ought not to have been

the dupe of this disguise at that particular period? It cannot be because he is known to have reposed a blind confidence in Burr. It is probable that Burr's knowledge of that circumstance induced him to suggest the disguise. It is certainly the circumstance which lulled Mr. Smith's suspicions, and made him the dupe of the artifice. It may be said, and truly said, he ought to have been more guarded; it would certainly have been better for Mr. S. to have been a better judge of human nature, and his present condition is sufficient evidence of the misfortune of the want of that knowledge, but it is no evidence of a crime, or of a criminal intent. The only conclusion I draw from this circumstance is, that Mr. Smith furnishes a striking example of a plain-dealing, unsuspicious man, involved in irretrievable difficulties from the professions and flatteries of an artful and designing one.

The next observation made upon this part of the evidence disclosed by Mr. S. is, that he consented to let his sons go with Burr, from which a knowledge of Burr's illicit views is inferred. It certainly would be an incorrect application of the rules of evidence to infer an object different from the one disclosed by the evidence, particularly when the one expressed is much more natural and probable than the one inferred. Mr. Smith himself furnishes both the fact and the object. He says he was induced to consent to his sons going with Burr, from Burr's promises to advance their fortunes by giving them large portions of his Washita lands. Was not this a very natural object? What could be more natural or probable than for a father to be influenced by a motive of advancing his son's fortunes? But it is said this conduct discovered too much confidence in Burr, and too much simplicity in Mr. Smith, there must be therefore some other concealed motive for it. It is admitted that none is proved, and I believe none exists. It is perfectly consistent with all the rest of the evidence. It does demonstrate too much confidence and too much simplicity; but it demonstrates nothing else. It demonstrates no crime. It does not demonstrate any participation in the conspiracy of Aaron Burr. We have now passed through these scenes of inferences and suspicions, and arrived at the 14th of December, 1806. The gentleman from Massachusetts, with his usual candor, here states, that from this time Mr. Smith's conduct became exemplary, from this date every effort on his part was made to defeat the conspiracy; he contributed his full quota of exertion for that purpose, and succeeded. How can this laudable conduct be reconciled with the inferences of guilt made against him? Why, sir, another inference more preposterous than any other, is brought up to

support all the former inferences, in my judgment, sufficiently preposterous and improbable in themselves. It is said that this laudable exertion to suppress the conspiracy by Mr. Smith was intended as a cover to his former misconduct. But certainly, sir, before this inference is drawn, the former misconduct ought to be proved. It ought not to be made evidence of the misconduct itself. It certainly cannot be a correct rule of evidence to infer a wrong motive from a right action. But, sir, this inference is made against every rule of probability. It is not probable that if the conspiracy should be suppressed by Mr. Smith's exertions in common with others, that such suppression would cover his own misconduct. It would have been the most effectual mode of detecting and exposing it. What hope could Mr. Smith have indulged, that if he had been engaged in the conspiracy, and had turned traitor to the rest by exerting himself in its suppression, that he would have been exempted from exposure? Would not such conduct have tended to excite the resentment of the other conspirators against him, and to call forth from them every exertion to expose him? This conduct was placing them at defiance, and in my judgment, is one of the strongest circumstances of his innocence. It was not at all calculated to cover his participation, and it appears to me absurd to conclude that it was resorted to for that purpose. But, sir, look at Mr. Smith's disclosure to the Secretary of War at this period. At this time could he not have anticipated any prosecution against himself. It was the day after the receipt of the President's proclamation. At that time he communicates to the Secretary of War all the communications made by Burr to him at any previous time, confirmed in every respect by the evidence of General Gano. I believe he did it with candor, and then he makes the following natural and correct observations, after having stated that Burr had deceived him with his apparent candor, that he had before believed Burr's views to be honorable; he remarks: "From the proclamation of the President, I am induced to believe that he is possessed of much more information than has come under my notice, and therefore the utmost attention will be paid to it, as the people here are universally (almost) well disposed to the Government, &c."

Upon the supposition that Mr. Smith is innocent, this conduct is natural and its object obvious. Upon the supposition of his guilt, it is unaccountable, and would have been without a rational object. I cannot, therefore, infer guilt against all the probabilities of innocence. I have now gone through all the evidence which has been deemed by the gentleman

from Massachusetts the most material against Mr. Smith. I have omitted many circumstances both in the papers formerly before the Senate, and those now presented by Mr. Smith's counsel, tending further to demonstrate his innocence; to these I merely request the attention and recollection of the Senate. It has not been my object to dilate on them, but merely to state the reasons on my mind why the conviction of Mr. Smith's guilt was not produced on it, which has been on the gentleman's from Massachusetts. This has been done by the best consideration of those parts of the evidence which he so ably and eloquently selected and presented to our view; of course the worst part of the picture has been constantly before us. Upon a candid review of all the circumstances, to what do they amount? To suspicions, and suspicions only—suspicions unnatural and improbable. Has a single act of participation in Burr's conspiracy been proved? Not to my discernment. Has any been suggested to have been proved? I have heard of none. If any criminal act has been committed, why do not gentlemen tell us what it is—in what it consists? Why do they not put their finger upon it? I call upon gentlemen, I challenge them to do it. That at least must be done, before I can convict the accused of guilt.

Mr. ANDERSON said, when he moved the postponement of this business, the day before yesterday, it was from a desire to collate the testimony; which, having done, he was prepared to vote when he first took his seat this morning, and had not intended to have taken any part in the discussion of the subject. But, seeing that almost all the strong points of circumstantial testimony had been either overlooked or not duly appreciated by the gentlemen (Mr. HILLHOUSE and Mr. GILES) who had spoken against the adoption of the resolution, and who had, withal, entered with great warmth into the discussion, he felt himself bound, as a member of the committee to whom the case of Mr. Smith had been referred, to examine some of the prominent parts of the evidence, and to present it impartially to the view of the Senate. Mr. A. said, in the course of his examination of the evidence, he should not, as the gentleman who preceded him had done, entirely discard the testimony of Elias Glover, but should make that testimony, in its proper place, a part of the groundwork of his observations, and support it by Mr. Smith's own affidavit, and his admission of parts of it in his answer to the committee. Mr. A. said, in order to have a correct view of the case, it would be necessary to recite sundry parts of the testimony—as, by combining and comparing it alone, could the subject be clearly understood—and he would

begin with the evidence of Peter Taylor, (as being the first in order,) who states that in the month of October, 1806, he was sent by Mrs. Blannerhasset, to Lexington, after Mr. Blannerhasset, with a letter, to prevent Colonel Burr from coming back with him to the island. That he was ordered to call at Mr. John Smith's. That he called at Mr. Smith's store and asked for him. When he came out, Taylor inquired for Colonel Burr and Blannerhasset. Mr. Smith said he knew nothing of either of them. That he, Taylor, must be mistaken as to the place where he was to inquire. Taylor said he was right. That he was directed to inquire for John Smith, storekeeper, Cincinnati; and asked Mr. Smith if he did not recollect a young man that had come for Colonel Burr's top-coat, (greatcoat,) and informed Mr. Smith he had lived with Mr. Blannerhasset three years. He says that, when Mr. Smith heard him talk so, he took him up stairs, and asked him the news. Wanted to know what was passing; what was said about General Wilkinson; and if he, Taylor, would carry a letter from him to Blannerhasset, which he agreed to. Mr. Smith then informed Taylor that he would find Burr and Blannerhasset at the house of a Mr. Jourdan, at Lexington, where he found Mr. Burr, who, among other inquiries, asked what letters he had? Taylor replied he had two; one from Mrs. Blannerhasset, and one from John Smith, of Cincinnati. The letter from John Smith, Mr. Burr allowed, was for him, (it was directed to Blannerhasset,) but on Mr. Burr's opening it, he found it contained a letter for him. Having recited some parts of the testimony of Peter Taylor, I shall proceed to make some observations thereon. And here let me premise, that the general character of Peter Taylor has, heretofore, stood the test of the strictest scrutiny at Richmond; and, on a recent inquiry into his veracity and general character, the counsel of Mr. Smith has found both so well sustained, that they have not, in the course of their arguments, attempted to invalidate it, but have contented themselves with pointing out some small mistakes, that have not, in the least degree, lessened the validity of his testimony. With this fair character, then, does Peter Taylor stand before you, and his testimony must receive that portion of credit which is due to established integrity. But notwithstanding the credit of this witness, thus established, Mr. Smith, in his answer to the committee, denies almost every thing that has been sworn to by Peter Taylor. We must then believe, either that Peter Taylor, with all his fairness of character, and totally disinterested, has sworn false respecting the conversation with Mr. Smith, or that Mr.

Smith in his answer to the committee, must have denied what he knew to be true. Which are we to believe? I shall make no comment. Every member of the Senate can form as correct an opinion for himself upon this subject, as I could possibly express. Let us now examine what the testimony of Peter Taylor amounts to against Mr. Smith. Taken by itself, although it may excite strong suspicion, perhaps no great criminality could attach to it; but, combine it with many other circumstances, and it wears a different aspect. I pass over the extraordinary conversation between Mr. Smith and Peter Taylor, and come to the question asked by Mr. Smith. What was said about General Wilkinson? Why is the name of General Wilkinson introduced by Mr. Smith? The Senate will recollect that, in the deciphered letter, written by Colonel Burr to General Wilkinson, which was read yesterday by the honorable chairman of the committee, (Mr. ADAMS,) Colonel Burr tells General Wilkinson that the contractor will supply provisions, to be sent to such points as Wilkinson shall direct. Mr. Smith is the contractor for supplying the army; and a strong inference would here arise that he was the person meant by the term contractor; hence his question—What is said about General Wilkinson? And this question, asked under the peculiar circumstances which here present themselves, implies a knowledge of Colonel Burr's plans, which are developed by the communication General Wilkinson made to the President, of the contents of the deciphered letter. Add to these considerations, Mr. Smith's first denying to Taylor that he knew any thing about Burr or Blannerhasset, and shortly after, when he found Taylor was a domestic of Blannerhasset's, he directed Taylor to the house in Lexington, where he would find Colonel Burr; and they certainly excite a strong impression that Mr. Smith had a knowledge of Colonel Burr's plans and movements. It will be recollected that Mr. Smith asked Taylor to carry a letter from him to Blannerhasset; but, from the testimony of Taylor, it appears that the letter was for Colonel Burr. The contents of this letter, and the answer thereto, are presented to us, and from them arguments have been drawn to prove that Mr. Smith is entirely innocent. But the very able elucidation which had been given of those letters by the honorable chairman of the committee, (Mr. ADAMS,) has not, I expect, left a very strong impression of the innocence of Mr. Smith, either with respect to the tenor of the correspondence, or the object of it. A very different construction has, however, been attempted to be given to the contents of this letter, and the answer thereto, by the gentleman from Virginia, (Mr.

GILES.) Which will best comport with the whole train of Mr. Smith's conduct in relation to Colonel Burr's plans, the Senate will determine.

I shall now proceed to examine the testimony of Elias Glover, and I think I can show that Mr. Smith's own affidavit does most fully support some of the most material parts of it; and it is worthy of remark, that Mr. Smith, in his answer to the committee, admits more of the facts sworn to by Elias Glover, notwithstanding the very bad character Mr. Smith gives him, than he admits of the facts stated in Peter Taylor's deposition, whose character, with all the pains that have been taken to invalidate it, yet remains untarnished. For this extraordinary procedure it may be necessary to account. With respect to Peter Taylor, it will be recollected, Mr. Smith had never admitted the material parts of the conversation as stated by Taylor to have taken place. That Taylor's weight of testimony of course depended on his own character, and Mr. Smith in his affidavit presented to the Senate, says, that he can prove the falsehood of the statement of this witness. Thus was this man's testimony to be positively disproved, which however has failed. But Glover's could not be completely prostrated in the same way, because Mr. Smith had on his oath admitted sundry of the facts stated by Glover, and that at a time when Mr. Smith hardly calculated upon being arraigned before the Senate under the present charge. It therefore became necessary that Glover's general character should be so completely destroyed by positive swearing, as to disprove, if possible, even the very facts which are fully corroborated by Mr. Smith's own admission on oath. But, Mr. President, when I look around, and observe that many of this body, either on the bench or at the bar, have been much accustomed to compare positive swearing with strong circumstantial testimony, I have not a doubt, but that each of those different kinds of evidence will be duly and deliberately estimated. I will now proceed to state some of the material parts of Elias Glover's testimony, and will afterwards compare those parts with Mr. Smith's own affidavit. In Glover's deposition, he states that on the 23d November he, in company with a friend, (this friend appears to be William McFarland,) went to Mr. Smith's, and had a conversation with him, in which Mr. S. stated that Mr. Burr had disclosed to him his object, which he had never fully done before—which was, in the first place, should a war take place between the United States and Spain, to head a corps of volunteers, and march into the Mexican provinces; a great number of enterprising young men were engaged for that purpose—that his

preparations on the western waters were extensive—that the plan had been long maturing, and expressed a full confidence in Colonel Burr's success. Mr. Smith said that his sons were going to Orleans in a few days, and that he had consented that Colonel Burr should there take them into his charge; he having assured him that he, Burr, would provide well for them—he also said that Burr wanted the gunboats he was then building. Mr. S. said he had not been well treated about the boats he had before built. Mr. S. in his deposition sent to the President, some time after the proclamation issued, states that when Burr made his second visit to Cincinnati, in November, 1806, he disclosed his plan fully to him as he thought. Being about to take his leave, he said, Mr. Smith, my object in a few months will be known; you will not find it dishonorable or inimical to this Government. Thus much I will venture to tell you, if there should be a war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces. In this statement of Mr. Smith, he fully confirms the deposition of Glover; and he also admits that he agreed to let his sons go with Colonel Burr. This is another very important point, which goes to support the testimony of Glover. For how could Glover have known this fact, but from Mr. Smith himself—for Mr. S. seems to have been so cautious about communicating it, that from his own affidavit, made the 6th January, 1807, he swears that he never communicated it to his eldest son until the Saturday preceding the 6th January. There is one point of some importance, which Mr. S. though virtually, does not absolutely deny, but evidently intends to deny it in his answer to the committee. It is that part of Glover's testimony respecting the gunboats, which is supported by the letter of the Accountant of the Navy in answer to one from the chairman of the committee. The accountant says, that Mr. Smith had previous to November, 1806, built two gunboats for the United States, and that from some change in the plan, there arose a difficulty in fixing a proper valuation. Glover says Mr. Smith told him he had not been well treated about them at Washington. I would ask how could Glover ever have known that there had been the smallest difficulty about Mr. Smith's gunboats which he built for Government, if Mr. S. himself had not communicated it. There is no great criminality in this communication, but it certainly tends to prove substantially the conversation between Mr. Glover and Mr. Smith. Thus, I conceive, have several important and material parts of the testimony of

Elias Glover been supported, and so far as circumstantial testimony can tend to establish facts, is the deposition of Glover entitled to credit.

It has been attempted to be shown, that Glover was a bitter enemy of Mr. Smith, and affidavits to that effect have been produced, from which it is inferred that no kind of communication whatever could, or had, taken place between them. In the deposition of General Gano, it is stated that, in the summer of 1806, Mr. Glover did, in an electioneering conversation, make use of harsh epithets respecting Mr. Smith. But from the deposition of Mr. Carr, at whose house Mr. Glover boarded, it appears that Mr. S. did visit Mr. G. at his lodgings, and that he saw them engaged in private conversation in the fall of 1806.

Mr. Dugan, who is stated to be a merchant at Cincinnati, deposes that he boarded in the same house with Mr. Glover, in the fall of 1806; that he has seen Mr. Smith going to Glover's lodgings, at the dusk of the evening, and that Mrs. Carr, the landlady, frequently expressed herself in the following terms: "I wonder what brings Mr. Smith so often to this house after dark, and causes him to stay so long in Mr. Glover's room?" or words to that effect. Now, if we believe these witnesses, and we have no reason to doubt their veracity, there certainly must have been a very good and intimate understanding between Mr. Smith and Mr. Glover in the fall of 1806, and this will account for Mr. Smith's free communication to Mr. Glover; and the deposition of William McFarland proves the conversation between Mr. S. and Mr. G. to be substantially correct; and as Mr. Smith has fully proved that Glover and McFarland were both concerned in Burr's plans, it will remain with the Senate to say whether it has not also been proved that Mr. Smith was likewise concerned. I shall take a very short view of Mr. Smith's journey to Frankfort, at the time he saw Col. Burr there, shortly after the conversation which has been stated to have taken place at Mr. Smith's own house, with Glover and McFarland. Some business led Mr. S. to Lexington, where he was informed by a Mr. Jourdan, that if it was known he (Smith) was there, he would be summoned as a witness against Colonel Burr, who it was said was at that time arraigned at Frankfort. Mr. S. said that he was willing, and that he knew nothing of the business. A similar conversation passed between Mr. S. and a Mr. Kelly, by which it appears that Mr. Smith did go to Frankfort on his own business; that for want of General Adair, Mr. Burr's trial before the grand jury was delayed; but Mr. Smith said he could

not be detained at Frankfort from his business, particularly as he knew nothing that would either criminate or exculpate Colonel Burr. Thus we see Mr. Smith denying any knowledge whatever of Col. Burr's plans, although he had acknowledged that Colonel Burr had disclosed his views to him; and the charge then against Colonel Burr was, an intention to invade the Spanish provinces. Mr. Smith's testimony, had it been given, would certainly have thrown much light on the subject, and might have put a complete stop to all the future consequences which created so much agitation throughout every part of the continent.

In about ten days after this affair happened, on the evening of the sixteenth December, Mr. Smith told Mr. Token, as appears by his deposition, that he never believed Colonel Burr to be engaged in hostility against the United States, until he saw the President's proclamation. Until then he believed, as we had been in expectation of a war with Spain, that if Colonel Burr was engaged in any enterprise, it was under the protection, and with the advice of our Government. About the same time, Mr. Smith makes a similar communication to Mr. Gano, who inquired of him if he was acquainted with Burr's designs and mysterious movements in the Western country. Mr. Smith said he had endeavored to find out, but could not, further than they were honorable, and would be approved by the United States; that he was going to settle his Washita lands, and would, if a war should take place between Spain and the United States, be ready to embark in it, and that many who were now his enemies, would then be glad to call him their friend. Major Riddle states that he had the command of the militia that were called out to stop Burr's boats; that he was stationed near Mr. Smith's house, and had instructions from his superior officer to try to find out whether Mr. S. knew any thing of Burr's affairs, and what he knew; and that, in one of the conversations had with him, Mr. S. said he knew more of Burr's concerns than any man in the State of Ohio, but one. Those various declarations thus made by Mr. S. at several different times, and under different circumstances, appear to be entirely inconsistent with one another. We see by the testimony of Jourdan and Kelly, that Mr. Smith declared that he knew nothing about Mr. Burr's business, and nothing that could criminate or exculpate him. We have seen what Glover stated of what Mr. Smith communicated to him; we have seen that statement confirmed by Mr. Smith's own affidavit, sent to the President; and we now see what Mr. S. has declared to Mr. Token and Mr. Gano; to the former he says, that if Burr

was engaged in any enterprise, it was under the protection, and with the advice, of our Government; this was the very language Mr. Burr himself held out to induce the unwary and unsuspecting to join him. To Mr. Gano, Mr. Smith says, he had endeavored to find out Burr's plans, but could not, further than that they were honorable, and would be approved by the United States; and to Major Riddle he says, he knew more of Burr's plans than any man in the State of Ohio, but one. These three last conversations took place about ten days after Mr. Smith had declared to Jourdan and Kelly, that he knew nothing of Burr's business, or any thing that could criminate or exculpate him. How are these various declarations of Mr. S. to be reconciled? At one time he says he knows nothing of Burr's affairs; ten days after, he says he knew more of his concerns than any man in the State of Ohio, but one; and goes so far as to say, that if Burr was engaged in any enterprise, it was under the protection, and with the advice, of our Government; and all this after Mr. Burr had told him that he had been persecuted in this Government, shamefully persecuted, and that, in it, all private confidence between man and man seemed to be nearly destroyed. Could, or did, Mr. Smith believe that the Government countenanced any of the plans of Mr. Burr? It appears to me impossible. What, then, could induce him to make such a declaration, and at different times? Did Mr. S. believe that the Government would give its sanction to an illegal act? For, as a member of the National Legislature, he must have known that it was not authorized by law, and that the President would not dare, in violation of the constitution, (even if had ever so great an inclination,) to countenance an enterprise that would inevitably involve our country in war. And did Mr. S. believe that the Administration had such unbounded confidence in Mr. Burr as to intrust him with so important an expedition at that critical period? Yet these things we must believe, if we believe Mr. Smith sincere in his declaration; and if we do believe him sincere in saying that if Mr. Burr was engaged in any enterprise, it was under the protection, and with the advice, of our Government, we must believe that he was conversant with Mr. Burr's plans, which must have been very plausibly impressed upon him indeed, to have induced him to have formed so extraordinary an opinion.

Mr. POPE.—It is with reluctance that I rise at so late an hour to express the reasons which will influence my vote. The very able and luminous view which my honorable friend from Virginia has taken of this subject will supersede the necessity of many additional remarks from me.

The counsel of Mr. Smith have opposed the resolution on two grounds: First, that the Senate have no jurisdiction in the case; second, that the evidence does not warrant its adoption. Although I have dissented, and still dissent from the opinion of other gentlemen in their application of some of the principles laid down in the report of the committee, I concur with them on the general ground of jurisdiction. Their arguments on this point were very plausible and ingenious. They have contended that the Senate has no power to inquire into any offence of which one of its members may be accused, that is cognizable in a civil court of criminal jurisdiction. Every man is equally amenable to the general laws of the land, and liable to be prosecuted and punished in the civil courts; but when a man is clothed with a legislative character, he is placed in a new relation; and, besides being amenable to the judicial tribunals of his country, he becomes, to a certain extent, responsible for his conduct to that body to which he belongs; and that body has a power to inquire into it, without the aid of a civil court. Whenever a member of this House shall be charged with a crime punishable by the general laws of the country, it may be a question worthy of consideration, whether to refer it to the civil court, or to have it examined before this body. On this question, the reasoning of the counsel, when addressed to the sound discretion of the Senate, would merit attention. If, however, the Senate should deem it necessary or expedient to make the inquiry, I entertain no doubt of its power to do so.

I will add nothing more on the subject of jurisdiction, but proceed to consider whether the resolution is supported by the evidence before us. The gentlemen for and against the resolution who have preceded me, seem to consider Glover discredited, and in their arguments, have laid his affidavit entirely out of the case. I shall not inquire into the credibility of this witness, after the solemn protest I have so often made against the use of ex parte testimony, either to criminate the accused, or to impeach the characters or credibility of the witnesses; the Senate must be satisfied that I should be very unwilling to bottom my vote on such testimony. My mind revolts at the idea of pronouncing a man guilty of an infamous crime upon a private ex parte affidavit, especially of a private conversation, so liable to be misunderstood, and so impossible to be disproved. The precedent would be a monstrous one, and the first, I believe, known in this country. I cannot give my vote to sanction it. We are called upon to declare to this nation, that Mr. Smith has been guilty of participating in the conspiracy of Aaron Burr

against the peace, liberties, and union, of the people of these States. To authorize us to pronounce the sentence, one of two things ought to appear; either that he has committed some treasonable act, or that Burr's treasonable project was disclosed to him; and that he connived at, or improperly concealed it; for, I presume, it will be conceded that it should appear that Mr. Smith has been guilty of some act of a treasonable nature. Glover was the important witness against Mr. Smith before the grand jury at Richmond, and his testimony has been deemed very material during the present investigation. If his affidavit is abandoned, I would thank some gentleman to specify the evidence which proves Mr. Smith guilty of committing or concealing any thing treasonable. We are told, however, that, although no particular part of the evidence, or no single link in the chain proves his guilt, yet the whole circumstances combined make it sufficiently manifest. I must confess that many circumstances, which do not appear to have any necessary connection with each other, have been put together with great ingenuity, and from them strong inferences drawn unfavorable to Mr. Smith. After exhibiting this chain in its most plausible and imposing attitude, I believe gentlemen will be at a loss to inform us what is the result, or what particular part, if any, it proves Mr. Smith has performed in this conspiracy of Burr. My friend from Virginia has well explained the circumstances stated by Peter Taylor. Peter Taylor may be mistaken in some of the circumstances, but, admitting the whole to be true, there is nothing incompatible with innocence. It is evident that Mrs. Blannerhasset's sending Peter Taylor, the letter from Smith to Burr, and Burr's answer, were not the result of any previous concert, but grew out of the circumstances of the moment. The conversation mentioned by Colonel Taylor has been much relied on. I have, from personal acquaintance, as well as from character, too much confidence in the honor and veracity of Colonel Taylor, to suspect, for a moment, that he would intentionally misrepresent; but if the testimony of Doctor Sellman is to be regarded, we might be induced to suppose it possible that Colonel Taylor either did not apprehend Mr. Smith's meaning correctly, or that he did not hear the whole of his observations. I am not, however, convinced that Colonel Taylor has been mistaken. I disapprove, very much, the dissemination of such sentiments; it tends to weaken the bond of union, but it cannot, surely, be deemed an infamous or criminal act, which will constitute a ground of expulsion. It is worthy of remark, that almost the whole of the testimony against Mr. Smith relates to

conversations; a species of testimony which should be received with great caution. I beg leave to remind gentlemen of some circumstances which have occurred in this city during the present session. Conversations, which have been repeated on the same or the day after they took place, have been understood, and represented differently, by different gentlemen who were present. The gentlemen who have advocated the expulsion of Mr. Smith, have relied principally on Mr. Smith's own statements. If Mr. Smith's explanation of his own conduct is to be resorted to, the whole should be taken together. It would be very unfair to garble it. However improper or dangerous it may be considered, to permit a man to prepare the means of a military expedition against a foreign government, without the authority of his own, Mr. Smith's explanation in his answer, his conduct and declarations, after the President's proclamation arrived at Cincinnati, his letter to the Secretary of War, of the 14th of December, 1806, afford a strong presumption that he had no criminal intentions. In his letter to the Secretary of War, he stated that, about two weeks before he had called on Burr, then at Cincinnati, and requested to know his object; Burr answered that, in the event of war with Spain, which he deemed inevitable, he would head a corps of volunteers, and march into Mexico; but if peace should be preserved, which he did not expect, he would make a settlement of lands. This was the only disclosure, if it may be called one, which it appears was ever made to him, and this he communicated to the Government two weeks after he received it; but observes, in his letter, that Burr had expressed himself with apparent frankness and candor, that he could not believe that he was engaged in any criminal project. Inasmuch, however, as the President had issued his proclamation, he presumed he must have more information than himself, and considered it his duty to enforce it.

All parties about Cincinnati seem to agree that Mr. Smith was one of the most active and efficient men in arresting the progress of the expedition. He procured the public arms on his own responsibility, and put them in the hands of the militia. It has been said that he pursued this course to blind the people, and not from patriotic motives; this is uncharitable indeed. If Mr. Smith had disregarded the warning of the President and discountenanced an attempt to stop the expedition, such conduct would have been relied on as very strong evidence of his connection with Burr; so, that, whether he was active or passive, his conduct, after suspicion had alighted upon him, would have been equal evidence of his guilt. Whatever may have been Mr. Smith's

confidence in Burr previous to the arrival of the proclamation, it is evident that he abandoned him the moment he was denounced by the Government. If it be true, as has been alleged, that Mr. Glover was a partisan of Burr's, it is strange, if Mr. Smith was also concerned, that Mr. Smith and Mr. Glover should have conducted themselves so differently after the arrival of the proclamation; and it appears to me very extraordinary that Mr. Glover, if he had been initiated into the secrets of Mr. Burr's projects, should, in his communications to the Government, have implicated no person except Mr. Smith, who had been so active in defeating them. Can it be seriously contended that Mr. Smith's hospitality to Burr and his confidence in him is evidence of his criminal participation? Surely not. If such circumstances are deemed sufficient to prove a man a traitor to his country, hundreds of innocent persons might be implicated. When Mr. Burr was in the Western country in the fall of 1806, I thought, and still think, that the charges made against him in the public prints, and in court by the attorney of the United States, if not sufficient to convict him of crime, ought at least to have put us on our guard, and I considered any attempt under these circumstances to give eclat, or to turn public opinion in his favor, imprudent and improper; but, sir, I should not feel myself authorized to pronounce every man a traitor, who treated Mr. Burr with respect, before the President's proclamation reached that country. The gentleman from Tennessee has contended that we ought not to require the same evidence that would be requisite to convict a man of treason before a petit jury. No position, received in the light in which this appears to have been considered by many during the present investigation, is more fallacious or dangerous; that we are not bound by the forms or technicalities of the law, I admit; but I contend, with confidence, that the Senate of the United States, when called upon to declare the existence of a fact, are as much bound by justice and conscience to require proof of it, as any other tribunal. A court and jury would not perhaps require the proof to be as clear and conclusive in a case where the sum of twenty pounds only was in dispute, as in a case of life and death; and it may be said, with at least some plausibility, that we ought not to be as scrupulous on the present occasion, where reputation only is involved, as if life was at stake. The difference consists, not in the tribunals which decide, but the importance of the questions to be decided. In every case where a fact is in question, the triers or judges ought to require convincing evidence of it before they assert it. It has been said that if odium

or suspicion has attached to a man's character, he ought to be expelled. This ground, if tenable, cannot be relied on in the present state of this question. If this was a proper ground of expulsion, we should have expelled Mr. Smith when he first presented himself here in November last, on account of the odium which had attached to his character by the finding of the indictments at Richmond; but this ground was abandoned. It was decided by this Senate that Mr. Smith was entitled, on the principles of justice, to an opportunity of controverting the charges against him before he should be banished from this House. We have proceeded to inquire into the fact. The question now to be decided is not whether he is a suspicious character, but whether he is proved by the evidence before us to be guilty of crime. I cannot act upon suspicion, or mere conjecture. I will not bottom my vote upon any thing which does not present itself in the shape of substantial evidence. Were I a citizen of the State of Ohio, mere suspicion or distrust of his integrity, or the circulation of opinions which I disapproved, might be a sufficient reason to me to withdraw my confidence from Mr. Smith, to refuse him my suffrage; very different is my situation. It does not depend on my choice or opinion, who shall represent the State of Ohio in this Senate. I do not feel myself authorized to deprive Mr. Smith of his seat here, until he is proved to have been guilty of some infamous or disgraceful conduct.

Mr. CRAWFORD had determined to take no part in this discussion. The exposition which the subject had received from the gentleman from Massachusetts, was so clear, so comprehensive, and at the same time so candid, as to supersede the necessity of any remarks from him. He felt, however, constrained to make a few remarks in reply to the gentleman from Virginia. The Senate has been told by that gentleman, that its dignity has been assailed by the depositions taken on the part of Mr. Glover, in support of his credibility, that they have been procured on the presumption that this body is to be governed by political prejudices. If this objection is well founded, it applies with equal force to the conduct and testimony of Mr. Smith. From the first to the last word of Mr. Smith's answer, he endeavors to impress upon this body the zeal with which he has been devoted to the present Administration. In the deposition of every witness examined by Mr. S. as to his own conduct, the witness is questioned upon that point—his zeal for the Administration is the principal point which he labors to establish. If then the dignity of the Senate is assailed by Glover, it is equally so by Mr. Smith.

Another, very convenient method of destroying the force of the depositions inculcating Mr. S. has been adopted by the gentleman from Virginia, and also from Kentucky. We are first told, that they have been taken without proper notice to Mr. Smith; but as many of Mr. Smith's depositions were taken in the same manner, and liable to the same objection, it was necessary to find some other objection to them, and especially to Mr. Riddle's deposition. What, sir, is this formidable objection to his deposition? One, sir, which if well founded must be effectual. We are gravely told, sir, if Mr. Riddle is an honest man, and not connected with A. Burr, that Mr. S. would never have disclosed his views to him; and that if he was one of Burr's associates he cannot be an honest man, and therefore is not entitled to credit. This sir, is a two-edged sword, which is destructive to the credit and reputation of Mr. Riddle indeed; and the same candid mode of reasoning would be equally destructive to the reputation and credit of any other man. If the witness is an honest man, you are not to believe him, because Mr. Smith would not be so foolish as to disclose his views to him; and if he is a dishonest or suspicious character, to whom Mr. Smith might safely disclose his iniquitous plans, then you must believe him, because of his suspicious character. This reasoning may be ingenious, but it certainly has nothing in it of sincerity and candor.

The gentleman from Connecticut cannot believe that A. Burr ever disclosed his projects to Mr. Smith, because all the persons to whom he disclosed them, were inimical to the Administration. It is true that in the Atlantic States, at least east of the Alleghany mountains, that artful traitor addressed himself to persons who were in a state of enmity with the Government, and to no other. He applied to General Eaton, who believed he had just cause of complaint against the Administration; who believed he had suffered absolute injustice at their hands. For the same reason he applies to Commodore Truxton. But, sir, trace him from Philadelphia to Pittsburg—view his conduct on the western side of the same mountains. What is his conduct there? What is his conduct and conversation with the Morgans? His conduct and the motives of his conduct are changed. Here he endeavors to convince every man that it is the interest of the Western country to separate from the Atlantic States. Here he addresses himself to the most respectable and influential characters, who stood high in the estimation of the public, who had no cause of complaint against the Administration. The Morgans were not anti-ministerialists—they were respectable, they were influential;

it was therefore important to obtain their countenance and support. Blannerhasset was a man of wealth and talents, and of easy credulity. He is applied to and secured. The next we hear of Aaron Burr is at the house of Mr. Smith. This gentleman stood high not only in his own State, was not only a Senator of the United States, but also a contractor for furnishing the army of the United States. It was an object of the highest importance to the success of Aaron Burr's plans to obtain his aid and co-operation. But we have been told that it is improper in the investigation of this subject, to introduce the acts and sayings of Aaron Burr. If this is correct, there is an end of the question. After deciding this point, it was wholly unnecessary for the gentleman from Virginia to have performed the herculean labor which he afterwards attempted. How, sir, is it possible to convict John Smith of a participation in the views or plans of Aaron Burr, if the sayings and acts of Aaron Burr are to be excluded from the investigation? It is impossible, sir. If this attempt to keep out of view the words and actions of Aaron Burr had been made by an advocate in a criminal court, it would justly be entitled *a coup de main*. Aaron Burr had the strongest possible inducements to seduce Mr. Smith and to obtain his countenance and assistance. He was contractor for your army. He could procure supplies for his men, and the then situation of your army was such, that the supplies procured and sent by the contractor might with equal facility be converted to the use of Aaron Burr or applied to the support of the legitimate army. The procurement of supplies in sufficient quantity for Burr and his men by any other person, would have excited suspicion, and created alarm. He arrived at Mr. Smith's on the 4th September and remained an inmate of his house until the 9th or 10th, and yet Mr. Smith says he never mentioned to him any of his designs or plans, not even of the settlement of Washita lands. This he asserts in his letter of the 14th December to the Secretary of War. On the 6th January afterwards, he says and swears that Burr did during his first visit mention the settlement of those lands. Yet the gentleman from Virginia not only discovers no contradiction between the oath and letter, but thinks he discovers strong evidence of their consistency and agreement. To me, sir, there appears a direct and palpable contradiction. On the 23d of October Peter Taylor arrives at the house of Mr. Smith and inquires of him, at his own door, whether he knew anything of Burr and Blannerhasset. "He allowed he knew nothing of them; that I must be mistaken; this is not the place; I said no, this was the right place," "Mr. Smith, storekeeper, Cincinnati." "Sir, I have lived

with Blannerhasset for three years.” Mr. Smith then took him up stairs, or he followed him up. He then made inquiries which tend strongly to prove that he was one of Burr’s confidants, and gives Peter Taylor the very information he had asked, and the very information of which he had just before declared his ignorance. The testimony of this man is admitted by every one to be worthy of the highest credit. I shall therefore leave to the gentleman from Virginia the rugged task of proving the innocence of Mr. Smith without impeaching Peter Taylor’s veracity.

That Mr. Smith should write a letter to Burr and direct it to Blannerhasset has been satisfactorily explained. But it is not easy to explain, nor has it been explained, by what means Burr could devise that the letter directed to Blannerhasset was a letter written to him, or contained a letter for him. The construction which this transaction, and the letters written by Mr. Smith and Burr to each other, have received from the gentleman from Massachusetts, is the only candid and rational construction of which they are susceptible.

The Senate have been cautioned not to lay much stress upon the testimony of Colonel James Taylor, not because he is unworthy of credit, but because he deposes to a conversation which has long since past, and because Dr. Sellman was present and heard no such expressions. Sir, I believe the deposition of Colonel James Taylor contains not only a perspicuous declaration of what he believed, but also a correct statement of facts; a correct statement of what he heard. His deposition, it is true, was made long after the conversation happened; but shortly after that event he reduced it to writing, and communicated it to the Secretary of State, and to that writing he referred when under examination before the Senate. He also swears he conversed with General Findley, and that his understanding of that conversation was the same. Compare the circumstances under which Colonel Taylor testifies, with those which attend Dr. Sellman’s deposition. If he was present at all, it does not appear that any circumstance whatever occurred to impress that conversation upon his mind—it does not appear that he ever thought of it afterwards, until he was called upon to depose, which was more than fifteen months subsequent to the conversation; but it does appear that Dr. Sellman has acted the part of a partisan of Mr. Smith’s. In truth, sir, there is not a single circumstance tending to confirm his statement of that conversation, in opposition to that of Colonel James Taylor.

I agree with the gentleman from Massachusetts, that it would be improper to declare a member of this body unworthy of his seat for the expression of mere speculative opinions; but the expression of these opinions, connected with other circumstances which preceded, and followed after it, amounts to very strong proof. We are called upon by the gentleman from Virginia, and also from Kentucky, to lay our fingers upon that particular part of the testimony which produces conviction in our minds, of the guilt of Mr. Smith. To this call, sir, I will observe that in all cases of circumstantial evidence, convictions are the result of a combination of circumstances; they are not produced by any one link in the chain of testimony, but by the whole chain taken together. If, sir, a conviction could not take place in a court of justice unless the jury could put their fingers upon the particular part of the testimony which established the guilt of the accused, it might happen that in nine cases out of ten the culprit would be acquitted.

My friend from Kentucky says, if John Smith has participated in Burr's treasonable and unlawful projects, it must have been by performing some act or in concealing it—that he is not charged with having performed any act, and that therefore the charge must be founded on his concealment of what he knew. I will not say that Mr. Smith has been charged with enlisting troops for Aaron Burr; but, sir, I will say, that he has been guilty of an act very much like it—an enlistment of the strongest character—an engagement or an enlistment of his two sons to go with Aaron Burr—to march under his banner—subject to his control, under his absolute government, dependent upon him for their future prospects and station in life. And here, sir, I refer to the deposition of Mr. Smith himself. He swears, that Aaron Burr did at his second visit to Cincinnati, disclose his views of invading Mexico; and yet, sir, he engaged his sons in the enterprise.

But, sir, there is one point in the testimony, which of itself produces something like conviction on my mind, that Mr. S. was guilty of participating in Burr's plans. And here, sir, I will refer to the deposition made by Mr. Smith, and that of A. D. Smith already referred to by the gentleman from Tennessee, for a different purpose. Mr. S. swears that he never communicated to his son the engagement with Burr until the day he returned from Marietta, and not till he had expressed a disinclination to co-operate with Colonel Burr's object. This deposition was made on the 6th

January, 1807, and by a deposition of A. D. Smith of the same date, it appears he returned from Marietta on the 3d day of that month. It also appears in evidence, that for some time previous to this day, Mr. Smith had been in Kentucky, and that during that time A. D. Smith had become the bearer of a letter to Blannerhasset from Burr, and for that purpose had gone to Marietta and Belle Pre; and that the 3d of January was the day he met his father on his return. But A. D. Smith on the 13th August, at Richmond, swears, that he never received any overtures from Burr on that subject; yet he considered himself as engaged under him, for he says—"From the papers which daily teemed with the treason of Colonel Burr's designs; the frequent solicitations, and injunctions of my father, to relinquish the idea of descending the Mississippi as an accomplice of Colonel Burr's; and General Eaton's deposition, alone induced me to abandon him and his projects." Here, sir, the son declares he did not engage himself with Aaron Burr, yet he was engaged; he knew that he was engaged, and reluctantly broke that engagement. The father swears he engaged him; but that he never disclosed that engagement to him until he expressed his disinclination to go. From whom did A. D. Smith receive the knowledge of this engagement? The answer is too plain; from his father, and not communicated to him on his return from Marietta, but before he set out for that place; before the father set out for Kentucky; and a knowledge of this engagement is the only probable reason of his becoming the bearer of that letter. But, sir, there is another contradiction which ought to be noticed here. A. D. S. and his father met on his return from Marietta, and the frequent solicitations and injunctions of the father induced the son to abandon B.; yet the father swears he never disclosed the engagement he had made until the son had expressed a disinclination to go with B. This expression of Mr. S.'s is a contradiction in itself; but when compared with the declarations of the son, the contradiction is gross and palpable. How could he solicit and enjoin his son to violate an engagement which he knew nothing of? Sir, it is impossible to reconcile these contradictions. Upon this occasion my mind has received no bias whatever from the conversations and whispers alluded to by the gentleman from Kentucky. I have lived in a section of the country that has not felt the general impression made by the movements and enterprises of Aaron Burr. I have attended to nothing but the testimony. I have had no acquaintance with Mr. Smith; I entertain no prejudice against him. I should feel as much gratified as any member of this body, to be able,

consistently with my duty, to vote for his retaining his seat. Sir, the feelings of this House have been addressed—an appeal has been made to the humanity of the Senate. We have a duty to discharge which is paramount to humanity; instead of resigning ourselves to our feelings, we ought to exercise our judgment, and do that which the public good imperiously requires. From a full examination of the evidence, I am constrained to say, that the conduct of Mr. Smith has been such as to render it highly improper for him to retain his seat in the highest council of the nation.

The question was now taken to agree to the resolution, and determined in the negative, two-thirds of the Senators present not concurring therein—yeas 19, nays 10, as follows:

YEAS.—Messrs. Adams, Anderson, Condit, Crawford, Franklin, Gaillard, Gilman, Gregg, Kitchel, Maclay, Mathewson, Milledge, Moore, Robinson, Smith of Maryland, Smith of Tennessee, Sumter, Tiffin and Turner.

NAYS.—Messrs. Giles, Goodrich, Hillhouse, Howland, Pickering, Pope, Reed, Smith of New York, Thruston, and White.^[54]

MONDAY, April 11.

Resolved, That the President of the Senate and the Speaker of the House of Representatives, be authorized to adjourn their respective Houses on Monday the twenty-fifth day of April instant.

Ordered, That the Secretary notify the House of Representatives accordingly.

TUESDAY, April 12.

Removal of Federal Judges upon Address from Congress.

Mr. ADAMS stated that he, together with his colleague, were instructed by the Legislature of the State of Massachusetts, to use their best endeavors to procure such an amendment to the Constitution of the United States, as will empower the President of the United States to remove from office any of

the judges of the courts of the United States, upon an address to him made for that purpose, by a majority of the House of Representatives, and two-thirds of the Senate, in Congress assembled.

On motion, by Mr. ADAMS,

Ordered, That the instructions be referred to the committee appointed the 25th of January last, on the subject of amendments to the constitution, to consider and report thereon.

***Amendment of the Constitution—President by lot from among the
Senators.***

Mr. HILLHOUSE.—The situation of the United States at the time of the meeting of the Convention for forming the constitution, I well remember, and it will be recollected by every member of this Senate, to have been such as to excite the anxious solicitude of every considerate man in our country. External pressure being removed, the recommendations of Congress had ceased to have effect on the States. We were a nation without credit and without resources; or rather without the means of drawing them forth. Local policy began to operate in a manner that tended to excite jealousy and discontent among the States; and there was reason to fear that we were exposed, and at no remote period, to all the calamities of civil war. Under these circumstances, the present constitution was promulgated, and was eagerly seized on by the great body of the people, as the palladium of our liberties, and the bond of our Union. I was of the number of those who approved it, though some parts of it appeared to me mere theories in the science of Government, which I hoped in the experiment would prove salutary; but my expectations were not sanguine.

Before I proceed with my explanatory remarks, I must take the liberty of stating, that in using the terms monarchy, aristocracy, or democracy, I do not use them as the cant words of party; I use them in their fair, genuine sense. The terms Federalist and Republican, I do not use by way of commendation or reproach; but merely by way of description, as the first names of individuals, to distinguish them from others of the same family name.

Federalists and Republicans never divided upon the elementary principles of government. There are very few Americans who are not in principle attached to a free republican government; though they may differ on minor points, and about the best mode of organizing it. Persons attached to monarchy or aristocracy are few indeed; they are but as the dust in the balance. No one in his sober senses can believe it practicable, or politic if practicable, to introduce either. If ever introduced, which God forbid, it must be done at the point of the bayonet.

It is well known that the denominations of the parties, called Federalists and Republicans, were applied, the former to those who supported, the latter to those who opposed the two first Administrations formed under the Federal Constitution. Those who opposed those Administrations, wishing to obtain the governing power, and disliking the name of Anti-Federalists, given to the first opposers of the constitution, assumed the more popular name of *Republicans*. It cannot be expected that a politician, when he has made himself up for a political ball or masquerade, will exhibit his true character. Many of the most florid speeches are made more with an eye to the people, than to the body to which they are addressed. To find the true character of man, you must look to his homespun, everyday dress; if you do this, will you not find a full proportion of good Republicans, as they are called, who exhibit no more of that virtue called humility than their neighbors, and who manifest no greater regard for equal rights? The supposed differences are more imaginary than real. Names may, and sometimes do, deceive ignorant, uninformed individuals; but these names now scarcely do that.

Some of the important features of our constitution were borrowed from a model which did not very well suit our condition: I mean the Constitution and Government of England, a mixed monarchy, in which monarchy, aristocracy and democracy, are so combined as to form a check on each other. One important and indispensable requisite of such a Government is, that the two first branches should be hereditary, and that the Monarch should be the fountain of honor and source of power. In the United States, the people are the source of *all* power.

Placing in the hands of the Chief Magistrate, who depends on a popular election, prerogatives and powers in many respects equal, in some, exceeding in practice those exercised by the King of Great Britain, is one of

the errors of the constitution. This error can be corrected only in one of two ways; either the office must be stripped of those high prerogatives and powers, and the term of holding the office shortened, or some other mode devised, than a popular election, for appointing a President: otherwise, our country must perpetually groan under the scourge of party rage and violence, and be continually exposed to that worst of all calamities, civil war.

I am aware I have engaged in a difficult undertaking. I have to oppose deep-rooted prejudices and long-established opinions, which will be abandoned with reluctance. I have to contradict favorite theories, long ago adopted, and still strenuously maintained. It is therefore to be expected that arguments which go to destroy the former, or contradict the latter, will be admitted with caution, and listened to with a reluctant ear. Some of the amendments, when first presented to my mind, made but a slight impression, and I was disposed to pass them by as impracticable or ineffectual; but experience and mature reflection have satisfied me both of their correctness and importance.

I am aware that the amendments will not be approved by many individuals in this nation, under an apprehension of their tending to lower the tone and energy of the Government. They will be denounced by all office hunters, demagogues, and men of inordinate ambition, more anxious for their own elevation to office than for the public good. All artful men, who rely more on their dexterity and skill in intrigue, than upon honest merit, to secure an election, will raise their voices and cry aloud against them. They will describe them as utopian and visionary; as departing from the elective principle; and as lowering the dignity and character of the Government. But the great body of the people, who compose that portion of the community which can have no views or interests incompatible with the general welfare, which can have no other wish or desire than to see the nation prosper, and which the feelings of nature would stimulate to do what would advance the prosperity and happiness of future generations, will, I flatter myself, lend a listening ear, and grant me a candid and patient hearing. I must also be permitted to indulge the hope, that, in this honorable body, the amendments will not be hastily rejected; nor until they shall have undergone an attentive and critical examination.

A prominent feature of the amendments is, to shorten the term of service of the President, Senators, and Representatives; observation and experience having convinced me, that in an elective Government, long terms of office and high compensations do not tend to make independent public servants, while they produce an anxious solicitude in the incumbents to keep their places; and render seekers of office more eager to obtain them, and more regardless of the means.

My first amendment goes to reduce the term of service of the members of the House of Representatives to one year.

No inconvenience can arise from this arrangement; because there is a constitutional provision that Congress shall assemble once in every year. That body, composed of the immediate representatives of the people, ought to exhibit a fair representation of their sentiments and will; and, coming fresh from the people to the Congress of each year, will, it may be presumed, fairly express such sentiments and will. And if, in an interval from one session of Congress to another, there be a real change of public sentiment, why should not that change be expressed? Will an attempt in their Representatives to resist it, tend to tranquillize the public mind? or will it not, like persecution in religion, tend to make proselytes to their sentiments?

Constitutions, except so far as they are necessary to organize the several departments of Government, and bring the public functionaries into a situation to deliberate and act; and, in the General Government, to draw the line of demarcation between that and the State governments, to prevent interference and collision, are of little avail; and present but feeble barriers against the public will. Whenever a measure is understood and believed to be necessary to promote the general welfare, the people will not fail to effect it. If they cannot, by construction, get round the constitution, they will, by an amendment, go directly to their object. Of the truth of this, experience has furnished ample proof. The danger is, that by attempting to extend constitutional restrictions too far, unnatural and mischievous exertions of power may be produced.

By the second amendment, the term of service of the Senators is to be reduced to three years; one-third to be chosen each year.

The Senate, I am aware, may be surprised, and perhaps feel some displeasure, that one of their own body should propose an amendment, which, in the estimation of some, may tend to lessen their dignity, and destroy their independence. Did I believe this, I should be the last to offer it. If the Senate will hear me patiently, I think I can show that it will produce no such effect.

Senators represent the rights and interests of States in respect to their sovereignty. In them, therefore, the States ought to feel a *confidence*. And this confidence will rather be increased than lessened by shortening the term of service to three years. Shall I be told that the Legislatures of the States are not to be relied on for their *stability* and *patriotism*? that it would be unsafe, every third year, to trust them with the appointment of their Senators? No, surely. The several States are the *pillars* on which the Constitution of the United States *rests*, and *must rest*. If these pillars are not sound, if they are composed of feeble, frail materials, then must the General Government moulder into *ruin*. This, however, is not my belief. I have confidence in the State Governments. I am for keeping them in their *full vigor* and *strength*. For if any disaster befalls the General Government, the States, having within their respective spheres all the power of independent Governments, will be the arks of safety to which the citizens can flee for protection from *anarchy*, and the horrid evils which follow its train. I have therefore uniformly been opposed to measures which had the remotest tendency to their consolidation.

When I shall have stated the next amendment, it will be found that my plan, instead of lessening the dignity and importance of Senators, will magnify their office, and make it the object of desire and laudable ambition to the best characters and greatest talents of our country; for, from the Senate I propose that the President of the United States shall always be taken; and in a manner that will exclude all *cabal* and *undue influence* in obtaining that high office—a mode in which the man of modest merit shall have an equal chance of success with the most daring and artful intriguer.

The third amendment provides for the appointment of a President. He is to be taken by lot from the Senate, and is to hold his office for one year.

This mode promises many advantages, and only two objections against it present themselves to my mind; one, that it is a departure from the *elective*

principle; the other, that it will not always ensure the best talents. I should not have proposed this mode, if any other could have been devised, which would not convulse the whole body politic, set wide open the door to *intrigue* and *cabal*, and bring upon the nation incalculable evils; evils already felt, and growing more and more serious. Upon mature examination, those objections appear less formidable than at first view.

When Senators shall be chosen with an eye to this provision, every State will be anxious to make such a selection of persons as will not disgrace it in the eventual elevation of one of them to the Presidential chair. Every State Legislature would, in the choice of the Senator, consider itself as nominating a candidate for the Presidency. The effect of this arrangement would be, in reality, that, instead of the States appointing Electors to choose a President, the Legislatures themselves would become the Electors; with this advantage, that the nomination would be made when not under the influence of a Presidential electioneering fever. In the regular course of appointing Senators, only one nomination would be made at one time in each State; and in most cases, three years would elapse before he could be designated for the Presidency. The great caution in the selection of Senators, with a reference to that high office, would produce another excellent effect: it would ensure the continuance, in that body, of men of the most respectable talents and character—an object of the highest importance to the general welfare. In the mode directed by the constitution for choosing a President by the House of Representatives, there is almost as great a departure as in what I propose, from the pure elective principle; which requires perfect freedom of choice among all who are eligible; and that the ballot of each qualified voter shall have equal weight in making such choice. Whereas, by the constitution, the House are confined to three candidates, and must vote by States; so that a State having twenty-two members, has but one; and, consequently, no more weight than a State having only a single member. And those States whose members shall be equally divided, will have no vote. These circumstances considered, the present constitutional mode of choosing a President by the House of Representatives, when tested by the pure elective principle, may be deemed, as to the mode of choosing, and the object of the choice, as exceptionable as the appointment by lot; while it remains liable to all the evils of a contested election, from which the appointment by lot is wholly free.

In answer to the second objection, it may be fairly presumed that the Senate will always be composed of men possessed at least of decent talents. And such men, with honest views, long experience, and the aid of the Heads of Departments and other officers, would be able to do the public business correctly. It is not necessary, it is not desirable, that the President should command the armies in person; and all our foreign relations may be managed through the agency of able Ministers, whose appointments are to be approved both by the Senate and House of Representatives. The several Executives, ever since the adoption of the constitution, have been in the habit of calling to their aid a Cabinet Council, composed of the Heads of Departments; who ought to consist, as they probably will, of men of talents, integrity, and experience; and who, upon the plan proposed, being likely to continue long in office, will thereby give stability and system to the measures of Government.

If the appointment by lot will not always insure a President of the first rate talents, neither will the present mode of electing; for when party spirit runs high, and parties are nearly balanced, candidates will be set up, not for their talents, but because they are popular and can command votes. And there may be a possibility of having a President for four years, distinguished neither for talents nor integrity. A President appointed by lot will possess the advantage, and in practice it will be found a very great advantage, of coming into office free from party influence; which, under the present mode of electing, is seldom if ever to be expected; and it is to be feared that it will be too powerful to suffer even an honest man to do right.

Appointing a President by lot from the Senate, will give every State an equal and fair chance of participating in the dignity of that high office; will prevent the possibility of bargaining among the large States to the total exclusion of the middling and small States; and will thus remove one ground of State jealousy, which must inevitably grow out of our present mode. As it regards the sovereignty of the respective States, the appointment by lot is in exact conformity to the principles of the constitution; for in the event of an election of a President by the House of Representatives, each State has an equal vote, conformably with its equal rights as sovereign and independent; so that, in respect to peace and union, this mode of appointing a President would produce effects of great and lasting importance.

As the President is to be taken from the Senate, and, if worthy of the Senatorial office, must have experience, and be well informed of the affairs of the nation—and can also avail himself of the information and talents of every member of the Government—there can be no solid objection to reducing his term of service to one year. The President will always enter on his office at the close of the session of Congress; and during the recess have time to make himself more fully acquainted with the state of the nation, so as to present a proper view of it to the next Congress, as well as to conduct successfully the public business at the end of his term. No serious embarrassment or inconvenience, in conducting the public business, has been felt from the change of a President or the Head of a Department. There are and always must be subordinate officers around the Government, well acquainted with the routine of business; which will and must proceed in its usual course. If any example were necessary to show that no injury would arise to the nation from an annual appointment of a President, I might instance the ancient Republic of Rome—where, in the days of her greatest virtue, prosperity, and glory, her chief magistrates, or consuls, were chosen every year. But, being taken from the Senate, a body conversant with the management of their public affairs, as is our Senate, no evil accrued to the public.

The office of President is the only one in our Government clothed with such powers as might endanger liberty; and I am not without apprehension that, at some future period, they may be exerted to overthrow the liberties of our country. The change from four to ten years is small; the next step would be from ten years to life, and then to the nomination of a successor; from which the transition to an hereditary monarchy would almost follow of course. The exigencies of the country, the public safety, and the means of defence against foreign invasion, may place in the hands of an ambitious, daring President, an army, of which he would be the legitimate commander, and with which he might enforce his claim. This may not happen in my day; it probably will not; but I have children whom I love, and whom I expect to leave behind me, to share in the destinies of our common country. I cannot therefore feel indifferent to what may befall them and generations yet unborn.

I do not desire in the smallest degree to lessen the President's power to do good; I only wish to place such salutary checks upon his power, as to

prevent his doing harm. His power of nominating and appointing to office, and removing from office, will still be continued; with only the additional check of requiring the consent of the House of Representatives, in one case, and of the Senate and House in the other. All his other powers will remain the same as at present, and there will be but little danger of an abuse of those powers, if the term of Presidential office be reduced to one year, and the appointment be by lot: which will render it impossible to bring the high prerogatives of this office to aid in procuring it. An artful intriguer cannot then point to the various lucrative offices in the gift of the President, for the purpose of stimulating exertion in favor of his election: than which a more powerful engine could not have been devised.

Of the impropriety and impolicy of the present mode of electing a President, can there be stronger proof, can there be a more convincing evidence, than is now exhibiting in the United States? In whatever direction we turn our eyes, we behold the people arranging themselves under the banners of different candidates, for the purpose of commencing the electioneering campaign for the next President and Vice President. All the passions and feelings of the human heart are brought into the most active operation. The electioneering spirit finds its way to every fireside; pervades our domestic circles; and threatens to destroy the enjoyment of social harmony. The seeds of discord will be sown in families, among friends, and throughout the whole community. In saying this, I do not mean any thing to the disadvantage of either of the candidates. They may have no agency in the business; they may be the involuntary objects of such competition, without the power of directing or controlling the storm. The fault is in the mode of election; in setting the people to choose a King. In fact, a popular election, and the exercise of such powers and prerogatives as are by the constitution vested in the President, are incompatible. The evil is increasing, and will increase, until it shall terminate in civil war and despotism. The people, suffering under the scourge of party feuds and factions, and finding no refuge under the State, any more than in the General Government, from party persecution and oppression, may become impatient, and submit to the first tyrant who can protect them against the thousand tyrants.

I have dwelt so long on this amendment, because of the novelty, in this country, of appointing a Chief Magistrate by lot. The facility of appointing by lot was obvious; but it seemed necessary to exhibit, and to demonstrate

the many and highly important advantages which will arise from this mode of appointing a President of the United States. The principal of these I will now present in one short view:

1st. It will make the Senate more respectable.

2d. It is prompt and certain.

3d. It will avoid the evils of a disputed election, now unprovided for in the constitution.

4th. It will exclude intrigue and cabal.

5th. It gives talent and modest merit an equal chance.

6th. It is economical.

7th. It gives to the people a President of the United States, and not the chief of a party.

8th. It removes temptation to use power otherwise than for public good.

9th. It will annihilate a general party pervading the whole United States.

10th. It will remove a direct, powerful, and dangerous influence of the General Government on the individual States.

11th. It will prevent the influence of a Presidential election on our domestic concerns and foreign relations. And,

12th. It will secure the United States against the usurpation of power, and every attempt, through fear, interest, or corruption, to sacrifice their interest, honor, or independence; for one year is too short a time in which to contrive and execute any extensive and dangerous plan of unprincipled ambition; and the same person cannot be President during two successive terms.

Reducing the Presidential term of service to one year, will remove the necessity of attaching to the office the splendor of a palace. The simplicity of ancient Republics would better suit the nature of our Government. The instances of persons called from the plough to command armies, or to preside over the public councils, show that in a Republic pomp and splendor are not necessary to real dignity. Cincinnatus, who was content with the scanty support derived from tilling, with his own hands, his four-acre farm, has been as celebrated in history as the most splendid monarchs.

By these remarks I would not be understood to object against giving adequate salaries to all public functionaries. In the case of subordinate officers, it may be left to Legislative discretion. But the President having such great power and extensive influence, his compensation ought to have a constitutional limit, and not exceed fifteen thousand dollars.

FRIDAY, April 15.

Death of the Representative, Jacob Crowninshield.

A message from the House of Representatives notified the Senate of the death of JACOB CROWNINSHIELD, Esq., late a member of that House, and that his funeral will take place to-morrow morning, at 10 o'clock.

On motion, by Mr. GILMAN,

Resolved, That the Senate will attend the funeral of Mr. CROWNINSHIELD to-morrow morning at 10 o'clock.

SATURDAY, April 16.

The Senate adjourned to twelve o'clock, and attended the funeral of the honorable JACOB CROWNINSHIELD. After which they returned to their Chamber, and the VICE PRESIDENT having retired for the remainder of the session, the Senate proceeded by ballot to the choice of a PRESIDENT *pro tempore*, as the constitution provides; and the honorable SAMUEL SMITH was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the Vice President, elected the honorable SAMUEL SMITH their President *pro tempore*; and that the Secretary make a like communication to the House of Representatives.

WEDNESDAY, April 20.

Bank of the United States.

Mr. GREGG presented the memorial of the stockholders of the Bank of the United States, signed Samuel Breck, chairman, representing that, by an act of Congress, passed on the 25th of February, 1791, the subscribers to the capital stock of the said Bank, their successors and assigns, were incorporated for a term of years, which act will expire on the 4th day of March, 1811; and praying a renewal of their charter, for reasons stated at large in their memorial; which was read, and referred to the Secretary of the Treasury, to consider and report thereon at the next session of Congress.

MONDAY, 5 o'clock, P. M., April 25.

Adjournment.

Resolved, That Messrs. MITCHILL and CRAWFORD be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary acquaint the House of Representatives therewith, and request the appointment of a committee on their part.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States and notify him of the intended recess, and have appointed a committee on their part.

Mr. Mitchill, from the committee, reported that they had waited on the President of the United States, who informed them that he had no further communications to make to the two Houses of Congress; whereupon, the President adjourned the Senate until the first Monday in November next.

TENTH CONGRESS.—FIRST SESSION.
PROCEEDINGS AND DEBATES IN
THE HOUSE OF REPRESENTATIVES.

LIST OF REPRESENTATIVES.

New Hampshire.—Peter Carlton, Daniel M. Durell, Francis Gardner, Jedediah K. Smith, Clement Storer.

Massachusetts.—Joseph Barker, John Chandler, Ezekiel Bacon, Orchard Cook, Richard Cutts, Jacob Crowninshield, Josiah Deane, William Ely, Isaiah L. Green, Edward St. Loe Livermore, Daniel Ilsley, Josiah Quincy, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, Jabez Upham.

Vermont.—Martin Chittenden, James Elliot, James Fisk, James Witherall.

Rhode Island.—Nehemiah Knight, Isaac Wilbour.

Connecticut.—Epaphroditus Champion, Samuel W. Dana, John Davenport, Jonathan O. Mosely, Timothy Pitkin, jr., Lewis B. Sturges, Benjamin Tallmadge.

New York.—John Blake, jr., George Clinton, Barent Gardenier, John Harris, Reuben Humphreys, William Kirkpatrick, Gurdon S. Mumford, Josiah Masters, Samuel Riker, John Russell, Peter Swart, David Thomas, John Thompson, James J. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck.

New Jersey.—Ezra Darby, William Helms, Adam Boyd, John Lambert, Thomas Newbold, James Sloan, Henry Southard.

Pennsylvania.—David Bard, Robert Brown, Joseph Clay, William Findlay, John Heister, William Hoge, Robert Jenkins, James Kelly, William Milnor, Daniel Montgomery, jr., John Porter, John Pugh, John Rea, Jacob Richards, Matthias Richards, John Smilie, Samuel Smith, Robert Whitehill.

Delaware.—Nicholas Van Dyke.

Maryland.—John Campbell, Charles Goldsborough, Philip Barton Key, Edward Lloyd, Wm. McCreery, John Montgomery, Nicholas R. Moore, Roger Nelson, Archibald Van Herne.

Virginia.—Burwell Bassett, Wm. A. Burwell, Matthew Clay, John Clopton, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, David Holmes, John G. Jackson, Walter Jones, Joseph Lewis, jr., John Love, John Morrow, Thomas Newton, jr., John Randolph, Abram Trigg, John Smith, Alexander Wilson.

North Carolina.—Evan Alexander, Willis Alston, jr., Wm. Blackledge, Thomas Blount, John Culpepper, Nathaniel Macon, Thomas Kenan, Lemuel Sawyer, James Holland, Richard Stanford, Meshack Franklin, Marmaduke Williams.

South Carolina.—Lemuel J. Alston, jr., William Butler, Joseph Calhoun, John Taylor, Robert Marion, David R. Williams, Richard Wynn.

Georgia.—William W. Bibb, Howell Cobb, Dennis Smelt, George M. Troup.

Ohio.—Jeremiah Morrow.

Kentucky.—Joseph Desha, Matthew Lyon, Benjamin Howard, Richard M. Johnson.

Tennessee.—John Rhea, G. W. Campbell, Jesse Wharton.

Orleans Territory.—Delegate; Daniel Clark.

MONDAY, October 26, 1807.

This being the day appointed by Proclamation of the President of the United States, of the thirtieth day of July last, for the meeting of the Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats, to wit:

From New Hampshire—Peter Carlton, Daniel M. Durell, Francis Gardner, Jedediah K. Smith, and Clement Storer.

From Massachusetts—Joseph Barker, John Chandler, Orchard Cook, Richard Cutts, Josiah Deane, William Ely, Isaiah L. Green, Daniel Ilsley,

Josiah Quincy, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, and Jabez Upham.

From Vermont—Martin Chittenden, James Elliot, James Fisk, and James Witherall.

From Rhode Island—Nehemiah Knight, and Isaac Wilbour.

From Connecticut—Epaphroditus Champion, Samuel W. Dana, John Davenport, Jonathan O. Mosely, Timothy Pitkin, jr., Lewis B. Sturges, and Benjamin Tallmadge.

From New York—John Blake, junior, Barent Gardenier, John Harris, Reuben Humphreys, William Kirkpatrick, Josiah Masters, Samuel Riker, John Russell, Peter Swart, David Thomas, John Thompson, James J. Van Allen, Philip Van Cortlandt, Killian K. Van Rensselaer, and Daniel C. Verplanck.

From New Jersey—Ezra Darby, William Helms, John Lambert, Thomas Newbold, James Sloan, and Henry Southard.

From Pennsylvania—David Bard, Robert Brown, William Findlay, John Heister, Robert Jenkins, James Kelly, William Milnor, Daniel Montgomery, jr., John Porter, John Pugh, John Rea, Jacob Richards, Matthias Richards, John Smilie, Samuel Smith, and Robert Whitehill.

From Maryland—John Campbell, Charles Goldsborough, Philip B. Key, Edward Lloyd, William McCreery, John Montgomery, Nicholas R. Moore, Roger Nelson, and Archibald Van Horne.

From Virginia—Burwell Bassett, William A. Burwell, Matthew Clay, John Clopton, John Dawson, John W. Eppes, James M. Garnett, Peterson Goodwyn, Edwin Gray, David Holmes, Walter Jones, Joseph Lewis, jr., John Love, John Morrow, Thomas Newton, jr., John Randolph, and John Smith.

From North Carolina—Evan Alexander, Willis Alston, jr., Thomas Blount, John Culpepper, Thomas Kenan, Lemuel Sawyer, Richard Stanford, and Meshack Franklin.

From South Carolina—Lemuel J. Alston, jr., Wm. Butler, Joseph Calhoun, Thomas Moore, John Taylor, and David R. Williams.

From Georgia—William W. Bibb, Howell Cobb, Dennis Smelt, and George M. Troup.

From Ohio—Jeremiah Morrow.

From Kentucky—Joseph Desha, Benjamin Howard, and Richard M. Johnson.

From Tennessee—John Rhea, and Jesse Wharton.

The Assistant Clerk of the House announced 117 members and one delegate to be present, being a majority of the whole number. He then inquired if it were the pleasure of the House to proceed to the appointment of a Speaker, which being determined in the affirmative, the members proceeded to ballot for that officer, Messrs. CUTTS, HELMS, and JOHN CAMPBELL, being named tellers.

The tellers, after examining the votes, reported that 117 were received, and JOSEPH B. VARNUM, a Representative from the State of Massachusetts, having fifty-nine of them, was declared to be duly elected.

The votes were given as follows, viz:

Joseph B. Varnum, 59; Charles Goldsborough, 17; Burwell Bassett, 17; Josiah Masters, 8; Thomas Blount, 7; John Dawson, 4; John Smilie, 2; Benjamin Tallmadge, 1; Timothy Pitkin, 1; and R. Nelson, 1.

The Speaker being conducted to the Chair, by Mr. VAN CORTLANDT and Mr. ALSTON, addressed the House as follows:

Gentlemen of the House of Representatives:

You will please to accept my most grateful acknowledgments for the honor which by your suffrages on this occasion you have conferred upon me. I am sensible of my own inability to perform the important duties you have been pleased to assign me, in the most desirable manner; but relying on your candor and readiness to afford me your aid, I accept the trust. And be assured, gentlemen, that it will be my assiduous endeavor to discharge the duties of the office faithfully and impartially; and in a manner which, in my opinion, shall be best calculated to meet your wishes and afford me the consolation of an approving conscience.

The oath to support the Constitution of the United States, as prescribed by the act, entitled “An act to regulate the time and manner of administering certain oaths,” was administered by Mr. VAN CORTLANDT, one of the Representatives for the State of New York, to the SPEAKER; and then the same oath, or affirmation, was administered by Mr. SPEAKER to all the members present.

GEORGE POINDEXTER, Esq., having also appeared as the delegate from the Mississippi Territory of the United States, the said oath was administered to him by the SPEAKER. The same oath, together with the oath of office prescribed by the said recited act, were also administered by Mr. SPEAKER to the Clerk.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business. Also, that the Senate have appointed a committee on their part, jointly with such committee as may be appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and have elected JOSEPH B. VARNUM, Esq., one of the Representatives for the State of Massachusetts, their Speaker; and that the Clerk of this House do go with the said message.

Mr. BASSETT, Mr. GOLDSBOROUGH, and Mr. MASTERS, were appointed a committee on the part of this House, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communication that he may be pleased to make to them.

Election of Clerk, &c.

The House next proceeded to the election of a Clerk. The same tellers which had been appointed on the former election having been named by the Speaker on this, the members proceeded to ballot, and Patrick Magruder having received 72 votes was declared duly elected.

TUESDAY, October 27.

Several other members, to wit: from Virginia, ABRAM TRIGG and ALEXANDER WILSON; from South Carolina, ROBERT MARION; and from Tennessee, GEORGE W. CAMPBELL, appeared, produced their credentials, were qualified, and took their seats in the House.

WEDNESDAY, October 28.

Another member, to wit, WILLIAM HOGE, from Pennsylvania, appeared, produced his credentials, was qualified, and took his seat in the House.

THURSDAY, October 29.

Another member, to wit, WILLIAM BLACKLEDGE, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

FRIDAY, October 30.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. OBADIAH B. BROWN.

MONDAY, November 2.

Several other members, to wit: from Massachusetts, EZEKIEL BACON; from New York, GURDON S. MUMFORD; from North Carolina, JAMES HOLLAND; from Kentucky, MATTHEW LYON; and from South Carolina, RICHARD WYNN, appeared, produced their credentials, were qualified, and took their seats in the House.

THURSDAY, November 5.

Revolutionary Pensions.

Mr. DANA said it was well known, that during the last Congress, an act was passed for the relief of persons claiming pensions. The object of the act was, to grant relief to some whose cases were not embraced by the former act, and to grant an increased allowance to others who had not, as yet, received sufficient. This act provides for taking depositions before the district judge, in cases where the claimants have never been placed on the pension list, as well as for examination of the claims of those who apply to have their pensions increased. Whether any compensation should be allowed for issuing commissions, or for making the examinations required, is not declared by the act. A difference of practice, he understood, had taken place. In some cases, commissions were issued gratuitously by the district judge; in other cases, these poor solicitors were obliged, from their small pittance, to pay for these services. If any compensation were to be allowed for this service, he thought it should be paid from the public treasury. Whatever might be the mode adopted, he wished it to be fixed by law. For this purpose he offered the following resolution:

“Resolved, That a committee be appointed to inquire what compensation shall be allowed for issuing commissions giving authority for taking testimony, or examining evidence relative to claims or applications under the act to provide for persons who have been disabled by known wounds received in the Revolutionary war, and that the committee have leave to report by bill or otherwise.”

Frigate Chesapeake.

Mr. QUINCY said the House would recollect that when in Committee of the Whole on the state of the Union, some days ago, he submitted an amendment to a resolution of the gentleman from Virginia, (Mr. DAWSON,) which went to an inquiry into the circumstances of the attack on the Chesapeake, and the causes assigned for it, as well as the manner in which it was repelled. At that time two objections of some apparent validity were urged against this motion; the one was that it might have an improper effect upon a pending trial, the other was as to its form. To obviate these objections, he had modified the resolution, which he should now offer to the House.

Mr. Q. read his motion, as follows:

“Resolved, That the committee to whom was referred so much of the Message of the President of the United States as relates to aggressions committed within our ports and waters, by foreign armed vessels, to violations of our jurisdiction, and to measures necessary for the protection of our ports and harbors, be instructed to inquire into the circumstances of the attack made on the frigate Chesapeake in June last, and the pretexts or causes assigned for making it, and to report the same in detail to the House.”

Mr. Q. would lay before the House his reasons for offering this resolution. He could not acquiesce in the course which had been given to that part of the President’s Message which relates to the attack on the Chesapeake. He could not reconcile it with the sense of justice or with the honor of this House. He asked gentlemen to consider our situation in relation to this subject. A violent attack is made upon one of our public ships of war, in a manner undeniably hostile. A great degree of excitement has taken place in the public mind throughout the continent. Our newspapers have teemed with every species of information, a part of which has been correct, and a part incorrect; which has sometimes fallen short of the truth, and sometimes exceeded it; has been sometimes official, and sometimes unofficial. In this situation of things, the President of the United States deemed it wise and prudent to call an extraordinary session of this Legislature. We are now assembled. He has made a communication to us, and this attack is a striking feature in it. This is our situation. What have we done? The House has gone into a Committee of the Whole, taken up the Message of the President, cut it up into parts, according to Parliamentary custom; and we have taken as many of those parts as we pleased and referred them to particular committees; some of which are a kind of patchwork committees. In all of these references, notwithstanding it was the very object which occasioned the early meeting of the present session, no mention is made of the attack on the Chesapeake. The committee, which he proposed to instruct on this subject, had what related to aggressions committed within our ports and waters submitted to them generally, but they have no compass by which to steer; no prominent object is placed

before them. He could not reconcile this manner of acting with his duty. He deemed it necessary to obtain a full development of all the circumstances relative to this affair, in order that Congress, and the people at large, may form a correct judgment of our situation. The course adopted is not the course to gain the information so desirable. It is a course of Parliamentary ignorance, not a course of development. It is a course of concealment. He spoke as to the general effect of measures, and not as to gentlemen's motives.

He inquired of gentlemen what method they would pursue, if they wanted to understand any particular subject? Would they not refer it to a distinct committee, and not mix it up with extraneous matter? And if you give a committee two or three distinct objects to act upon, but wish them to attend more especially to one, it is proper to give them specific instructions to that point. This is the way to come at the proper understanding of a subject. But, on the contrary, if it were the wish of any member of this House to promote concealment, to prevent a knowledge of facts, the way is obvious. It would be to place three or four subjects together, and to suffer the committee to which they are referred to act as they please upon them. We know that committees thus left to themselves, will never do too much.

It was because the people of the United States wish to know something on this subject, that he made this motion. It may be said that this committee have already the power, and that they may make the necessary inquiries without this instruction. But it is the duty of this House to be certain that they will do so. Indeed, if the committee were now proceeding in this inquiry, this would be no good reason why this motion ought not to be adopted. If, without being instructed by this House, the committee should report the facts now called for, the honor of the act would rest upon that committee; whereas it ought to rest upon this House.

Perhaps it may be said, as on a former occasion, that every man, woman, and child, in the United States is acquainted with these facts; but what is known from popular report, or newspaper information, is not the kind of knowledge we want. We want facts from the proper authority.

An objection had been made to this course, that it would be casting a censure upon the committee. Not so; it would be no more than drawing the attention of an organ of the House to a particular subject. It may be objected

to, because a negotiation is pending; but what is done by Congress, at this time, can have no effect on a negotiation carrying on across the Atlantic. The House is at present calm and tranquil, and this is therefore a proper time to undertake an investigation of the facts required. Let the negotiation terminate as it may, we shall never have a fair inquiry into these facts, unless we enter upon it at present. Suppose, said he, the negotiation has a favorable issue, and no inquiry has been made, is there a member present who will say the inquiry would then be entered upon? No, it would be said to be an old wound, which ought not to be probed, but forgotten. But suppose, on the other hand, that the negotiation should be abruptly broken off, and this House should be called upon to put the nation in hostile array, would that be a proper time for entering upon the proposed inquiry? Would the House be in a fit state for deliberating upon the facts required? Indeed, the subject appeared to him so clear, and the duty to bring forward this motion so impressive, that he could not refrain from making it.

Mr. BURWELL said he had hoped he should have been able to have satisfied the gentleman from Massachusetts, as to the attention of the committee to whom this duty was assigned; but after an expression which had dropped from him, he despaired of doing it. He would, however, inform the House that the committee to whom the subject was referred were engaged in a course of investigation on the very part of it now agitated, and had come to a determination to obtain, from the proper authority, a correct detail of the circumstances attending this particular attack; not content with this, they were about to call on the Government for a detail of all aggressions that had been committed within our ports and waters.

Mr. BLOUNT said, that, at the moment the gentleman from Massachusetts had moved this resolution, he was in the committee-room, in the act of addressing a note to the Secretary of State on this subject, according to the direction of the committee, calling for a full and correct statement of all the facts relative to the aggression committed on the frigate Chesapeake. For the satisfaction of the gentleman, he would read the note which he had written. [Mr. B. then opened and read the note.]

THURSDAY, November 12.

Two other members, to wit: from Massachusetts, JACOB CROWNINSHIELD; and from Pennsylvania, JOSEPH CLAY, appeared, produced their credentials, were qualified, and took their seats in the House.

The SPEAKER laid before the House sundry documents, transmitted to him by Duncan McFarland, of the State of North Carolina, relative to his claim to a seat in this House, as a Representative for said State, in the room of John Culpepper; which were referred to the Committee of Elections.

Maryland Contested Election.^[55]

The House then resolved itself into a Committee of the Whole on the report of the Committee of Elections, to whom was referred the memorial of Joshua Barney, of the State of Maryland. The report of the Committee of Elections is as follows:

The Committee of Elections, to whom was committed the petition of Joshua Barney, of the city of Baltimore, praying to be admitted to a seat in the House, he having, in his opinion, the highest number of votes given to a candidate legally qualified to represent the city of Baltimore, having carefully examined the facts stated on both sides, and compared the laws of Maryland under which the said election was held, with the Constitution of the United States, report—

That, by an act of the Assembly of Maryland, passed in November, 1790, it is required that the member shall be an inhabitant of his district at the time of his election, and shall have resided therein twelve calendar months immediately before.

By another act of the Assembly of Maryland, passed in November, 1802, it is enacted that Baltimore town and county shall be the fifth district, which district shall be entitled to send two Representatives to Congress, one of which shall be a resident of Baltimore county, and the other a resident of Baltimore city.

That Joshua Barney is a citizen of Maryland, and has been a resident of Baltimore city for many years.

That William McCreery has been for many years a citizen of Maryland, and a resident of the city of Baltimore; but that, in the year 1803, he removed himself and his family to his estate in Baltimore county; that, from that time, though he himself has occasionally resided in Baltimore, yet he, with his wife and family, have not made the city their settled residence.

That William McCreery states that his intention was, and still is, to reside with his family on his country estate in summer, and in the city of Baltimore in winter; but that, ever since he has removed his family to his farm, he has been obliged every winter, in the public service, to reside, and frequently with his family, in the city of Washington, which prevented him from removing his family, agreeably to his intention, to the city of Baltimore; but he resided himself in the city of Baltimore five or six days before the election; that he and his family were residing in the same situation, when he was elected to serve in the ninth Congress, that they were when he was elected into the present Congress; that, however, not wishing to have been taken up as a candidate at the last election, he expressed to some of his friends some apprehensions that exceptions might be made on account of his constant family residence not being in the city of Baltimore.

At the election in that district for the Congress now in session, Nicholas R. Moore had 6,164 votes; he is a resident in Baltimore county; and William McCreery, against whose right to a seat in this House objection is made on account of residence, had 3,559 votes; and Joshua Barney, who claims a seat in this House, and it is admitted is a resident of Baltimore city, had 2,063 votes; and John Seat, also a resident in Baltimore city, had 353 votes. The above statement of facts being admitted by the parties, further evidence was not required. No question was taken on the legal residence of William McCreery in the city of Baltimore.

The committee proceeded to examine the constitution, with relation to the case submitted to them, and find that qualifications of members are therein determined, without reserving any authority to the State Legislatures to change, add to, or diminish those qualifications; and that, by that instrument, Congress is constituted the sole judge of the qualifications prescribed by it, and are obliged to decide agreeably to the constitutional rules; but the State Legislatures being, by the constitution, authorized to prescribe the time, place and manner of holding the elections, in

controversies arising under this authority, Congress are obliged to decide agreeably to the laws of the respective States.

On the most mature consideration of the case submitted to them, the committee are of opinion that William McCreery is duly qualified to represent the fifth district of the State of Maryland, and that the law of that State, restricting the residence of the members of Congress to any particular part of the district for which they may be chosen, is contrary to the Constitution of the United States: therefore,

“Resolved, That William McCreery is entitled to his seat in this House.”

TUESDAY, November 17.

Another member, to wit, MARMADUKE WILLIAMS, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Frigate Chesapeake.

Mr. BLOUNT, from the committee to whom was referred so much of the Message of the President as relates to aggressions, &c., made a report.

The report commences with an expression of sensibility at the outrage committed on the Chesapeake; states the receipt of information relative thereto from the State and Navy Departments; presents a general view of the circumstances; observes that it might be said to have been incontestably proved that William Ware, John Strachan, and Daniel Martin are citizens of the United States. But the committee add, that they conceive it unnecessary for them or the House to go into any inquiry on that part of the subject, as in their opinion whether the men taken from the Chesapeake were or were not citizens of the United States, and whether the Chesapeake was or was not within the acknowledged limits of the United States at the time they were taken, the character of the act of taking them remains the same.

“From the foregoing facts, it appears to your committee that the outrage committed on the frigate Chesapeake has been stamped with circumstances of indignity and insult of which there is scarcely to be found a parallel in

the history of civilized nations, and requires only the sanction of the Government under color of whose authority it was perpetrated to make it just cause of, if not an irresistible call for, instant and severe retaliation. Whether it will receive that sanction, or be disavowed, and declared an unauthorized act of a subordinate officer, remains to be determined by the answer which shall be given to the demand of explanation. That answer (now daily expected) will either sink the detestable act into piracy, or expand it to the magnitude of premeditated hostility against the sovereignty and independence of this nation; and until its true character shall be fixed and known, your committee deem it expedient to decline expressing any opinion as to the measures proper to be adopted in relation to it. But, as other acts of aggression have been committed within our ports and waters by British ships of war, as well anterior as posterior to this, some of them manifesting the same disregard of our national rights, and seeming to flow from the same contempt for the authority of our laws; and especially as the British squadron, of which the Leopard was one, after being notified of the President's proclamation, ordering them to depart from the waters of the United States which they knew had been published in conformity to an act of Congress, anchored within the capes of Chesapeake Bay, and in that situation remained, capturing American vessels, even within our acknowledged territorial limits, and sending them to Halifax for adjudication—impressing seamen on board American vessels—firing on vessels and boats of all descriptions, having occasion to pass near them in pursuit of their lawful trade, and occasionally denouncing threats, calculated to alarm and irritate the good people of the United States, particularly the inhabitants of Norfolk and Hampton—all which facts are substantiated by the accompanying documents, Nos. 1 to 6—the committee are of opinion that it is expedient to provide more effectually for the protection of our ports and harbors; but not being prepared to report specifically on that subject, they ask further indulgence of the House, and beg leave to submit for their consideration the following resolution:

“Resolved, That the attack of the British ship of war Leopard on the United States frigate Chesapeake was a flagrant violation of the jurisdiction of the United States, and that the continuance of the British squadron (of which the Leopard was one) in their waters, after being notified of the proclamation of the President of the United States, ordering them to depart the same, was a further violation thereof.”

The report was referred to a Committee of the Whole on Monday.

On a motion of Mr. BASSETT, that the proceedings of this day, with closed doors, ought to be kept secret, the question being taken thereupon, it passed in the negative—yeas 22, nays 104.

WEDNESDAY, November 18

British Aggressions.

Mr. QUINCY said the House might have observed, that in the Message of the President of the United States to Congress, delivered on the 27th of October, there was an express reference to a certain Proclamation interdicting our ports and harbors to British armed vessels. It was in Great Britain, he understood, a universal Parliamentary rule, that proclamations of this kind should be laid before Parliament; and in this country it had heretofore been the usual practice. In the case of the Proclamation of Neutrality, issued by President Washington, in 1793, in his first communication to Congress, he laid it before them, and it was entered on the Journals. Circumstances of however great notoriety were not official information on which they could act; but, were it so, he had not been able to find it in any papers he could procure. He had expected it would have been connected with the report of the committee on aggressions; but, as it was not yet before the House, he moved the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House a copy of his Proclamation interdicting our harbors and waters to British armed vessels, &c., referred to in his Message of the 27th of October last.

Mr. CROWNINSHIELD could not see any necessity for calling for this paper. He well recollected that the President had issued proclamations on other subjects which had never been laid before the House. That issued in the case of an aggression committed by Captain Whitby, commanding an armed ship of Great Britain, had not been transmitted to the House; so, in the case of the famous conspiracy of Mr. Burr, a proclamation was issued at the time, and not laid before the House, nor had the House thought

necessary to call for these papers. They were before the public, and every member of the House must have perused them. Mr. C. wished his colleague to show some necessity for the present call; for he could see none. The practice which had taken place in other countries was not to govern them; he might as well have drawn a precedent from the practice of France, Germany, or any other country, as from Great Britain. Besides, he doubted whether it was the practice there. It was well known that, under that Government, the King and Council legislated in a variety of instances. The citizens of this country had suffered severely by these measures. They legislated for neutrals in this way, and property to an immense amount had been taken from our merchants under these orders, and Mr. C. did not know that their acts in such cases had been laid before the Parliament, or even called for. He should, however, have no objection to the call in this instance, but that he saw no necessity for it. The gentleman might perhaps not have seen the Proclamation; but it was well known that it had been published in almost all the papers in the Union. It first appeared in a paper of this city, and he presumed was copied from that paper into the others. He had no doubt but the Proclamation would be communicated, or any other paper that might be called for.

Mr. ALSTON said it was certainly very immaterial whether the resolution was adopted or not; but it was certainly causing considerable trouble for nothing, to submit such a resolution to the House. The gentleman might have laid his hands on it in any paper published in the Union. Did that gentleman receive an official copy of the proclamation for convening Congress at this time? If he did, Mr. A. said he had an advantage over him; for he saw the Proclamation in the newspapers, and came on in consequence; and if there had been any proclamation issued, Mr. Q. could have found it in the newspapers. He had an objection to this resolution, because it was going out of the way; he had never before known an instance of a call upon the President for any proclamation which he had not thought proper to lay before them.

Mr. QUINCY said he had cited the example of Great Britain, because that was the country from whose Parliamentary practice so many precedents had been drawn. The Proclamation of President Washington, however, was published in all the papers on the continent, and yet the President had laid it before Congress on the first day of the succeeding session. He would refer

to the mode in which it was presented, in order to convince the House it had been heretofore done. The case was thus: The President of the United States, after some prefatory observations, tells them that the Proclamation laid before the House had been issued. Immediately after this, the Journal says, a Message was received from the President of the United States, enclosing a copy of the Proclamation. The case in the present instance was of much more importance: he had no conception, before he saw the report of the committee, but that it would be laid before them; he had not conceived it possible that it would not be laid before them in some way. It had been said, that he should give reasons for calling for it. He thought that in an important case like this the House should know what was done. He had no objection to the Proclamation; but it contained certain national principles to which they ought to refer.

He was at a loss to account for the opposition which this motion received from some quarters of the House; it was impossible it could be made on any other grounds than a determination to vote down at all events any question that might be moved, or any inquiry that might be requested on the part of gentlemen of one description in the House. It seemed to him to be following up the advice which had lately been given to them through the channel of a paper printed in this city, which was understood generally to speak a demi-official language. I have before me, (said he,) the words in which this House were a short time since addressed in that paper, by a person making observations on a motion which Mr. Q. had made, and which was negatived. Mr. Q. then read the following paragraph from the National Intelligencer, of November 9:

“Let them weigh well the advice of an enemy before they adopt it. Let them act as they have done in the present instance. Let them entertain no apprehensions on the sense of popularity, even though their adversaries should sound the tocsin of alarm, and declare themselves in patriotic strains the exclusive friends of the people. Let them remember that while their opponents have nothing to do but talk, *they have to act.*”

And was this the language in which this House was to be addressed through the medium of a newspaper printed at their doors? Was a mere printer to obtrude upon them his advice as to what course they were to

pursue in relation to the interest of the nation, and to denounce a portion of the House as unworthy of notice or confidence? He hoped not. But he could account for the opposition which was now given to this motion from no other reasons; for if a Proclamation of this kind had been issued, they ought to have it before them.

Mr. Q. said he possessed no interests different from any other member of this House; and assuming the right to which he was entitled, he would ask for information when he had occasion for it.

Mr. CROWNINSHIELD felt much surprised at what had been said by the gentleman last up. Had Mr. C. said any thing about it, had he made any allusion to what had appeared in a newspaper in this city? The publication was made before he had been able to arrive at this city. [Mr. QUINCY here remarked, he did not refer to him.] Mr. C. did not know to whom he could refer, except to him or his friend from North Carolina. He had no intention to make any remark to hurt the gentleman's feelings with respect to what had appeared in a newspaper of this city; but what relation could that have to the subject under consideration? If the paper alluded to had infringed any privilege appertaining to him as a member of that House, of which Mr. C. said he knew nothing, he had his remedy. If of a personal nature, the gentleman had other means of satisfaction. He was perfectly at a loss as to the object the gentleman could have in bringing the matter up now. Mr. C. had alluded to the same paper: it was the only paper of any consequence in the city, and the President was obliged to take that course to circulate official acts throughout the Union. It had always been the custom of the President to publish his Proclamations, but in no instance had he laid them before the House. The two extraordinary sessions of Congress had been held by Proclamation published in the newspapers, and the Proclamations for convening them had not been laid before the House. It having been done by another President had no bearing on the present case: no law existed authorizing President Washington to issue such a Proclamation as that referred to; but the Proclamation now referred to, as well that in the case of Mr. Burr, were issued under an act of Congress. Mr. C. had no particular objection to the call; but he could not see the necessity for it. With respect to precedents in other countries, he wished them to have no influence on the proceedings in this.

Mr. BURWELL did not rise to oppose the resolution; he was willing that the Proclamation should be sent to them by the President; but the gentleman had expressed his surprise that he did not find that Proclamation contained in the report of the committee. The only reason was, that they had supposed it was sufficiently official in the newspapers, and had referred to them when occasion required, as they would have done to any other authority. He held it a correct proceeding, that it was the right of any member of that House to call for any information relative to any subject; he should always favor such an application; he therefore did not rise to oppose the gentleman's motion, but to apologize for the committee's not having reported it.

Mr. DANA said that the observations of the gentleman from Virginia had been made with his general candor he had no doubt, but the committee considered such reference as they had made correct; but as no public prints were strictly official, and as they were called upon to deliberate on the Proclamation itself, he thought it necessary they should have it before them. Were they not called together on this subject particularly, he might not see the same necessity for having it; but as it was to be the basis in some measure of their proceedings, they ought to have an official copy of it. Mr. D. also thought it was more correct, whenever Congress were called together by Proclamation, that they should be specially notified. The gentleman from Massachusetts was in an error so far as related to the form of giving notice of extraordinary sittings; he had understood the gentleman to say, that Congress were called together by a Proclamation published in a newspaper, which was official notice. This was not the correct course. It was true they were now all gathered together; but their journals would not show how. When an extraordinary session had been called formerly, a letter had been addressed to each member from the Secretary of State, enclosing the Proclamation for the purpose; and this was capable of being done in every instance, by transmitting these letters to the Executive of each State, who might notify them individually. This had been the course, and he thought it more correct than the other.

The question on the resolution being taken, was carried, 70 to 32; and Messrs. QUINCY and BURWELL named a committee to wait on the President for the purpose.

THURSDAY, November 19.

British Armed Vessels.

The following Message was received from the President of the United States:

To the House of Representatives of the United States:

According to the request expressed in your resolution of the eighteenth instant, I now transmit a copy of my proclamation interdicting our harbors and waters to British armed vessels, and forbidding intercourse with them, referred to in my message of the twenty-seventh of October last.

TH. JEFFERSON.

NOVEMBER 19, 1807.

By the President of the United States of America:

A PROCLAMATION.

During the wars which, for some time, have unhappily prevailed among the powers of Europe, the United States of America, firm in their principles of peace, have endeavored, by justice, by a regular discharge of all their national and social duties, and by every friendly office their situation has admitted, to maintain with all the belligerents their accustomed relations of friendship, hospitality, and commercial intercourse. Taking no part in the questions which animate these powers against each other, nor permitting themselves to entertain a wish but for the restoration of general peace, they have observed with good faith the neutrality they assumed; and they believe that no instance of a departure from its duties can be justly imputed to them by any nation. A free use of their harbors and waters, the means of refitting and of refreshment, of succor to their sick and suffering, have, at all times, and on equal principles, been extended to all, and this, too, amidst a constant recurrence of acts of insubordination to the laws, of violence to the persons, and of trespasses on the property of our citizens, committed by officers of one of the belligerent parties received among us. In truth, these abuses of the laws of hospitality have, with few exceptions, become habitual to the commanders of the British armed vessels hovering on our coasts, and frequenting our harbors. They have been the subject of repeated representations to their Government. Assurances have been given that proper orders should restrain them within the limits of the rights and of the respect due to a friendly nation; but these orders and assurances have been without effect; no instance of punishment for past wrongs has taken place.

At length a deed, transcending all we have hitherto seen or suffered, brings the public sensibility to a serious crisis, and our forbearance to a necessary pause. A frigate of the United States, trusting to a state of peace, and leaving her harbor on a distant service, has been surprised and attacked by a British vessel of a superior force, one of a squadron then lying in our waters and covering the transaction, and has been disabled from service, with the loss of a number of men killed and wounded. This enormity was not only without provocation or justifiable cause, but was committed with the avowed purpose of taking by force, from a ship of war of the United States, a part of her crew; and that no circumstance might be wanting to mark its character, it had been previously ascertained that the seamen demanded were native citizens of the United States. Having effected her purpose she returned to anchor with her squadron within our jurisdiction. Hospitality under such circumstances ceases to be a duty; and a continuance of it, with such uncontrolled abuses, would tend only, by multiplying injuries and irritations, to bring on a rupture between the two nations. This extreme resort is equally opposed to the interests of both, as it is to assurances of the most friendly dispositions on the part of the British Government, in the midst of which this outrage has been committed. In this light the subject cannot but present itself to that Government, and strengthen the motives to an honorable reparation of the wrong which has been done, and to that effectual control of its naval commanders, which alone can justify the Government of the United States in the exercise of those hospitalities it is now constrained to discontinue.

In consideration of these circumstances and of the right of every nation to regulate its own police, to provide for its peace and for the safety of its citizens, and consequently to refuse the admission of armed vessels into its harbors or waters, either in such numbers or of such descriptions, as are inconsistent with these, or with the maintenance of the authority of the laws, I have thought proper, in pursuance of the authorities specially given by law, to issue this my Proclamation, hereby requiring all armed vessels bearing commissions under the Government of Great Britain, now within the harbors or waters of the United States, immediately and without any delay to depart from the same, and interdicting the entrance of all the said harbors and waters to the said armed vessels, and to all others bearing commissions under the authority of the British Government.

And if the said vessels, or any of them, shall fail to depart as aforesaid, or if they or any others, so interdicted, shall hereafter enter the harbors or waters aforesaid, I do in that case forbid all intercourse with them, or any of them, their officers or crews, and do prohibit all supplies and aid from being furnished to them or any of them.

And I do declare, and make known, that if any person from or within the jurisdictional limits of the United States, shall afford any aid to any such vessel, contrary to the prohibition contained in this Proclamation, either in repairing any such vessel, or in furnishing her, her officers or crew, with supplies of any kind, or in any manner whatsoever, or if any pilot shall assist in navigating any of the said armed vessels, unless it be for the purpose of carrying them, in the first instance, beyond the limits and jurisdiction of the United States, or unless it be in the case of a vessel forced by distress, or charged with public despatches as hereinafter provided for, such person or persons shall, on conviction, suffer all the pains and penalties by the laws provided for such offences.

And I do hereby enjoin and require all persons bearing office, civil or military, within or under the authority of the United States, and all others, citizens or inhabitants thereof, or being within the same, with vigilance and promptitude to exert their respective authorities, and to be aiding and assisting to the carrying this Proclamation, and every part thereof, into full effect.

Provided, nevertheless, that if any such vessel shall be forced into the harbors or waters of the United States, by distress, by the dangers of the sea, or by the pursuit of an enemy, or shall enter them charged with despatches or business from their Government, or shall be a public packet for the conveyance of letters and despatches, the commanding officer immediately reporting his vessel to the collector of the district, stating the object or cause of entering the said harbors or waters, and conforming himself to the regulations in that case prescribed under the authority of the laws, shall be allowed the benefit of such regulations respecting repairs, supplies, stay, intercourse, and departure, as shall be permitted under the same authority.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same.

Given at the City of Washington the second day of July, in the year of our Lord one thousand eight hundred and seven, and of the sovereignty and independence of the United States the thirty-first.

TH. JEFFERSON.

By the President:

JAMES MADISON,
Secretary of State.

The Message was read, and, together with the Proclamation, ordered to lie on the table.

SATURDAY, November 21.

Sir James Jay.

Mr. JONES moved that the House should, according to the order of the day, go into Committee of the Whole on the report in favor of the petition of Sir James Jay. Agreed to, 18 to 29. The report being read with the letter from the Secretary of State accompanying it,

Mr. TAYLOR opposed and Mr. JONES supported it.

The question being taken on concurrence with the report, the votes were, in favor of it 45, against it 46; there appearing some doubt whether this decision was correct, a second count was about to be had, when a debate took place, in which Messrs. UPHAM, COOK, DANA, QUINCY, LOAN, and BLACKLEDGE, supported, and Messrs. J. CLAY, GARDENIER, D. R. WILLIAMS, HOLLAND, TAYLOR, and BURWELL opposed the report.

In support of the report it was urged that the secret mode of correspondence, for which the petitioner prays a compensation, was very useful in the Revolutionary War, and no doubt might be again; that the testimony in favor of the invention was very satisfactory; that there was on file in the office of the Secretary of State, a letter written by General Washington in this invisible ink; that Mr. Jay had never received compensation; that although it had been used by various persons, none had ever yet known the composition of it but himself; that the report was only to

authorize the President to purchase this secret if he thought fit, leaving him the judge of its utility.

Those who opposed the report, argued that it was absurd to vote away money for a thing they did not and could not understand; that there never yet was a secret ink made but a composition could be invented that would bring it out, and that possibly Sir James himself might know such a composition; that the House had no security before them that it was not or would not be disclosed to other Governments as well as this; that if secret correspondence was wanted, it had from late occurrences appeared that Entick's Dictionary and a key word would afford, by writing in cipher, sufficient secrecy.

In the course of this debate much wit was displayed in speaking on different modes of keeping secrets, and the futility of all; with allusions to the secret proceedings of Congress, particularly those which took place on the 19th instant, which were said to have been known before the House took them up. Some amusement also arose amongst the members from the difficulty of hearing each other, and the consequent mistakes that took place.

The question on concurrence being taken was carried, 50 to 48.

The committee rose and reported to the House their agreement to the resolution contained therein; which was read, as follows:

Resolved, That it shall be lawful for the President of the United States to obtain, by purchase, at a reasonable price, the exclusive right, on behalf of the public, of the system invented by Sir James Jay, as submitted by him to the Executive Department of Government: provided, in the opinion of the President, it will be of public utility and importance to possess the same.

The House proceeded to consider the said resolution; and, on the question that the House do concur with the Committee of the whole House in their agreement to the same, Messrs. J. CLAY and SOUTHARD opposed, and Messrs. SLOAN, QUINCY, NEWTON, BLACKLEDGE, and CROWNINSHIELD, supported it. The question was then taken, and decided in the affirmative—yeas 74, nays 53.

TUESDAY, November 24.

British Aggressions.

Mr. BLOUNT, from the committee appointed on so much of the Message of the President of the United States as relates to aggressions committed within our ports and waters by foreign armed vessels; to violations of our jurisdiction; and to measures necessary for the protection of our ports and harbors; presented to the House a letter from the Secretary of the Navy, stating that, in a letter addressed by him, on the twelfth instant, to the chairman of the said committee, some erroneous information had been given, and an omission made, which he had since discovered, and thought it his duty now to correct. The said letter was read, and ordered to lie on the table.

Mr. BLOUNT, from the committee to whom was referred so much of the Message of the President of the United States as relates to aggressions, &c., reported further, in part,

“That the numerous aggressions and violations of our jurisdiction recently committed within our ports and waters by British ships of war, whether they are to be regarded as the effects of positive orders from the British Government, or as proceeding from that unrestrained insolence and rapacity in British naval commanders which previously produced the murder of our fellow-citizen, Pierce, and the perpetration of many other well-remembered outrages and irritating acts, are convincing proofs of the necessity of placing our ports and harbors, as speedily as possible, in a situation to protect from insult and injury the persons and property of our citizens living in our seaport towns, or sailing in our own waters, and to preserve therein the respect due to the constituted authorities of the nation.

“That the committee, having maturely considered the subject, are of opinion that the protection desired can be best and most expeditiously afforded by means of land batteries and gunboats, as they have been induced to believe that by a judicious combination and use of these two powers, effectual protection can be given, even to our most important seaport towns, against ships of any size unaccompanied by an army.

“That our most important ports and harbors, and those requiring the earliest attention and the most expensive fortifications, are, New Orleans, Savannah, Charleston, S. C., Wilmington, N. C., Norfolk, Baltimore, Philadelphia, New York, New London, Newport, R. I., Boston, Salem, Newburyport, Portsmouth, N. H., and Portland.

“And that the ports, harbors, and places of minor importance requiring protection, and which may be protected by less expensive works, are, St. Mary’s, Ga., Beaufort, and Georgetown, S. C., Ocracoke, Albemarle Sound, James River, York, and Rappahannock Rivers, Potomac, Patuxent, Annapolis, and Eastern Shore, Md., Delaware Bay and River, Egg Harbor, N. J., Amboy, Long Island, Connecticut shore, Tiverton, R. I., New Bedford, Marblehead, and Cape Ann, York, Kennebunk, and Saco, Kennebeck, Sheepscut, Damarescotta, Broad Bay, and St. Georges, Penobscot, Frenchman’s Bay, and Passamaquoddy Bay.

“Wherefore, your committee holding themselves bound, by the tenor of the resolution referred to them, to report hereafter their opinion of the expediency of interdicting the waters of the United States to foreign armed vessels, according as circumstances, now unknown, may, when known, seem to require, submit the following resolutions, viz:

“*Resolved*, That it is expedient to authorize the President of the United States to cause such fortifications to be erected as, in addition to those heretofore built, will, with the assistance of gunboats, afford effectual protection to our ports and harbors, and preserve therein the respect due to the constituted authorities of the nation; and that there be, and hereby is, appropriated for that purpose, out of any moneys in the Treasury not otherwise appropriated, the sum of —— dollars.

“*Resolved*, That it is expedient to authorize the President of the United States to cause to be built an additional number of gunboats not exceeding ——, and to arm, equip, man, fit, and employ the same for the protection of our ports and harbors; and that there be, and hereby is, appropriated for that purpose, out of any moneys in the Treasury not otherwise appropriated, the sum of ——.”

The report was referred to a Committee of the Whole on Thursday.

TUESDAY, December 1.

Mr. QUINCY offered the following resolution:

Resolved, That the Secretary of the Department of War be directed to lay before this House an account of the state of the fortifications of the respective ports and harbors of the United States, with a statement of the moneys appropriated for fortifications remaining unexpended; and an estimate of the sums necessary for completing such fortifications as may be deemed requisite for their defence.

Which being under consideration,

Mr. Q. said the House would perceive the object of this resolution was to obtain information; there was a document on their table which gave some information on the subject, but was not explicit. This resolution was exactly similar to one passed last session, by which the House obtained some important and interesting information; this being the case, he hoped no objection would be made to it.

The resolution was agreed to without a division.

Soldiers of the Revolution, &c.

Mr. RANDOLPH rose and said, that as long as the subject of national defence was in possession of a respectable committee of the House, and as long as their report was pending before it, he had deemed it, if not improper, at least unavailing in him, to offer any thing upon that subject. But, that committee having reported, he saw, from the course which the debate had taken yesterday, a necessity so pressing that he could no longer dispense with it, for offering some propositions on this most important subject. These propositions grew out of the almost universal impression which seemed to exist that there was but one peculiar mode of defence to which the nation could turn itself in this perilous juncture of their affairs. When so great an appropriation was demanded for this favorite expedient, he feared, that if other plans of defence, which had at least as high claims to the public attention, were not now brought forward, they might hereafter find an

empty Treasury, and be compelled to resort to the system of loans, recommended by the head of that department, as the only means, however precarious, of providing for them.

It had always been his opinion, that whether in war or in peace, there was one system of national defence which ought sedulously to be cherished, and concerning which there could not exist a contrariety of opinion between any two men in that House, or out of it; and he had hoped that the attention of the committee (for there were more than one) would have been directed towards it. Were they not told, and was it not self-evident, that if matters came to the last extremity we should not only have an extensive frontier exposed to the inroads of the enemy's continental possessions, but that a vast line of country, from Detroit to Natchitoches, would have the native savages let loose upon their dispersed and almost defenceless population? Did there exist then no necessity for defence but of a few places on the coast, the depots of privileged wealth, when the whole line of back settlements were left at the mercy of the enemy and their savage adherents, without a force, even upon paper, to protect them? If it should be said that there existed no obligation on the Union gratuitously to bestow arms upon the individual States which had failed to furnish themselves, the same reason would apply yet more forcibly to the fortification of States which had neglected to provide that species of self-defence. In the one case the arms issued were still the general property, at all times disposable for the good of the whole; in the other, the fortifications were so much real estate, vested in the country where erected; fixtures to the freehold. It appeared to him that, whether they considered themselves in a state of profound peace, or on the eve of war, or (as he feared would prove to be the case) in actual war, it behooved them to arm the natural defence of their country; to rely, as had been said by a gentleman from New York, not upon delusive theory but established practice; upon that which, heretofore, had carried them triumphant through danger, and upon which, when they could no longer depend, there was an end of our existence as a nation.

There was another subject to which he hoped the committee would also have turned their attention, one on which, as on the first, no two men could differ; not like gunboats, perishable in its nature, and susceptible of dispute as to its utility, which remained to be tested by experience; a train of formidable artillery, that might not only oppose the enemy in a particular

harbor, but calculated to change its position, to bear upon his armed vessels wheresoever they might lie, to compel him to quit our waters, and even, if he should effect a landing, confront him under any possible change of circumstances. He was the more inclined to hope that his opinion would prevail upon this subject, when he heard a gentleman whose influence was almost decisive in that House—he trusted that it was deserved—declare that terra firma was our natural element, that it was madness to dream of coping with the enemy on his own vantage ground: and yet all the provision which they had thought of making, was to fight him with his own weapons. He reminded the House with what striking effect his friend from Maryland, (Mr. R. NELSON,) whose military experience entitled him to a peculiar weight in this matter, had on a former occasion cautioned them, that erect what fortifications they might, the enemy were not obliged to lie before them; that ships of war were a movable force on the water, and to be resisted with effect must be opposed by a movable force on the land.

These were the two leading measures which were impressed on his mind as proper to be adopted. Muskets in the hands of our citizens, and cannon in our arsenals, were so much national wealth, even exclusive of the idea of present national danger. The uses to which they were to be applied under any possible emergency, were not susceptible of dispute. No man could arraign this as a visionary plan of defence, as had been done with respect to gunboats and fortifications. Upon them however he should say nothing at present, except that he thought this the preferable mode of defence, and one entitled to be provided for, before the Treasury should be drained for less worthy purposes.

But there was another and more important measure, which ought to precede any step which the House might take for defence. It was a measure of justice; which would not only entitle them to success, but was eminently calculated to insure it; a measure which would unite all hearts, and nerve every hand in the cause of their country. It would do away the stigma of suffering those who had fought and bled in their service, to starve in the streets. With what face could the Government call upon the youth of the nation to turn out in the public defence, when their eyes were every where assailed by the spectacle of their countrymen and kindred, veterans of the Revolution, who had raised the proud fabric of our independence, begging from door to door a morsel of bread? It was impossible to contemplate the

condition of these gallant men, who, after giving to their country every thing, were consigned by it to beggary and want, without sensations of indignation and shame, as well as of commiseration. But it is a subject, said Mr. R., on which I will say no more; I cannot supply feelings to those who are destitute of them; and I should as soon undertake to raise the very dead as to excite those whom the subject itself is unable to move. He concluded by offering three resolutions, calculated to meet the objects he had in view, professing himself, at the same time willing to submit to any amendment which did not alter their substance.

Before he handed these resolutions to the Chair, Mr. R. said he would obviate an objection which might be made at the first; that they had already a law to provide for these persons. To the disgrace of the statute book, they had a pension law. What was the provision? That a man who had incurred disability by known wounds during the Revolutionary war, after being tied down to the most minute proofs, which in most cases, from the death or removal of his old companions in arms, he was unable to give, although the fact might be of general notoriety, was, if he could surmount all the difficulties thrown in his way, entitled to a miserable annuity, to take date, not from the time when the disability occurred, but; from the time when his claim should be established. So that the man whose keen sensibility had restrained him from applying to the public for relief, who had struggled on, in the hope of better days, till the last gasp, was put off with a pension, which so far from discharging the petty debts which he might have contracted previous to his application, would hardly keep soul and body together; when, if his pension were to take date from the time of the service being rendered, as in common justice it ought to do, he might be placed in comparatively easy circumstances.

Mr. R. then submitted to the House the following resolutions:

Resolved, That provision ought to be made, by law, for an adequate and comfortable support of such officers and soldiers of the late Revolutionary army as are still existing in a state of indigence, disgraceful to the country which owes its liberties to their valor.

Resolved, That provision ought to be made, by law, for arming and equipping the whole body of the militia of the United States.

Resolved, That provision ought to be made, by law, for procuring a formidable train of field artillery for the service of the United States.

The resolutions were referred to a Committee of the whole House tomorrow.

WEDNESDAY, December 2.

Another member, to wit, from Delaware, NICHOLAS VAN DYKE, appeared, produced his credentials, was qualified, and took his seat in the House.

Soldiers of the Revolution.

The House went into Committee of the Whole on the resolutions offered by Mr. RANDOLPH yesterday; and the first resolution being under consideration, as follows:

Resolved, That provision ought to be made, by law, for an adequate and comfortable support of such officers and soldiers of the Revolutionary army as are still existing in a state of indigence, disgraceful to the country which owes its liberties to their valor.

Mr. RANDOLPH said he trusted that on this resolution there would exist in the House, as there did in the nation, but one sentiment. The provision which had been made for the officers and soldiers of the Revolution was notoriously scanty and mean. Who, he asked, enjoyed the carrying trade for which, two years ago, we were near being plunged into a war? Emigrants since the peace of 1783. Men who ran no risk—who put nothing to hazard—whilst those who met the enemy in the field, with the gibbet staring them in the face at the same time, were left to pine in want and obscurity. Had the persons who achieved this right to trade with every quarter of the globe less claim to the benefits acquired by their blood than the man of yesterday? But they had no capital for such enterprises. They had sown that others might reap. The very lands which they had won with their swords had become the prey of rapacious adventurers. Should the fruits of the Revolution inure to the sole benefit of those who never put their persons to hazard, or even

spent one dollar for the acquisition of our independence? He reminded the House of the pathetic appeal which had been made on a former occasion by one of its oldest members, (Mr. VAN CORTLANDT,) whom he hoped would long enjoy his seat there: "We shall not prove very chargeable to you—there are but few of us left, and they are daily dropping off—you will not be burdened with us long—most of us have broken our constitutions in the public service." Mr. R. hoped that provision would be made for these gallant veterans—living monuments of the ingratitude of their country; that every man who had a claim on the public for services rendered during the Revolution, would be made comfortable for life, unless his own misconduct should forbid it.

Mr. QUINCY said he did not rise to make objections to the general object of the resolution; but there was one part which he did not think it decorous for the committee to adopt; he meant the epithet *disgraceful*. He was not prepared to fix a disgrace upon the nation by his vote; if it were true that it was disgraced, he should wish more evidence of the fact than had been exhibited on that floor. Were he even to admit that it was a disgrace, he was not willing to turn the eyes of the world upon the shame of his country. In another point of view he objected to this declaration, as it would, by a strained or forced construction, limit the provision contemplated to be made. He should not offer an amendment to the resolution, because he trusted the gentleman himself would amend it. It would, however, meet his wishes either to strike out the last declaratory sentence, or to strike out the words "disgraceful to the," and insert "in a."

Mr. RANDOLPH said that he did not feel for his resolution that sort of parental affection which authors were supposed to bear towards their works. The language was perfectly immaterial to him, so as it embraced his object. He thought it needless in a matter of this kind to attend to those verbal niceties with which the gentleman from Massachusetts had amused himself and the committee. So far from disgracing the country, he thought the acknowledgment in question the first step towards wiping off the stigma—a sort of atonement; and if the nation was disgraced, it was their duty as faithful servants to tell her so, and not to flatter her with the success of her arms, and persuade her that she was the very mirror and pink of chivalry, when they knew to the contrary.

It was matter of notoriety, and as such it was proper for the House to act upon, that there existed a great number of citizens in this nation in a state of indigence, who, if their country had done its duty, might, and probably would, have been in far different circumstances. This failure on the part of Government had thrown the evidences of their claims into the hands of men, many, if not most of them, emigrants since the Revolution. He asked whether our public lands, our free commerce—every blessing of our country—should be participated by those who had sacrificed nothing to our independence, and the men who achieved it be suffered to live and die in wretchedness? This was the question which he had propounded to the House, and those who could not comprehend it in its present shape, would not be assisted by any explanations which it was in his power to give. He knew comparisons were odious, but he must be permitted to make one. He would compare the services of Captains Lewis and Clarke, in exploring the continent of the Pacific Ocean, and their remuneration, with the hardships and dangers of the soldiers of the Revolution and their reward. He had no disposition to undervalue the services of those gentlemen and their companions; far from it. He thought them deserving of what they had obtained, and he had voted accordingly. But he should be guilty of gross injustice were he to aver that their labors had been as important to the United States as the services of those who had fought their battles, before they were United States. Yet, what a wide difference in their remuneration! On the one side, ample compensation; on the other, the statute of limitation, or perhaps a scanty pension. Mr. R. wished this subject to be taken up on the broadest ground—that where services could be shown, they should be recompensed—that the State should take the sufferer under her protection, and secure him from want.

Mr. THOMAS asked the gentleman who moved this resolution, whether he intended to confine his provisions to the officers and soldiers of the Revolutionary war, and not to extend relief to other sufferers? It was well known that there were many others in the service who suffered equally with those in the army—some of whom had lost their limbs, and others who performed meritorious services—and were of as much benefit as soldiers. Were they excluded by the resolution? It was but lately that an officer, who commanded one of our armed ships in the Revolutionary war, was in a state of almost starvation; and there were many more equal sufferers and equally meritorious with those who served in the army.

Mr. RANDOLPH could only say, that his object was to provide for every man who had fought, whether in the militia, the regular army, or the navy.

Mr. QUINCY said he really had not meant to amuse the House or the gentleman from Virginia by the observations which he had made. In certain cases words were things, and certainly this was one of those cases. Would the committee declare their own disgrace by passing the resolution as it now stood? No; they would declare their country to be disgraced. He could not consent to this. He therefore moved, as he wished to make as little alteration in the resolution as possible, to strike out the words “disgraceful to the,” and insert “in a.”

Mr. RANDOLPH did not perceive the necessity of the amendment, neither was he very tenacious of the language of his resolution. The object of it alone was dear to him. Yet, there were occasions in which it behooved men, and nations too, to confess their sins. He thought the present one of them. Would the State of Georgia, for instance, have done herself more honor, if, instead of passing sentence of indelible disgrace on the Legislature which passed the famous law of the 5th of January, 1795, commonly called the Yazoo act, and expunging it from her records, she had faintly censured its authors and their abettors by a dainty circumlocution? He feared he would not be pardoned for introducing the Yazoo act in this case, since he had seen a most respectable Representative from the State of Georgia, (Mr. TROUP,) attacked on all sides for daring to lisp the word Yazoo. They were told it was a worn out thing. That the House and the people were tired of it. That, like the cry of wolf in the fable, it had been repeated until no one would heed it. Mr. R. said that those who calculated in this way reckoned without their host. The people of the Union could never become familiarized and hardened to acts of corruption, by whomsoever they might be practised or patronized. Whether the words were stricken out or not, was perfectly immaterial to him. Perhaps, in rendering the censure more delicate, it was only rendered more severe. He thought the situation of these gentlemen—for gentlemen they were, by the most honorable of all titles, the sword—disgraceful to the country. Whenever the country was disgraced, he was for confessing it, that the people might be roused to wipe it away. For this reason he had said that the navy of the United States was a disgraced navy, and he should continue to say so until its character was retrieved.

Mr. QUINCY said he was as willing as any gentleman to confess his own sins, but did not like to cast censure on other people, much less on his country. They would declare, by passing the resolution as it now stood, that their country was disgraced. He hoped they would not do it. He had no objection to the House confessing its own misdeeds. Let us, said he, work out our own reformation, but not pass a censure on our country. He declared his objection to the resolution to extend no further than to those words.

The amendment moved by Mr. QUINCY was then agreed to without a division; and the question recurring on the original resolution,

A motion was then made for the committee to rise, and carried—75 voting in favor of it.

TUESDAY, December 8.

Fortifications and Gunboats.

On motion of Mr. BURWELL, the House went into a Committee of the Whole on the bill from the Senate for building gunboats, and the bill for fortifying our ports, as reported by the Committee of Aggressions.

The bill from the Senate being still under consideration,

Mr. MILNOR said, when he was on the floor yesterday, and interrupted by the message from the President, it was his intention to have moved an amendment. The bill provided for building one hundred and eighty-eight gunboats; he moved to strike out the words “and eighty-eight,” so as to reduce the number to one hundred. He thought a hundred gunboats in addition to those they already had, would be fully sufficient, if they also adopted other modes of defence. He had yesterday stated that he did not believe the building additional fortifications, and an additional number of gunboats, would effect the object which appeared to be contemplated by the committee. He confessed he did not place as much reliance in gunboats as some gentlemen did. While he thought they might be useful in aid of land batteries or frigates, it was also his opinion, that if gentlemen examined the statement respecting different aggressions by a certain power, they would find that not one single act of aggression could have been prevented or punished by any batteries on land or gunboats in aid of them. They were not

committed in the face of our batteries, or in that part of our ports and harbors where the gunboats could have acted with effect; they were committed within the mouths of our rivers, or just outside them. He thought the construction of a few frigates would be expedient, in addition to those now in our possession. They might act with gunboats; and might drive any foreign nation either to the necessity of bringing a large force on our coasts, and keeping it all together, by which the number of their aggressions would be lessened, or expose their fleets to a force which would be able to avenge the insults offered to us.

Mr. BURWELL said he should vote against the amendment proposed, and in favor of the number reported by the Committee of Aggressions, as contained in the bill from the Senate now under discussion. It appeared to Mr. B. that the gentleman from Pennsylvania had taken a very incorrect view of the subject. That gentleman has objected to this law because it did not make provision for ships of war to serve as a defence to our commerce, and because he supposed the committee had taken up this mode of defence to the exclusion of any other. Mr. B. said it must be obvious to every gentleman that it was almost impossible to have crowded into one bill all the measures of defence which might become necessary; thus it contained no provision for arming the militia, for raising a standing army, building or repairing frigates, &c. The only question now was, on building a number of gunboats, for defence against the attack of a foreign nation. He thought a sufficient number should at once be authorized: for if the number were insufficient to answer the intended purpose, the money expended in their purchase would be so much thrown away; so much expended from which the public would derive no benefit. The opinions of those men best acquainted with the force which might be necessary, which had been communicated to the Committee of Aggressions, has stated this as the competent number.

With respect to the expense of building gunboats, it would be found that the cost of building a frigate would be much greater than a number of gunboats equal to the number of guns carried by a frigate. The Secretary of the Navy had estimated the annual expense of gunboats at \$11,000. Mr. B. admitted that the sum appeared enormous, and it remained for the consideration of the House whether they would expend so large a sum for that purpose. The estimate of the Secretary of the Navy went upon the

ground that during the whole of the year, forty men would be required to man each of these boats. Mr. B. thought that regulations might be adopted, that would render eight or ten men sufficient to be regularly employed on board these boats; a sufficient force fully to man and use them upon occasion might be organized from the different ports or seaport towns; and it would be found, by recurring to the President's Message, that the same idea had been entertained by the Executive. And he believed, that although the Secretary of the Navy had estimated \$11,000 as the sum necessary for the annual expense, he had done it on the supposition that forty men would be employed during the whole year in each gunboat. At times when Europe and the United States were at peace, it would not be necessary that more than a small portion of those boats should be afloat; they might be kept in ordinary, relying on the seamen of the port for any sudden emergency.

With respect to the propriety of building gunboats, he would observe that they were not a mere experiment; they were sanctioned by the practice of Europe, and were very beneficial for the defence of ports against sudden attack. The French, Spanish, Dutch, and other nations, in the vicinage of the British Navy, had combined their boats with land batteries, for the purpose of defence against the assaults of that formidable Navy. These boats were also a part of a system heretofore practised in other countries, and proposed to be further pursued here.

Mr. CROWNINSHIELD said that there was some inconsistency in the observations of the gentleman from Pennsylvania; he had said gunboats would be useful with the aid of large vessels, and at the same time said they were entirely useless in the mouths of rivers or deep waters. [Mr. MILNOR explained that he had meant they would be useless when acting alone.] Mr. C. said he had formed a very different opinion, indeed, from that expressed by the gentleman from Pennsylvania with respect to gunboats. It was well known that no longer ago than the year before last, this Government had employed eight or ten gunboats to assist in the attack on Tripoli; they all crossed the Atlantic in safety, except one boat. Although they did not come into the attack on Tripoli, because a peace was prematurely concluded, yet he himself had heard the late Commodore Preble say that, without them the squadron would not have been competent to have made an effectual assault on the city. These boats then kept the sea in very tempestuous weather, a fact which the despatches from the commanding officer had announced. He

believed that they could not at this time adopt a better mode of defence than that proposed by the bill. He should be sorry to see the proposed number reduced, because he believed they would render important services, if at any time our ports or harbors should be attacked. These gunboats were not boats that would sink the moment they got into rough water; they were boats of 60 or 70 tons burden, which might navigate the globe with safety. He spoke from experimental knowledge. The gentleman surely did not mean to say they could not swim. In Mr. C.'s opinion, there could be no better system of defence in aid of fortifications than that proposed by the bill.

Mr. BLOUNT presumed the gentleman would admit, as a certainty, that it was the duty of the House to provide effectual protection. The select committee having determined, in their own mind, that the best system of defence would be composed by fortifications and gunboats, had inquired what number, would be of use. The answer to this inquiry was already before the House; it was stated that the United States had already 69 gunboats—that 257 were the whole number which might be usefully employed; consequently that 188 were wanting. If it were the object of gentlemen to afford a certain protection to the country, he hoped they would not hesitate to pass this bill. If the gentleman from Pennsylvania should be able, when the subject was properly before them, to prove to Mr. B. that frigates or ships of war would add to the protection which might be afforded by fortifications and gunboats, he would vote with him for their construction. It would be time to discuss this when the subject was before them. He hoped the idea of the utility of a naval force would not induce gentlemen to withhold from the Executive that force which they had signified as necessary for the protection of our ports and harbors. If any doubt were entertained by gentlemen who were not members of the last Congress, there was a report, which he held in his hand, made at a former session, containing the opinions of naval officers on the expediency or utility of these boats. The report was lengthy, and he should not call for the reading of it, except gentlemen wished it. There was, however, no necessity to demonstrate their utility, as no gentleman had attempted to show that they were not eminently and essentially useful as one species of defence.

The gentleman last up has stated that I wished this mode of defence because it was the wish of the Executive. I stated expressly, and the

gentleman must so have understood me, that the committee had selected this number of gunboats because they were informed that this number would be necessary. I referred to the document where this statement is expressed and where it may be found. I meant to express the opinion, that if we built a less number than necessary, it would be a waste of public money; and that protection would not be obtained by a less force than that which is proposed.

Mr. B. also said that the 88 gunboats would cost \$440,000; that sum, when applied to the building of a large frigate, would not complete her; and when built, she would carry but 44 guns, one-half the number of guns which would be carried by 88 gunboats; besides which, the expense of rigging and making her fit for service would be enormous. Thus, by building one frigate only at the same expense as would complete 88 gunboats, they lost 44 guns, besides the additional expense of fitting out and manning the frigate. He had, however, only risen at this time to explain that he had been misrepresented when it was stated that he had said he should vote for this number of gunboats because the Executive had recommended it.

Mr. SMILIE said the question was, whether they would appropriate a certain sum of money for the defence of their ports and harbors. He had not heard it said, and he hoped it never would be said, that they ought to defend themselves beyond their own shores. He confessed that he was now called upon to give his vote on a question to the decision of which he was not competent; but it being his duty to decide, he should, on this as on other subjects with which he was not well acquainted, depend upon the opinions of those who were. He believed many gentlemen in the House were in the same situation with himself, not being acquainted with naval affairs. It was the duty of the Executive to communicate information in answer to any inquiries which it was necessary to make. They had performed that duty, and the answers were in favor of gunboats. Should he then pursue any opinion of his own in contradiction to this, when he had no evidence on which to ground that opinion? Certainly not; he should depend upon those who possessed better information on the subject than himself, except there was something so absurd in their opinions that he could not swallow it.

Mr. CHANDLER said, when they had information from actual examination, that the contemplated number of gunboats would be necessary, he did

believe that the proposed sum should be appropriated to that object. The gentleman from Pennsylvania, who had moved this amendment, professed himself as willing to protect our ports and harbors as any gentleman, but wished to strike out part of the number of gunboats, in order to adopt another mode of defence. Admitting that a frigate could be built for the sum which would complete eighty-eight gunboats; could he demonstrate that the force of forty-four guns would be equal to eighty-eight of heavier metal? Another thing he would mention; when the gunboats were constructed, a part of them might be removed, and they could increase or diminish the force at any particular place, as occasion might require; if they had one frigate in place of them, they could not divide her strength, and it could be retained at one point only.

Mr. NEWTON said it was not his intention to take up the time of the committee in a disquisition on the subject of gunboats; though, were he to attempt it, he had no doubt but he might be equally qualified with some gentlemen who had displayed their eloquence on this occasion. He thought they should now take into consideration the situation of the country in relation to Great Britain. Why were they now talking of defence, of fortifications, and of gunboats? Because they had arrived at a perilous crisis; the nation had been attacked; the blood of its citizens had been spilled; and they must have war, if reparation were not made. They heard by the papers that a Minister was to be sent to negotiate on the subject; but when that Minister arrived here, would any gentleman say that they would receive that reparation which he was prepared to offer? He believed not. When our affairs were thus situated, and as the gentleman from North Carolina (Mr. MACON) said a few days ago, when they were actually in a state of war, ought they not to make a better use of their time and the public money, than in debating on the details of a bill? If a treaty with Great Britain were laid upon their table at this moment, should they for that reason desist from preparations for defence? No; that nation had trampled on every moral principle; there was no faith in her; paper and parchment were no security for her good conduct. If they wished to be respected by that power, they must place themselves in a situation to return injury for injury; to retaliate on her for the violations of their rights. When they did this, they might expect something like decency of conduct, or respect for their rights from that power; until they put themselves in a situation to command her respect, they would in vain expect to receive it.

Mr. GARDENIER said that although he was not one of those who entertained a great passion for gunboats, yet he could see certain situations in which they would be useful in aid of fortifications; but they should be restricted to a certain number. The mode of fortification which was proposed, was by gunboats and batteries; and the proportionate expenditure for these two objects, how much for one, and how much for the other, was a subject which would engage the attention of the House when it came properly before them. He should feel no objection to vote for the whole number of gunboats, were he certain at the same time that enough would be appropriated for land-batteries and other objects.

Mr. MASTERS said, if the amendment of the gentleman from North Carolina (Mr. BLOUNT) had for its object to authorize the President to dam up the Hudson River by sinking blocks, he trusted the good sense of the committee would reject such a preposterous proposition. The injurious consequences of such an experimental measure to the city of New York, and the State at large, would be beyond calculation. It would, in all human probability, inundate, in high freshets, a considerable part of the town; and in low water, in the summer season, so prevent the influx of water as to cause the tide to recede more than thirty miles, and ruin a number of most flourishing towns one hundred and seventy miles up the river. The effects would be ruinous to one of the finest rivers in the world. It was a well-known fact that sinking the piers of Westminster bridge, in the river Thames, caused the tide to recede in that river upwards of seven miles; take the same data for calculation, and the tide in Hudson River would recede more than fifty miles. This, said Mr. M., is a visionary scheme to evade the real object of defence, and to introduce false notions of economy. Whenever we attempt to make appropriations for permanent forts and batteries, expense and economy are brought forward as an objection. The objects of necessary defence, and a prudent, well-regulated economy, can be easily reconciled; but your plausible and popular sound of economy, which is always the sweeping argument when this and similar measures are under consideration, is like a fine net, which is intended to catch every thing, both great and small. It may serve for a fine fancy to fill up a speech with, but will not answer for fortifications. It will endanger the nation by keeping us defenceless and weak, tempt aggressions, and invite the destruction of our seaport towns. Where, then, will be your economy?

Mr. QUINCY said he would only ask the gentleman from North Carolina, as to his precise meaning in inserting the word “works.” This word was, perhaps, in common life, confined to constructions other than fortifications; he believed, however, it might include fortifications also. When he had asked the question as to the species of works contemplated to be erected, he had no conception that it was possible, under an expression of this kind, to comprehend the sinking of blocks to choke up the harbor of New York; for he had thought the erection of works was putting up, whilst sinking blocks was putting down. He had, however, a different object in rising. He had understood it to be the intention of this bill not only to authorize the repair of old fortifications, but the erection of new ones; and the bill as it stood antecedent to the gentleman’s amendment, might have been competent to that end. Now, as the gentleman had amended it, it would imply works different from fortifications as he understood. If indeed it were the real object of the gentleman to repair old fortifications only, and not to erect new ones, the bill would now answer his purpose fully. If it were otherwise, he conceived the language was not correct.

Mr. BLOUNT said he felt very little solicitude as to the fate of his motion. His intention was to give a greater latitude to the discretion of the President. He would not, however, undertake to dispute with the gentleman from Massachusetts on the precise meaning of words; for he had not spent his early life within the walls of a college, as that gentleman had, but in the field, fighting for the liberties of his country. Under the belief that the word *works* did include fortifications, he had made his motion for amendment. It was the intention of the committee both to erect new works and to repair old ones. If the gentlemen from New York and Massachusetts were determined to restrain the President from giving that protection to the port of New York which the people of that State should think proper, he was content. He did not wish to waste the time of the House unnecessarily, especially on a subject which required so much expedition.

Mr. COOK said he lived in a port in which there was sufficient depth of water for any British man of war, and he thought he should feel as indignant at any proposition for destroying the harbor as the gentleman from New York. He hoped the feelings of other gentlemen in the House would be in unison with his. If they were arrived at such a point of degradation, that, in case of attack, they must retreat to or beyond the mountains, and if instead

of defending they must abandon the coast to its fate, they had better adopt this measure, and block up their ports altogether. After such a proposition as this, he should not be surprised at any one which could be made; it appeared to him that the spirit of our forefathers was departing the country. He was alarmed when he heard such a proposition as this, and he hoped there would be sufficient magnanimity in the House to give the amendment a decided negative.

WEDNESDAY, December 9.

Another member, to wit, EDWARD ST. LOE LIVERMORE, from Massachusetts, appeared, produced his credentials, was qualified, and took his seat in the House.

Fortifications and Gunboats.

The House proceeded to consider the amendments reported yesterday by the Committee of the Whole to the bill, sent from the Senate, entitled "An act to appropriate money for the construction of an additional number of gunboats."

Mr. DURELL said, as there appeared to be a considerable diversity of opinion on this gunboat business, and as a number of gentlemen from, the North did not readily fall into the scheme of the Southern gentlemen, and as he was from the North, he would state some reasons why this bill should not pass. He thought, as every gentleman appeared to think, that this was a crisis which called for union and great exertion; the great object was, to arm the nation to meet an event which they would be called to meet ere long. The question was now on one species of this arming, on which there were different opinions.

It appeared that, in addition to fortifications, the precise number of one hundred and eighty-eight gunboats was called for. A question had been asked, why that number was exactly calculated as being necessary; the chairman of the committee, who reported the bill, states that this number was thought necessary by the Executive Department. It was not to the system of gunboats that he had an objection, for he believed that, to a certain extent, they might be useful; but he did not believe that gunboats in

connection with fortifications, would attain the end for which they were acknowledged to be proposed. In casting his eye over the documents before him, he perceived that gunboats were assigned to certain situations in the North, where he was confident they could never be of use. He was positive of this fact. Four gunboats were assigned to the port of Portsmouth, New Hampshire. He would appeal to gentlemen in the House, acquainted with the situation of that port, whether they seriously believed that four gunboats, or that twenty, would be of any service there? It was impossible that they should; the situation of the port, the strength and rapidity of the tide, were such that they could not be used. The same observation would apply to a number of ports east of that; it was generally conceded that gunboats were not calculated for deep and turbulent waters; the Northern shores were not sand banks, and gentlemen seemed to think these were necessary to allow gunboats to defend even themselves.

He saw that for the ports of Norfolk and New York, there were assigned a large number of gunboats. He was inclined to believe that a number of frigates, to the amount of the expense of these gunboats, would be more consonant with the wishes of the people in the mouth of the Hudson, than so many gunboats.

One hundred and twenty-eight gunboats to Norfolk and New York! The expense of sixty-four, one half of this number, would be fully equal to the expense of four forty-four gun frigates; and he was of opinion that these, at one-half the expense, would be considered by the gentlemen from Norfolk and New York, and by the House, as better calculated than gunboats to defend those ports. Mr. D. could see no reason why they should not have their choice in this respect. He, therefore, concluded with moving to strike out "one hundred and eighty-eight gunboats," and insert "one hundred and twenty-four gunboats, and four forty-four gun frigates."

Mr. BLOUNT called for a division of the question, wishing the first question taken on striking out.

Mr. GARDNER felt very conscious of the importance of fortifying the various ports and harbors of the United States, and should give the bill his support on its passage; but he had been in hopes yesterday that the amendment proposed by the gentleman from Pennsylvania, would have prevailed. He wished to see the system of gunboats put into operation, and

to see the efficiency of that mode of defence properly tested. There appeared to be many different opinions on the subject; and he perceived the House would not be satisfied till the experiment was tried, and their utility known. He was willing that as many gunboats should be employed as was sufficient for defence in those waters where they might be useful; but he did not think they would be efficient in the Northern and Eastern ports of the United States. He should be obliged to gentlemen if they would strike out a part of this number of gunboats, and appropriate the sum applicable to them to another mode of defence. There appeared to be a large majority in favor of the bill, but if they would be so condescending as to fortify the Northern ports in a way most agreeable to the people interested in their defence, he should feel gratified at it. He was in favor of the amendment, though he would rather a large number should be stricken out; and hoped the question on striking out would be carried, whether ships of war were inserted or not. It had been yesterday said, by a gentleman from Virginia, that if a less number were built than that proposed, they would be useless. This argument could have no weight with those who did not think they would afford defence at all; but, for his own part, he should vote for any thing in the shape of defence, till it should be found insufficient by experiment.

Mr. BACON observed, that some gentleman had undertaken in themselves, to represent the whole Northern part of the Union, and had expressed their wishes that the House would condescend to listen to the united prayers of the representatives from those States. He only rose to say, that he, for one, protested against being considered as joining in that request. He was of opinion that the mode embraced by the bill would better accord with the sentiments of the people of the Northern States, than that which those gentlemen had proposed. He had no intention of making any calculation on the subject, because he did not consider himself qualified to do it; but would barely observe that, were the question fairly tried in the Northern interest, those gentlemen would be found in the negative.

Mr. CROWNINSHIELD said he considered the present proposition as much the same with that which was yesterday offered in Committee of the Whole, and to which the committee was decidedly opposed. He trusted the decision of the House to-day would be the same as that of the committee yesterday. He thought his friend from New Hampshire was extremely mistaken in his calculations of the comparative expense of gunboats, and frigates of forty-

four guns. It would be seen by the report of the Secretary of the Navy, that the estimates for gunboats would amount to about \$5,000; and he thought it would not go beyond it. Taking this for granted, the gentleman's calculations of expense must fall to the ground. Mr. C. then stated the expense of frigates which had been built, from which it appeared that the expense of building one frigate was fully as much as that of sixty-four gunboats. If they proposed to strike out this number of gunboats in order to build frigates, they must add a sum of one million of dollars to the appropriation.

Mr. SAWYER said it was not his intention to trouble the House often with his observations; for, being but a young member, he sat there more for the purpose of acquiring information than of giving it; nor should he have risen at this time, had not his duty compelled him to reply to some remarks, and to oppose the amendment offered by the gentleman from New Hampshire, (Mr. DURELL.) The gentleman wished the United States to have a fleet; to have four forty-four gun frigates to assist in the defence of New York. For his own part, Mr. S. wished the United States were in such a situation as to enable them to usher into existence a fleet capable of annihilating at one blow the whole naval power of England, which had so long proved a scourge to all nations, and to this nation in particular. Such a consummation was devoutly to be wished; but the attainment of such an object by the United States, was utterly impossible: they had not means wherewith to do it, and an attempt which should fall short of the end, would do the nation more injury than good, by tending to swell the already overgrown naval power of Great Britain. At present, he must say, he was entirely opposed to a Naval Establishment, and differed entirely with the gentleman from Massachusetts, upon the propriety of any such establishment in the present situation of affairs; he wished to have nothing to do with any establishment unconnected with a system of land defence. There was a time when a Naval Establishment might have been consistent with national policy; when a naval armament, such as could then have been constructed, might have been instrumental, by proper management, in maintaining the balance of naval power in Europe; that time was, when the combined fleets of France, Spain, and Holland, were nearly a match for the British naval force; but that time was now elapsed; that opportunity, which might have been so advantageously seized, was, through an unfortunate prejudice in favor of one nation and against another, suffered to escape unheeded. They now saw

the effects of that policy; the fleets of France, Spain, and Holland, were swept from the ocean; the British Navy retained the undisputed possession of every sea, and it would be an extravagant undertaking in the United States to attempt the creation of a naval force calculated to make a serious impression upon Great Britain; they would become the mere shipwrights of Great Britain, who would be ready to receive their ships as fast as they could be launched. Could they erect a navy equal to that which Denmark had possessed? Could they build and equip twenty-four sail of the line at once? If they could do this, experience had fatally shown, that so far from aiding in the defence of this nation, that force would soon be turned against it; England, with a superior force, would soon convert them into a means of offence against this nation. But it would not be in the power of the United States, encumbered as they were by a great national debt, and cramped in their resources by interruptions of their trade, to provide a navy as respectable as that of Denmark was; and surely any smaller force could not be contemplated. Let us then, said he, apply our limited means to a mode of defence on which more reliance may be placed; let us in the first place put our ports and harbors in such a state of defence as will, in a great degree, prevent our feeling the want of a navy. To effect this object, he said, they must have recourse to gunboats. He did not conceive this means of defence to be so trivial as the gentleman from New Hampshire (Mr. DURELL) seemed to think them; not that they could be relied on as an efficient system of defence by themselves; not that they were to expel the British squadron from our shores, (though it was thought they could effect that object;) but because, in conjunction with land batteries and fortifications, they would ensure some safety of person and property in our seaport towns. By judicious management, by disposition in shoal waters, so as to aid the batteries on shore, they might be the means of preventing our cities from being plundered and burned, and our banks and stores from being rifled of their wealth. In this point of view, he considered them as part of a land defence, totally unconnected with a navy; they were not to go into deep water; the ocean was not their element; they were to remain in stations from which they might afford the greatest assistance to our forts and batteries, and when hard pressed or overpowered by force they could take shelter under them. This, said Mr. S., is the great advantage they have over heavy ships, there being no danger of their capture while we can maintain possession of our forts.

The British have not dared to attack a single French port since, though they had full possession of the channel and every means of attack which their unopposed naval superiority could afford. Though they saw preparing in those ports materials for their destruction, though they saw rising up in them means of offence so much dreaded as to require the utmost vigor of national exertion to provide against them, still did they stand aloof. Had Copenhagen been defended by gunboats distributed so as to act with the batteries, she would not have fallen so easy a prey; in fact, the few gunboats they had did all the execution that was done to the British shipping; for the fleet which remained in the port for its defence had no retreat from the superior force of the enemy, but where they could be pursued by vessels of equal size, while the gunboats ran under the forts and continued to annoy the British ships until those forts were taken by land. And if all the vessels which were captured had been gunboats, how much better would it have been for the Danes; how much less heavy would the loss of a few boats have been than that of so many large ships, so long building and accumulating, and at such an immense expense! But in order to show the inutility of gunboats, as well as fortifications, this House was told the British could succeed against our towns by landing a sufficient number of men below our forts and attacking them by land. This is exactly, Mr. S. said, what he wished to hear; for it was conceding at once that our gunboat and fortification defence would be too much for them to pass, that they would be compelled to give up the idea of carrying the place by water, and thus lose all the great advantages which their boasted irresistible naval power could afford them.

Mr. COOK said he could have wished that the different modes of defence should have been united, and decided upon together; but from the disposition of gentlemen who were in favor of the gunboat system, the House appeared to be compelled now to decide on this alone. It was well known that he was not averse to the proposition for constructing a number of gunboats; that he had last session given his vote in favor of them, and was now in favor of increasing the number, believing that in some situations they might be eminently useful; but when he found that so large a sum had been appropriated, almost to the exclusion of any other mode of defence, he deemed it his duty to give his vote in favor of a proposition tending more equally to apportion the modes of defence.

It had been moved to strike out of the bill a certain number of gunboats, and insert a certain number of ships of war. That a navy was necessary for the protection of our commerce was the opinion of President Washington, expressed at a time when our commerce was comparatively small. [Mr. C. here read an extract from an address to Congress from President Washington.] Mr. C. acknowledged that he had not experimental knowledge on this subject; but he appealed to the candor of those gentlemen who advocated this mode of defence, to accord to him that liberality which he would exercise towards them. He meant to impeach the motives of no man. He conceived that every gentleman would act according to the dictates of his conscience, and he claimed their indulgence to do the same.

Were the navy now to be increased to repel aggression from any foreign power, it would be regarded as a proper measure. He was not in favor of a large increase of our Navy; but he conceived it necessary to have a few large ships to drive from their ports scattering ships of an enemy. He thought himself not out of order, since the opinion of the President of the United States on the subject of gunboats had been read, verbally to quote his opinion on this subject. The President was in favor of large ships; he thought it was improper that any single ship should be able to block up a port or harbor of the United States; and that a remedy should be provided. Mr. C. thought that no danger could arise to the liberties of the people from an increase of the Navy; he called upon gentlemen who supported that doctrine to quote a single instance where any nation had lost its liberties from a navy. He did not himself consider an increase of our Navy necessary at the present moment, but it might be necessary at a future time; it would not, therefore, be improper now to provide materials, that they might have them in readiness when wanted. At present their attention should be directed solely to the defence of their cities on the seacoast; but at any future time, when it should be made satisfactorily to appear to this Government that the nations of Europe were disposed to coalesce for the purpose of asserting those rights which were dear to every maritime power, he hoped the United States would be ready and willing to join them in maintaining the freedom of navigation. It has been said, by some people, observed Mr. C., that we ought to lie by on our arms and avert the event of the European contest; let them alone, say they, let Buonaparte fight it out with them. Now this was a doctrine to which Mr. C. could not subscribe. If there was one great power disposed to control and domineer over the ocean,

and the United States had great property at stake, why not pay their proportion, their footing as it were? He considered an opposite conduct pusillanimous and unjust. They had more tons of shipping afloat, and were more largely concerned in the freedom of the seas, than any nation on earth, one only excepted; and should they say that they would lie by unconcerned, while the dearest rights of nations were destroyed by any one nation! It must be clear to every one that they should not, and yet instead of increasing their defensive powers where they were assailable and most vulnerable, he was hurt to hear gentlemen propose means of defence for points perfectly unconnected with existing evils, which consisted in the harassing their navigation, and inflicting injuries on their floating commerce.

Mr. C. did not want ships for protection of our cities; he had no fear of their being burnt; he considered them as sufficiently protected by the proposed fortifications and gunboats, but all the money in the Treasury should not be applied to these subjects. The merchants of the United States were more concerned for the defence of their property which they had sent beyond seas than for the burning or sacking of our cities. Some cities, it was true, had been burnt during the Revolutionary War; but it should be recollected that the enemy then carried on a war of extermination, and even invited the savages to burn our towns. The war which was now feared was not a war of the same stamp; it would be merely a war for the right of trade, and not carried on in so sanguinary a manner.

Mr. FISK said the gentleman from Massachusetts was opposed to this measure because it would take all the money out of the Treasury. He should show: *First*, That it was beyond their means; and *Second*, That it was not a measure of exigency. Would he be willing to leave our ports and harbors unprotected, and go abroad to protect our commerce? Mr. F. did not think that the merchants of the United States would support that doctrine. If they did, he wished they were out of the United States. The gentleman had told the House that his feelings had been wounded at the deference shown to the statements of the Secretary of War, and a few minutes after, read an extract from an English newspaper, giving an account of a transaction which had taken place between gunboats and English vessels. Mr. F. confessed he was not a little surprised at his preferring the authority of English newspapers to that of the Head of a Department in our own country. A gentleman who did

this, might be allowed to indulge in the spirit of prophecy. He had said, if they adopted this measure, they would soon feel the effects of it. Mr. F. wished the gentleman would show how. The gentleman had said, because a few towns were burnt last war, the House seemed to think that the war which was expected would be a war of extermination; but that this was to be a harmless war, a mere war of trade. He would ask that gentleman what was the conduct of Great Britain towards Denmark? Had they spared the town of Copenhagen? He believed not. Would they spare the towns of New York or Norfolk, if it were in their power to destroy them? He thought not. Mr. F. thought the great question now was, What was the most efficient force—what would afford the most complete protection to our ports and harbors? The gentleman had said that they had now no force which could contend with an eighty or ninety gun ship. If that were the case, Mr. F. said, his argument completely recoiled upon himself. They had now eight or ten frigates, and if these could not contend with one eighty or ninety gun ship, they had better stop where they were, and not erect more of such inefficient force. Let us consider the subject for a few moments, said Mr. F. This is not an untried force; it was tried before that gentleman had existence. The instance mentioned by the gentleman from North Carolina, (Mr. SAWYER,) might have shown that this force would be sufficient. It was the opinion of a most experienced naval commander, and whose standing and information entitled him to more than ordinary credit, that he would rather have four gunboats than a forty-four-gun frigate. A frigate could not carry the same metal as a gunboat. If a frigate was dismasted, becalmed, or any accident whatever happened to her, she could not get out of the way. These reasons should have weight on the minds of any gentleman, particularly of one who did not pretend to experimental knowledge on this subject. If the Treasury was as low as it was said to be, they should surely pursue the cheapest means of defence. By adopting the mode of defence by gunboats, in preference to defence by frigates, they would have, at the same expense, a third more in number of guns, besides double the weight of metal. With gunboats there was no loss of time in putting about. Not so with a frigate. She must first discharge one side, and then go about, before she could fire the other. But, gentlemen who were steeled against conviction, and determined, at all events, to have a Navy, would not be influenced by argument or reason. Had not Denmark a Navy? What became of it? It fell

into the hands of a superior naval power, and that will be the fate of our Navy if we erect one.

Mr. THOMAS said that the gentleman on his right, his colleague, (Mr. GARDENIER,) had told the House that he should vote to build the whole number of gunboats, not because he thought them an efficient defence, but because he considered them feeble machines. This reasoning might be conclusive in the mind of that gentleman, and he did not care what influenced him, since it appeared they should have his vote for the bill.

However, Mr. T. said he merely rose to reply to one remark of that gentleman. He knew that it had been rung through the country, by electioneering gentry, for these number of years, that the formidable navy, so carefully raised by the former Administration, had been sold off by the present one, and the nation left without defence; and that gentleman (Mr. G.) had repeated the same story, that the formidable navy which had been raised with so much care had been sold off, to the eternal disgrace of the nation. Hearing this assertion, Mr. T. thought it his duty, on that floor, to declare that not a single national ship had been ordered to be sold since the present Administration came into power; that not a single vessel had been sold except from orders issued previous to the time that the administration of this Government was taken out of the hands of those coinciding with that gentleman in political sentiment.

The amendment offered by Mr. DURELL was then negatived—ayes 19.

The bill being about to be read a third time this day, its decision was, on motion of Mr. ELLIOT, postponed till to-morrow.

THURSDAY, December 10.

Fortifications and Gunboats.

The bill sent from the Senate, entitled “An act to appropriate money for the construction of an additional number of gunboats,” together with the amendment agreed to yesterday, was read the third time.

Mr. ELLIOT.—When an humble and uninfluential individual, voluntarily isolating himself from the several great parties that divide, distract, and ruin

our devoted and degraded country—our devoted and degraded country—(I repeat the expression, sir, for I know it to be as consonant to the rules of order as I shall prove it to be incontestably true;) when such an individual rises to deliver his sentiments upon an important subject of national concern, it would seem that the singularity of his situation might attract attention, however deficient he may be in the solid powers of argument, or the brilliant tones of eloquence. But these are inauspicious times. These are not the *mollia tempora fundi*—the soft reasons of persuasion—the calm hours of peace. They are times of alarm and denunciation. For myself, peculiar and almost irresistible reasons would impel me to continue silent, not only this day, but for the short remainder of my political existence. But there are periods when silence is almost equivalent to an abandonment of duty. Private afflictions, as inconceivable by others as they are indescribable by myself, were I disposed to describe them, indispose me for political exertion. There are times, however, when even the most refined feelings of the human heart should give place to the sublime energies of the human mind. When imperious duty calls, the latter should be exerted, even if it be only that the former, when the great effort is over, should resume their empire with more exquisite sensibility.

The present is one of those great crises that rarely occur in the annals of nations—it is, indeed, a crisis of most awful moment. Our political day of hope and joy and peace is suddenly overcast with thick and dark clouds. In the language of sacred oriental poetry, it is a day of darkness and gloominess—a day of clouds and thick darkness—as the morning spread upon the mountains.

In casting my eye over the various documents upon the table, my attention is for the moment attracted by one which has been placed upon it this morning—a report from the Committee on Revisal and Unfinished Business, upon matters undetermined at the last session. In this I find mention made of several propositions upon the subject of the defence of the nation, which I had the honor then to propose, and which it was not the pleasure of the House then to act upon. Propositions of a similar character, so far as respects the fortification of the ports and harbors, the organization and arming of the militia, and the equipment of the frigates, it is now hinted, will be carried into effect in the course of the present session. I am happy that my doctrines are becoming popular, and that there is some

prospect of their adoption. But it is because I fear, and indeed believe, that the present bill is pressed upon us for the purpose of superseding every measure of national defence which would comport with the true interest and the honor of the nation, that I am so decidedly opposed to it, and that I consider the Republic degraded by the substitution of a weak and miserable policy for measures of a manly and magnanimous character, at a crisis which peculiarly requires them.

The principal argument, although this does not seem to be openly avowed, in favor of the present measure, is the supposed predilection of the Executive for this system of defence. Indeed, this is but a new edition, or rather a new volume, of the celebrated proclamation and gunboat system, which, instead of elevating us in the scale of nations, has greatly sunk the national character. The objects in view are to protect the commerce of the Union to a certain extent, and to protect our coasts and seaports. Of course this measure is to constitute a material, if not the principal part of a general system of national defence and protection. The object is proper and patriotic, and it is a subject of deep regret that the means are inefficient. But history and human experience have settled the true character of these machines, and as we have nothing else to hope for, we can expect nothing like an energetic and effectual system.

The President *shall* recommend. The voice of the constitution is imperative. It makes it the duty of the Chief Executive Magistrate to take upon himself the responsibility of explicitly recommending to the Legislature such measures as he deems the public welfare to require. In making the inquiry, in what manner has this great and solemn duty been performed at the present moment? the transition is easy to the Message of the President at the commencement of this session. These messages, as public documents, and addressed exclusively to the Legislature, are certainly fair subjects of criticism; and whoever shall be impelled by duty to speak unpleasantly of the present system of administration, will have an abundant source of rich consolation in the reflection, that, when gunboats are the subject of discussion, it is impossible to be out of order. The present system begins and ends with gunboats. In the Message to which allusion has been made, which should have been as a polar star to guide us at this dark season, not a single measure is explicitly and unequivocally

recommended. I will read that part of it which relates to the Naval Establishment:

“The gunboats already provided have been chiefly assigned to New York, New Orleans, and the Chesapeake. Whether our movable force on the water, so material in aid of the defensive works on the land, should be augmented in this or any other form, is left to the wisdom of the Legislature. For the purpose of manning these vessels, in sudden attacks on our harbors, it is a matter for consideration whether the seamen of the United States may not justly be formed into a special militia, to be called on for tours of duty, in defence of the harbors where they shall happen to be; the ordinary militia of the place furnishing that portion which may consist of landsmen.”

Here the Executive submits certain matters for consideration, without assuming to himself the responsibility of expressly recommending them. In relation to the Naval Establishment, he only talks of a movable force on the water; and if we should build our flotilla of two hundred and fifty-seven gunboats, at an expense which will be shown to be enormous, and, in the event of a war with Great Britain, two or three British ships of the line, and as many frigates, should come upon our coast, and blow them all to atoms, as would infallibly be the case if they were to come in contact with them, we shall no doubt be told that a wise and prudent Executive never recommended such an ill-judged, degrading, and disastrous measure. But for what purpose are gunboats to be built? To protect commerce and the coast. Every one knows that we cannot protect our commerce in every clime and on every sea against the naval power of Great Britain. It would be unwise, therefore, at present, to exhaust our resources by building a navy of ships of the line. It does not follow, however, that nothing can be done; that we cannot support our own jurisdiction. Nothing effectual, it is certain, can be done by gunboats. They have never been of use but as auxiliaries to more extensive and substantial establishments; and they have always been of so little comparative use, as to render it impossible to ascertain the amount of the service they have rendered. We may safely challenge their advocates to produce a single instance in which, alone and unconnected with works of more consequence, they have been of any essential use at all,

for purposes either of offence or defence. In my researches into their history I have met with no instance of the kind. Here I shall advert to a document, the reading of which has been called for by the honorable chairman of the committee on that part of the President's Message relative to aggressions committed within our waters, and with which I should not otherwise have troubled the House. I do it at this time, because I find my voice failing so fast that I shall be unable to go so fully into the subject as I originally contemplated. This I shall not regret myself, and still less will the House regret it. In the message of February 10, 1807, communicating the information requested by the House of Representatives in relation to the utility and efficacy of gunboats, we find, indeed, that gunboats apparently constitute but a subordinate species of defence, and yet they are spoken of as competent to almost all the purposes of national protection. A flotilla of no less than two hundred is contemplated.

Annexed to the Message are the opinions of several military and naval officers, some of them celebrated and some of them obscure. General Gates, whose memory we all venerate, has been mentioned. He merely gives his opinion, and furnishes no particular information upon the subject. He is followed by General Wilkinson, the hero of the Sabine and New Orleans, the man who violates your constitution at the point of the bayonet in order to preserve it inviolate; the idol of popular delusion for the moment, but the object of a very different homage from the wise and good. Unfortunately, the letter of this great character conveys no information. Commodore Barron says: "Ten or twelve of these boats will probably be sufficient to compel to remove from her position a frigate, and so on in proportion to the size and number of the enemy's ships. To do more than annoy would be difficult. With those vessels a great number and a long time would be necessary to capture a ship of war; but few commanders would feel secure while open to the attack of an enemy, which, however inferior, he could not destroy." This is all very candid and very strong reasoning against the cause it is produced to support. It is matter of regret, however, if it ever has been ascertained that gunboats have been able to remove a ship of war from her position, that we have not been put in possession of that information. The following remarks are taken from the communication of Captain Tingey: "The efficacy of gunboats in the defence of coasts, ports, and harbors, must be obvious to every person capable of reflection; when it is considered with what celerity they can generally change their position and mode of attack,

extending it widely to as many different directions as their number consists of, or concentrating nearly to one line of direction. Such, indeed, is believed to be the great utility of gunboats for defence, that, notwithstanding the gigantic power of the British Navy, in its present state, a judicious writer in the British Naval Chronicle, after advising a plan for raising a fleet of 150 or 200 gunboats to assist in repelling the threatened invasion of that country, says, ‘a gunboat has this advantage over a battery on shore, that it can be removed at pleasure from place to place, as occasion may require, and a few such vessels, carrying heavy guns, would make prodigious havoc among the enemy’s flat-bottomed boats crowded with soldiers.’” Surely we do not expect the British will come to invade us in flat-bottomed boats. If they should do so, we may array this miserable machinery against them, and shall probably be victorious.

But it is a popular system—the people are in favor of it—and this is an overwhelming answer to every argument that can be urged against it.

With whom is it popular? Certainly not with the people in the Northern States, for a very great majority of them are opposed to it. Within two or three years we have received addresses from the Legislature of New York and Rhode Island, passed, I believe unanimously, in both States, in favor of an enlarged and more efficient system of naval defence. Those two States, of course, may be considered as opposed to this project. No one will set down Connecticut as friendly to gunboats. Is it popular in Massachusetts? One gentleman from that State (Mr. BACON) protests against being considered as the Representative of a people hostile to this mode of defence. But that gentleman will not tell us that a very large majority of his constituents are attached to the system, or that among those who are, one in fifty has any practical or even historical information upon the subject. Are your constituents, Mr. Speaker, in favor of this mode of defence? I presume not. When, two or three years ago, you opposed this establishment in its infancy, you undoubtedly represented their sentiments and feelings, as most certainly you supported their true interest. The Representatives from New Hampshire, and others from the Eastern States, ask you to excuse them from accepting their proportion of these boats, and to give them a few frigates in exchange. You refuse their request.—They ask for frigates, and you give them gunboats. As it respects my own constituents, I have not been able to find any gunboat men among them. It is probable, however,

that there are some, as there may be men in that quarter, as in others, willing to believe whatever the Executive believes; but I trust there are fewer of these miserable minions in that district than in some others in the Union.

Mr. CROWNINSHIELD said he regretted that the present had been represented as a local question, applicable to the South; and it had been stated that the defence of the North was not at all in the question. Mr. C. viewed it in a very different light. He considered the whole seaboard of the United States, that every inhabitant on the coast, was deeply interested in the bill now about to pass. Gunboats would as well assist to protect the passage leading into Boston harbor, as the mouth of the Chesapeake. They were certainly fit to aid in the protection of any of the Northern ports. He was astonished when he heard a doubt expressed upon the subject. He was glad to hear a gentleman from Connecticut (Mr. DANA) say he should vote for the bill. He would rather have his vote than his speech on the subject, as well also the vote of one of his colleagues (Mr. UPHAM) who followed him in debate, and took the same course. Both these gentlemen said they should vote for the bill on the table, and yet they observed they could not approve of this mode of defence. It would thus appear that their votes were vastly more reasonable than their arguments. He trusted that on this bill the House would give a unanimous vote. What was the proposition? To put our ports and harbors in some state of defence. Was the measure embraced by this bill all the defence proposed? No; but it was all proposed to be decided on at present, because it could be almost immediately accomplished. And who knew when this force might be wanted? He did not say it would be wanted to-day, to-morrow, or the next day; but possibly the return of Spring might bring an occasion for its service to repel an invader; and, where the risk was deemed even probable, procrastination in preparing for the worst would be the height of imprudence.

In regard to the utility of gunboats, gentlemen differed; and well and honestly they might, because their use had not in this country been sufficiently confirmed by experience. Mr. C. would, however, quote an instance or two in which they had been eminently useful, even in our own country. He had learnt, from a very correct source, that in the war between Great Britain and France, in 1760, when the American colonies took a part, there was an instance on record which proved that these gunboats were employed with success in the river St. Lawrence—that four gunboats,

carrying one 18 pound cannon and 20 men each, did attack and capture a brig of 16 guns and 180 men, killing 60 or 70 men in the brig, while the gunboats lost but a single man, and received little or no other injury. If any gentleman doubted, Mr. C. would give the respectable authority of the Vice President of the United States for the fact. Mr. C. had understood he was an officer actually employed by the Colonial Government in that service. Another instance had been given to him by a naval gentleman of eminence, who was not now in the service of the United States, but who, he believed, if called upon, would do himself great honor. Mr. C. then read the statement made by that gentleman, to this effect: "In 1776, the Roebuck and Liverpool, two British frigates—one of them mounting 44 guns on two decks—lay in the river Delaware, below Philadelphia. A flotilla of American gunboats attacked them with spirit. The engagement was severe, and victory terminated in favor of the gunboats. One of the frigates (the Roebuck) was crippled and driven on shore, and would have been taken possession of, if the ammunition in the boats had held out. As it was, after the Roebuck floated off into deeper water, both frigates abandoned their station, and left the gunboats masters of the river." It was probable that there might be some gentleman of the Revolution near him who might have known of the fact; if so, would it have no impression on the House? He presumed it would have a favorable impression, as it deservedly ought. He could cite other instances—he could say, that in the neighborhood of Gibraltar, at Algeziras, the Spanish gunboats had in many cases attacked British frigates, and sometimes 74-gun ships, and very much annoyed them. He knew of no instance of their capture, because it often happened, that a new wind springing up, carried the vessels out of the reach of their fire. It was also believed to be a fact, that the British naval commanders in the mouth of the Straits of Gibraltar had always been alarmed in moderate and calm weather when they saw the gunboats of Algeziras coming out to attack their ships of war. Engagements with them were not uncommon, and the boats frequently had the advantage, and captured merchant vessels under their convoy, and carried them off, in spite of all the efforts to save them which could be made by the men of war.

Mr. SOUTHARD was in hopes this bill would have met with very little opposition, especially when it was considered that it was but a part of a system of defence, of which the other parts would be decided in progression. Various objections had been made to the bill. Some gentlemen

supposed that gunboats were altogether insufficient for defence, and that the scheme was merely ideal and visionary; and some had attempted to prove that gunboats had never been used. A gentleman from Massachusetts had just disproved this by circumstantial accounts of two engagements; one on the river St. Lawrence, and one in the river Delaware. In the last instance, about twelve gunboats engaged two British ships of war. Mr. S. would state, from good authority, that the reason why these vessels were not made a prize, was, that the gunboats were not supplied with a sufficient quantity of powder and ammunition. This statement and fact would go far to do away the impressions of those gentlemen who suppose that gunboats are of no efficiency as a defence, or that their utility was ideal. In the progress towards the passage of this bill, every day new difficulties had been discovered, and new objections raised to its passage. Some gentlemen told them if they passed this bill, and appropriated a sum of money sufficient for the object proposed by it, that they would not leave money in the Treasury adequate to the expense of building land batteries, &c. Another objection was, that if they appropriated money for building gunboats, fortifications, and batteries for the seaports, there would be no money left wherewith to provide arms for the militia. If these remarks were even correct, they possessed no weight, because gunboats, fortifications, and land batteries, and arming the militia, were but three several parts of one great system.

After these remarks, he would only state his own idea of what ought to be done. He thought they should first provide gunboats; secondly, erect fortifications and land batteries; thirdly, pass a law providing for arming the militia—for, unless men were armed, they could not prevent an enemy from landing, destroying, and laying waste the country. Mr. S. hoped everything would be done which was requisite for protection. Gentlemen had said that our resources were not sufficient to meet these objects. Mr. S. would observe that there was, in the Treasury, money sufficient to answer all these purposes; if not, the country had resources within itself, fully adequate to every measure of protection and defence. He would not go, as some gentlemen had, into calculations of dollars and cents. If the nation was embroiled in war, its expense would be incalculable. It was impossible to form even an idea of the enormous expense that would accrue from war. But, Mr. S. would withdraw all the money out of the Treasury; he would not leave a cent; he would even drain the blood from his own veins, if it were necessary, for the defence of his country. If the nation was involved in war,

life, liberty, and property, every thing, was at stake; and all their energies should be exerted to repel the invader.

Mr. KEY said he conceived he possessed the right to give his sentiments on this subject; and he felt it a duty to assign those reasons which would induce him to vote for the bill under consideration.

Mr. K. had no doubt but, in forming a general system of defence, some few frigates would be found necessary; but he strongly feared they could neither construct line of battle ships or frigates before it would be necessary to use them. Some gentlemen had asserted that the nation was at war; he would not combat this position, though it was not tenable. Some gentlemen said we were on the eve of war, with whom he thought. If they were engaged in war, it would not be upon any other part of the frontier than that accessible by water. Of course the most vulnerable points of the country were upon the seashore. He therefore thought that every species of defence competent to the protection of these points should be adopted, and of this description were fortifications and batteries, aided by gunboats; not that they composed the best possible means of defence, but the best that could be constructed within a given time.

There were, as far as Mr. K. knew, in modern times, but two instances, and but one that was remarkable, of the efficacy of gunboats as a part of a system. One case was the defence of Cadiz, when Nelson, with his whole fleet, anchored in the bay of Cadiz, and was repulsed, principally, he believed, by the instrumentality, but certainly by the assistance of gunboats. In case of attack, made on our ports, gunboats being locomotive, would, in such circumstances, be advantageous. Another case of the success of gunboats occurs in the bay of Gibraltar; they are there secured from attack, until, like spiders darting upon flies, they spring out in calm weather, and always capture their prey.

These gunboats took their origin in an early part of this century, when Gibraltar was surprised by the enemy. Gunboats were then introduced into the Gut of Gibraltar, and from the time that Britain captured Gibraltar, to the present day, such has been the effect of these boats, that the British were always obliged to send supplies and provisions to Gibraltar under convoy. He had mentioned this circumstance, to show that gunboats had acted offensively as well as defensively. If gentlemen, however, considered them

as alone a sufficient defence for this country, they were most miserably mistaken; they were merely eligible as a means of defence in aid of fortifications. Mr. K. agreed with the gentleman who had yesterday said that these boats would be no protection against ships of war, with wind and tide in their favor, in Chesapeake Bay; but, as offensive weapons, they might be placed at points where they might lie in readiness till a proper time should arrive in which they could act with advantage. A number of frigates had been, for some time, lying in the Chesapeake. Mr. K. did religiously believe, if the nation had been in a state of war, (and a contrary situation alone had prevented the experiment being made,) that twelve gunboats, stationed at Norfolk, could have driven them away from their anchorage. And why did he believe so? Because they could have chosen their time, when the weather was calm, and large ships could not be worked. It was in this way that gunboats could greatly injure ships of war, and, if not destroy them, could injure them so much as to render them unmanageable. He did not conceive that gunboats should be considered as incapable of rendering essential services, because they had not hitherto driven the British squadron out of the Chesapeake, for the measures taken by the Executive had not warranted such a step. We are not at war, said he; when, by the shameless impressment of our seamen and other injuries, and when consummating her folly and wickedness by the attack on the Chesapeake, the English nation gave cause for war, we did not go to war. In his judgment, and he was reluctant to withhold praise where it was due, a much wiser course was taken; he meant the call upon that Government for reparation before a resort was had to war. Had they gone to war, on the spur of the occasion, they would have committed to the mercy of the British navy twenty millions of American property, afloat on the ocean; it would have fallen a sacrifice to the superior naval force of our opponents. If honorable reparation be made, the course which had been pursued would have been wise; at all events, whether reparation be made or not, time had been given to our citizens to save a great portion of their property. A measure of immediate war would have brought bankruptcy on our cities, and ruin on our citizens. It was well, for this reason, to put the event off as long as possible—the longer it was put off, the better we should be prepared for it when it did arrive.

FRIDAY, December 11.

The Gunboat Bill.

Mr. JOHNSON said, although he should not pretend to propose measures of great national defence, he considered it a prudent exercise of his right as a member, to express his sentiments upon subjects proposed by others, upon which it became his duty to vote. He was in favor of the passage of the bill. He believed that they had arrived at a crisis; a crisis which had marked the maritime annals of Great Britain with the blood of American citizens; the period had arrived when this nation must receive a satisfaction for injuries inflicted, and a security from future wrong; or the sword must again be drawn to defend that liberty which was the boast of all, and which had cost so much. They had before them evidence sufficient to demonstrate the probability of war, an event which could not be long protracted but by an honorable accommodation. While America mourned the loss of her sons, she had wisely forborne to strike a blow which her wrongs had justified. New instructions had been despatched to our Minister at the Court of St. James since the outrage upon the Chesapeake, and a last appeal made to the reason and justice of that Government by whom they had been so much injured. The negotiation had terminated in England, and even now a special Minister was expected from Great Britain to attempt a settlement here. The door to reconciliation had not been closed, and he hoped it would not be barred so long as a real desire could be traced in Great Britain to make an honorable settlement of all important differences. But every thing they could hear or see proved the propriety of making preparations for the worst event. Our Government had been the injured party, and must have redress.

The conduct of the Administration had been arraigned. Mr. J. did not hesitate to approve the conduct of the Executive, and particularly in this late and important transaction, it had acted with prudence, wisdom, and firmness. If feeling had not been governed by prudence, the nation might have been in a state of actual war. Perhaps our wrongs might have justified it; but while there remained a hope for honorable peace, negotiation was the proper course. We fear no nation, but let the time for shedding human blood be protracted, when consistent with our safety. If our claims upon the justice of England should be disregarded, there would be time enough for human butchery. He looked around him, and saw many who had witnessed the calamities and miseries of the American Revolution. But if war could

not be avoided, accumulated horrors would not induce the American people to endanger their independence. They would say, like the immortal WASHINGTON, the former victorious leader of their armies, "I will conquer or die with my countrymen." Unanimity, in times of public exigency, was all-important; any other course than that which had been pursued by the Administration, might and would have created division; but if they should now be driven into war by the injustice of Great Britain, where was the man who would not be with them, who would not approve the conduct of the Administration, pronounce our cause just, and appeal to Heaven for victory.

As to the system of gunboats, which had involved such a wide range of discussion, and almost every national topic, he had no practical knowledge of their utility; but he could state the evidence he had of their utility to the full extent contended for. First, it was a system which had been recommended by the President, supported by the opinions of General Gates, Commodore Barron and Captain Tingey. He perceived that a very large majority of the Representatives of the seacoast, from Georgia to Maine, was in their favor. They are used by most of the powers of Europe, and particularly in the Mediterranean, for defence, and often for offence. They were considered particularly useful in the North of Europe and the Baltic, on account of moderate tides, shallow water, and narrow seas. He had also many examples of their practical utility. In the war between France and England and her colonies, a case had been cited of an attack and conflict in the river St. Lawrence, in the year 1763, between four American gunboats and a French vessel of war, carrying 16 guns and 180 men. The battle was obstinate; the French lost 60 or 70 men, the hull and rigging of the vessel were cut to pieces, while only one man was killed on board the gunboats. A battle had been mentioned by the same member, which happened in the Delaware during the Revolution, where two English frigates were attacked by gunboats, one of the frigates driven from our waters, and the other stranded, and would have been captured but for the want of powder. Again: the celebrated battle between the English navy and the French flotilla of gunboats off the port of Boulogne, in the British Channel. Lord Nelson was charged with the destruction of these gunboats, and made the attack for that express purpose. The first attack was made with thirty vessels of war of all sizes; he failed in the enterprise, and was obliged to retire. This great naval commander, not having satisfied himself or his nation by this attempt, ten days after returned to the assault, with more ships of the line, a larger

number of frigates and brigs, and renewed the fight; after a very bloody battle and great loss, he was again repulsed. In fact, nothing did the English so much fear as these gunboats, properly managed. A few years ago, it would be recollected, Napoleon collected above one hundred thousand soldiers for the purpose of invading England. This created alarm and agitation in Great Britain, and this project the British Cabinet knew could not be effected without the aid of the French flotilla of gunboats at the port of Boulogne. The late Minister, Mr. Pitt, to divert the attention of Napoleon from this design, by British gold and British influence, created a new coalition upon the continent of Europe against France. For the moment, this coalition had its desired effect, and it is known to all how it had terminated. It had resulted in the conquest of the North, cost the lives of thousands, and inundated Europe with human blood.

Mr. MACON said it appeared to him that the only question at present discussed was, whether the number of boats authorized by this bill was the proper number. Some cases had been stated in which gunboats had been efficacious, and some in which they had not. Mr. M. did not mean to dispute their efficacy, but as gentlemen on the seacoast were divided on the subject, until gentlemen could better agree as to number and utility, so large a number ought not to be built.

There was another thing he should have been glad to have seen before he voted on this bill; he should have wished to have seen how these boats were to be manned. They might be told that people would volunteer their services on board of these boats. There must be some way in which they must be manned; unmanned, they would be perfectly useless. He did not like legislating in this detached way; it had been tried in former days; first passing one law, they must pass another to render it effectual. He wished to see some efficient method in which these boats should be manned; he could have wished that the whole system should go hand in hand. The President was authorized to man these boats. Was any authority given to draught sailors for the purpose, or how were they to be supplied? It was essential that this should be known. He should wish, and if he thought he could succeed he would make a motion to recommit the bill to a select committee for the purpose of making this provision. Suppose twenty boats were stationed at Norfolk, did they know that these boats could be manned? In his opinion, the bill should contain a regulation for manning them; every

law should stand upon its own merits, and he should always protest against passing one law which would oblige them to pass another to carry it into effect. Let us, said he, see the whole system, and then let us vote upon it.

Mr. G. W. CAMPBELL said it had not been his intention to speak on this subject. There was sufficient cause to induce him still to decline entering into the debate. His indisposition would certainly prevent him from examining the subject in that manner which its importance required; and he would therefore have persevered in his original intention of remaining silent, had not an attempt been made to make an impression on the public mind, that the friends of this measure were about to drain the Treasury of the United States for a system of defence that would prove inefficient—for a mere useless experiment. This might therefore require some explanation, that the motives of gentlemen who were about to vote for this system of defence should be known, as well as their objects. In the discussion of this subject, gentlemen had also gone into an examination of the utility of our Naval Establishment, and the expediency of increasing it at this time, which was in his opinion a distinct subject, that had little or no connection with the proposed measure. It would be time sufficient to examine that question when it came properly before the House. There had also been a very novel mode of argument introduced on this occasion, and it was the second time it had been used during the present session—that of gentlemen arguing against the expediency of a measure, while they declared their intention to vote for it. This was indeed a new method of legislating, and may be intended to answer a double purpose: it may perhaps enable gentlemen to say to those of their constituents opposed to this measure, (if such there are,) We were inimical to it; we exposed its weakness in the House, and showed its inefficiency—you cannot therefore blame us for its adoption. While, on the other hand, they might say to the friends of the measure, We have supported it by our votes, and are therefore entitled to your confidence on that ground. Mr. C. did not say that this was the object of gentlemen; but if it was not, it appeared to him difficult to ascertain what it could be. It would have appeared much more consistent for those gentlemen who seriously believed the system to be useless, to vote as well as speak against it; and it were to be wished that those who intended to vote for the bill before the House, had permitted it to pass without opposing it; but, as this course of argument had been pursued, he deemed it a duty he owed to his country, to those he had the honor to represent, and to himself, to express to

the House (though in a very brief manner) some of the reasons which would induce him to vote for the bill. He did not pretend to possess much information on the subject of gunboats—he had therefore hitherto declined entering into the discussion, and waited to hear what might be advanced on the subject by those who had greater opportunities than himself of knowing their efficiency or inefficiency—but he had found those who had spoken on this subject were obliged, like himself, to depend on the information of others, and did not pretend to furnish the House with any practical knowledge on this subject. They must, therefore, form their opinions from the reasoning on the case, and such evidence as they were possessed of.

The first important inquiry would seem to be, whether the present state of our relations with foreign powers was such as required the adoption of effective measures for national defence. It appeared to be agreed by all that it was. No one denied the importance of the present crisis. It could not be denied by any gentleman who would reflect a moment on the repeated aggressions that have been committed on our commerce, the violated rights of our seamen, the insult offered to our national flag, and the murder of our fellow-citizens. These all go to prove, incontestable, the necessity of our putting the nation in a state of defence. The next inquiry was, of what nature ought our defensive preparations to be? It is clear, they ought to be calculated to meet and repel the attacks that we have a right to expect from those who are likely to become our enemies. Those attacks are to be expected on our coasts and seaport towns which are most exposed, and most vulnerable to a marauding enemy. The species of defence, therefore, that we ought to adopt, should certainly be such as was calculated to protect, as far as in our power, our coast, our harbors, and our seaport towns, from insult and ruin; unless, indeed, these are to be abandoned to the enemy on his first approach. We are then to determine whether we shall defend these or not.

Will the nation consent to expose to an enemy, without an effort to repel him until he has landed, the whole extent of your seacoast, all your seaport towns on the margin of the ocean? This would be a dangerous experiment, and he had supposed too wild a scheme to be advocated by any reflecting politician: though it seemed to be the favorite doctrine of some gentlemen in this House, who were opposed to every species of defence, except placing arms in the hands of the militia. It is true the foe might be repelled

by your militia, and no doubt would be; but, what would the citizens of those towns and on your seacoast say? Would they not justly complain that you had neglected their interest, had deserted them in the day of danger, and left them to be pillaged and destroyed by an enemy, without one effort to protect them? They certainly would, and their complaints would be well founded. There were, however, he presumed, but very few willing to subscribe to this doctrine—though it had been advocated by some gentlemen in this House, who appeared opposed not only to ships of war and gunboats, but also to fortifications.

Taking it then as admitted, that the coast and seaport towns are to be defended against naval attacks, what were the means in their power best calculated to effect that object? On this point there was, as might be expected, some difference of opinion. Mr. C. believed it would not be contended by any gentleman that our coast and seaport towns could be effectually defended by fortifications alone. No man was so wild in his plans as to say so. The whole coast, from Maine to the Gulf of Mexico, cannot be fortified—some other mode of defence must therefore be resorted to. He apprehended also, it would not be contended that the naval force now in our possession, in addition to fortifications, was sufficient to afford effectual protection to our seaports. This had not been pretended; its inefficiency was too well known for a single individual to rely upon it. There was then no question on the point that they must acquire an additional floating force in aid of fortifications. What kind of addition was it in their power to make? There was but one alternative left them—either to build an additional number of ships of war sufficient for that object, or to resort to the system of gunboats. They had been very earnestly called upon by some gentlemen to make an addition to the navy and unite this with gunboats. This would probably be found impracticable at the present crisis. Mr. C. had expected that those gentlemen who wished to have reduced the number of gunboats proposed, and substitute a few frigates in their place, would have shown the practicability of building their frigates in sufficient time to answer the present exigency. If this could not be effected, the proposition was useless. Mr. C. said the building of a large navy was not consistent with the policy or interest of this country. If it were in their power to do so, it would be at war with the genius of their Government, the interests of the people, and the security of their liberties.

Mr. QUINCY said he would not have risen now, but for an observation of the gentleman from Tennessee, as to speculative opinions. Mr. Q. had before not expressed his own opinion merely, but the opinion of men deeply interested and much experienced in this question. He could not boast of personal experience on the subject, but he had conversed with merchants and persons in naval employ, and he had found but one sentiment existed, that they might be useful, but not so much as to supersede the necessity of other modes. He recollected an observation made by a merchant deeply interested in the defence of our ports. When his opinion was asked of the efficiency of gunboats, he said, "you may have gunboats; but attempt to use them on our coasts, and you would soon not have a gun left on your boats." Much better would it be that these guns should be rested on carriages, and those distributed along the sea coasts. He had no objection to gunboats when contemplated to be used in shoal and narrow waters; but he must express an opinion against their efficiency in deep and rough waters, not from his own experience, but because it appeared to be the opinion of men skilled in naval affairs; and because the great mass of men interested in the defence of the ports were averse to this mode of defence. He should not vote for the bill, because he should, by so doing, abandon the best interests of the country; and because, when so large a sum was appropriated, it would seem that land batteries were to be proportionably neglected.

Mr. RANDOLPH said that so long as the details of the bill were under consideration, he had forborne to trouble the House with his sentiments, but now, on its final passage, he conceived himself entitled to express freely and fully his objections to it. His object was not to make proselytes, but to present to the House and to his country the grounds of his refusal to sanction the measure. When perhaps seventy or eighty speakers had repeatedly risen in its favor, it was surely reasonable that the few individuals opposed to it should be heard in their own behalf. He complained of the manner in which business had been conducted. Instead of a comprehensive system, the whole extent of which might be embraced by the House, measures had been laid before them piecemeal, and discussions of the most vague and unprofitable nature had grown out of them. So far from that general diffusion of information which was so desirable, they were totally destitute of any concerning the disjointed members which had been laid upon their table, and which he despaired ever seeing connected in one perfect whole. The deliberations which had arisen upon them defied

analysis. It was a sort of Parthian warfare, in which the difficulty lay not in vanquishing the enemy, but in coming up with him. He had not proceeded (as was alleged) upon his own speculative opinion. Experiment had proved the inadequacy of this species of armament. When the President of the United States issued his proclamation, commanding the British ships of war to retire from our waters, the want of adequate force alone could justify a failure to carry that proclamation into effect. A consciousness of his incapacity to enforce obedience to it, was notoriously one of the causes why Congress had been convened. Whosoever denied this must have the hardihood to charge the President with being deficient in his duty, which he presumed gentlemen were not prepared to do; and surely it was his bounden duty to enforce respect for the authority of the nation on those by whom it had been treated with derision and contempt. The British force remaining within our jurisdiction, in defiance of the laws, were as much an invading foe as if they had taken possession of the Capitol. The miseries of war had been feelingly depicted.

Mr. R. was as strong an advocate for peace as any gentleman on that floor; provided it were a safe and honorable peace. To his apprehension the arguments which had been urged would justify submission to any extent. He would ask if it was the duty of the Chesapeake to submit for the sake of peace, or to have resisted to the utmost of her strength? She was no more called upon by her duty to resist that attack, than the nation was now called upon to repel the attack which had been made upon her sovereignty. The obligation to resist was in both cases the same. Was any person disposed to applaud as a preserver of peace the unfortunate man of whom he should say no more than that he was not more bound to return the broadside of the enemy than Government were to expel their ships from our harbors after commanding them to depart. Much as he cherished peace, Mr. R. would be sorry to see it preserved by such forbearance; and it was only the inability to execute that could reconcile it for a moment to the feelings of the nation. The proclamation ought not to have been issued, or it should have been enforced. Let it not be supposed that he was an advocate for defence by forty-four gun frigates. Since the existence of their navy the United States had lost two of their stoutest ships to an enemy, and in both instances without even a show of resistance. It was true that in one of these instances, the victor, as if in contempt, had thrown the worthless thing back upon our hands, instead of sending it where he wished it had gone—to Halifax, or to

the bottom. An attempt to build a navy at this time would bring not relief but suffering. Mr. R. put little confidence in the regular navy, as it was called, which just sufficed to bait the war-trap, or in the gunboats. Like the contemptible insects to which they had been compared by their advocates, it was hoped that they would find shelter in their insignificance, but if they should prove instruments of annoyance, eventually they would be turned against ourselves. He wished to see the public treasure employed in putting arms into the hands of all who were capable of bearing them, and in providing heavy artillery, not in the erection of a naval force, which, whether great or small, unless it too could retreat beyond the mountains, must fall into the hands of the enemy. If they wanted a force that should combine strength with simplicity, ready at all times for the public protection, they had such a force amply in their power.

The question was put on the passage of the bill, and decided in the affirmative—yeas 111, nays 19.

MONDAY, December 14.

DANIEL CLARK, the Delegate from the Territory of Orleans, appeared, produced his credentials, was qualified, and took his seat in the House.

FRIDAY, December 18.

Embargo.

The following is the Message from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The communications now made, showing the great and increasing dangers with which our vessels, our seamen, and merchandise, are threatened, on the high seas and elsewhere, from the belligerent powers of Europe, and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantage

which may be expected from an inhibition of the departure of our vessels from the ports of the United States.

Their wisdom will also see the necessity of making every preparation for whatever events may grow out of the present crisis.

I ask a return of the letters of Messrs. Armstrong and Champagny, which it would be improper to make public.

TH. JEFFERSON.

Extract of a Letter from the Grand Judge, Minister of Justice, to the Imperial Attorney-General for the Council of Prizes.

PARIS, September 18, 1807.

SIR: I have submitted to his Majesty, the Emperor and King, the doubts raised by his Excellency, the Minister of Marine and Colonies, on the extent of certain dispositions of the imperial decree of the 21st of November, 1806, which has declared the British Isles in a state of blockade.

The following are his Majesty's intentions on the points in question:

1. May vessels of war, by virtue of the imperial decree of the 21st of November last, seize on board neutral vessels, either English property, or even all merchandise proceeding from the English manufactures or territory?

ANSWER.—His Majesty has intimated that, as he did not think proper to express any exception in his decree, there is no ground for making any in its execution in relation to any whomsoever, (*à l'égard de qui que ce peut être.*) His Majesty has postponed a decision on the question, whether armed French vessels ought to capture neutral vessels bound to or from England, even when they have no English merchandise on board.

REGNIER.

The Message, and documents accompanying it, were severally read.

Ordered, That the letters referred to in said Message be returned to the President of the United States, agreeably to his request.

On motion of Mr. RANDOLPH, that the House do come to the following resolution:

Resolved, That an embargo be laid on all shipping, the property of citizens of the United States, now in port, or which shall hereafter arrive:

And the question being put, that the House do agree to the said resolution, and, upon the question thereupon, the yeas and nays being demanded by one-fifth of the members present, and debate arising, a motion was made by Mr. MACON, that the resolution do lie on the table; and it was resolved in the affirmative.

A message from the Senate, by Mr. OTIS, their Secretary:

Mr. Speaker: The Senate have, in confidence, directed me to inform this honorable House that they have passed a bill, entitled “An act laying an embargo on all ships and vessels in the ports and harbors of the United States,” in which bill they desire the concurrence of this House.

The said bill was received, read the third time, and committed to a Committee of the Whole on the state of the Union on this day.

On motion of Mr. CROWNINSHIELD,

Resolved, That this House will immediately resolve itself into a Committee of the Whole on the said bill.

The House accordingly resolved itself into the said committee; and, after some time spent therein, the SPEAKER resumed the chair, and Mr. MASTERS reported that the committee had had the said bill under consideration, but not having time to go through the same, had directed him to ask for leave to sit again.

Resolved, That this House will, to-morrow, again resolve itself into a Committee of the Whole on the bill, entitled “An act laying an embargo on all ships and vessels in the ports and harbors of the United States.”

And then the House adjourned.

MONDAY, December 21.

The House met but transacted no legislative business.

The Embargo Act.

In secret session, the House again resolved itself into a Committee of the Whole on the bill from the Senate, entitled “An act laying an embargo on all ships and vessels in the ports and harbors of the United States;” and, after some time spent therein, rose, and reported the bill, with several amendments; which were twice read, and, on the question severally put thereupon, agreed to by the House.

A motion being made, by Mr. CROWNINSHIELD, to amend the amendment reported by the Committee of the Whole, by striking out the words “letters of marque excepted,” and the word “retained,” in the tenth line of the amendment, and insert the word “relanded;” and the word “retained,” in the twelfth line, and insert the word “relanded:” Whereupon, it was resolved in the affirmative.

Ordered, That the said bill, with the amendments, be read a third time this day: Whereupon, the question was stated, that the bill sent from the Senate, “An act laying an embargo on all ships and vessels in the ports and harbors of the United States,” together with the amendments agreed to, do pass.

Whereupon, the question was stated that the said bill, with the amendments, do pass: it was resolved in the affirmative—yeas 82, nays 44, as follows:

YEAS.—Lemuel J. Alston, Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, John Blake, jr., Thomas Blount, John Boyle, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Matthew Clay, John Clopton, Orchard Cook, Jacob Crowninshield, Richard Cutts, John Dawson, Josiah Deane, Joseph Desha, Daniel M. Durell, William Findlay, James Fisk, Meshack Franklin, Francis Gardner, Peterson Goodwyn, Isaiah L. Green, John Heister, William Helms, David Holmes, Benjamin Howard, Daniel Ilsley, Richard M. Johnson, Walter Jones, Thomas Kenan, Nehemiah Knight, John Lambert, John Love, Robert Marion, William McCreery, John

Montgomery, Nicholas R. Moore. Thomas Moore, Jeremiah Morrow, John Morrow, Gurdon S. Mumford, Roger Nelson, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Matthias Richards, Samuel Riker, Lemuel Sawyer, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, Peter Swart, John Taylor, David Thomas, Abram Trigg, George M. Troup, James I. Van Allen, Philip Van Cortlandt, Jesse Wharton, Robert Whitehill, Isaac Wilbour, Marmaduke Williams, Alexander Wilson, Richard Wynn, and James Witherell.

NAYS.—Evan Alexander, William W. Bibb, William Blackledge, John Campbell, Epaphroditus Champion, Martin Chittenden, Howell Cobb, John Culpepper, Samuel W. Dana, John Davenport, jr., James Elliot, William Ely, Barent Gardenier, James M. Garnett, Charles Goldsborough, Edwin Gray, John Harris, William Hoge, James Holland, Robert Jenkins, James Kelly, Philip B. Key, William Kirkpatrick, Joseph Lewis, jr., Edward St. Loe Livermore, Matthew Lyon, Josiah Masters, William Milnor, Jonathan O. Mosely, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rowan, John Russell, Dennis Smelt, Samuel Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, Jabez Upham, Archibald Van Horn, and Killian K. Van Rensselaer.

Ordered, That the Clerk of this House do carry the said bill, as amended, to the Senate, and desire their concurrence.

The bill is as follows:

An Act laying an embargo on all ships and vessels in the ports and harbors of the United States.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That an embargo be and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States; and that the

President be authorized to give such instructions to the officers of the revenue, and of the navy and revenue cutters of the United States, as shall appear best adapted for carrying the same into full effect: *Provided*, That nothing herein contained shall be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares, and merchandise, on board of such foreign ship or vessel, when notified of this act.

SEC. 2. *And be it further enacted*, That during the continuance of this act, no registered or sea-letter vessel, having on board goods, wares, and merchandise, shall be allowed to depart from one port of the United States to another within the same, unless the master, owner, consignee, or factor of such vessel, shall first give bond with one or more sureties to the collector of the district from which she is bound to depart, in a sum of double the value of the vessel and cargo; that the said goods, wares, and merchandise shall be relanded in some port of the United States, dangers of the seas excepted; which bond, and also a certificate from the collector where the same may be relanded, shall, by the collectors respectively, be transmitted to the Secretary of the Treasury. All armed vessels possessing public commissions from any foreign power are not to be considered as liable to the embargo laid by this act.

TUESDAY, December 22.

Importation of Slaves.

Mr. MARION presented the petition of sundry merchants and others, in Charleston, South Carolina, stating that many vessels had cleared out from thence for the purpose of importing slaves, before the law was passed by Congress prohibiting the importation of slaves, and some had cleared out immediately after the passing of the law, and had been detained by accidents beyond the time limited by law; and praying that a law may be passed affording them relief.

The question being put on a motion made by Mr. MARION for a reference of this petition to the Committee of Commerce and Manufactures—

Mr. MASTERS said if there was any subject in favor of which a petition should not be referred, it was the slave trade. These petitioners knew when the prohibitory law would go into operation, and they were not entitled to relief by the laws of God or man.

The motion for reference was negatived—yeas 37, nays 39.

THURSDAY, December 31.

General Wilkinson.

Mr. RANDOLPH then rose for the purpose of making a motion, and giving information to the House which he had just received. This was a duty which he owed, not only to himself, but to the enlightened and independent freeholders who gave him a seat on this floor, and to the country at large. Within a few days, information had been put into his possession, of a nature and on a subject which he deemed it proper for the constituted authority to inquire into. Had this information come earlier into his possession, he should not till now have delayed giving it publicity. He would first state certain facts, and those facts would be the ground of his motion, on which he should offer no argument. Mr. R. then read the following documents:

[TRANSLATION.]

NEW ORLEANS, January 20, 1796.

In the galley the Victoria, Bernardo Molina, Patron, there have been sent to Don Vincent Folch nine thousand six hundred and forty dollars; which sum, without making the least use of it, you will hold at my disposal, to deliver it at the moment that an order may be presented to you by the American General, Don James Wilkinson. God preserve you many years.

The BARON DE CARONDELET.

To Señor Don TOMAS PORTELL.

I certify that the foregoing is a copy of its original to which I refer.

TOMAS PORTELL.

NEW MADRID, June 27, 1796.

FORT WASHINGTON, Sept. 22, 1796.

Ill health and many pressing engagements must be my apology for a short letter. I must refer you to my letter to the Baron for several particulars, and for a detail of my perils and abuses. I must beg leave to refer you to our friend Power, whom I find of youthful enterprise and fidelity. He certainly deserves well of the Court, and I don't doubt but he will be rewarded.

What political crisis is the present! and how deeply interesting in its probable results, in all its tendencies! ... and thereby must hope it may not be carried into execution. If it is, an entire reform in the police and military establishments of Louisiana will be found immediately indispensable to the security of the Mexican provinces. I beg you to write me fully on this question in cipher by Power, whose presence in Philadelphia is necessary, as well to clear his own character, attacked by Wayne, as to support the fact of the outrage recently offered to the Spanish Crown in his person, and to bring me either the person or the deposition of a man now under your command, who had been suborned by Wayne to bear false witness against me, and afterwards, for fear he should recant, bribed him to leave Kentucky. Power will give you the perfect of this infamous transaction, and I conjure

you by all the ties of friendship and of policy to assist him on this occasion. If Spain does not resent the outrage offered to Power in the face of all Kentucky ... My letter to the Baron will explain the motives which carry me to Philadelphia: from thence I will write again to you. Power will explain to you circumstances which justify the belief of the *great treachery that has been practised with respect to the money lately sent me*. For the love of God and friendship, enjoin great secrecy and caution in all our concerns. *Never suffer my name to be written or spoken*. The SUSPICION OF WASHINGTON IS WIDE AWAKE. Beware of Bradford, the Fort Pitt refugee—he seeks to make peace—there are spies every where. We have a report here that you are appointed Governor of Louisiana. God grant it, as I presume the Baron will be promoted. I am your affectionate friend.

W.

Copy of a letter in cipher received from General Wilkinson. Natchez, February 6, 1797.

MANUEL GAYOSO DE LEMOS.

In a separate paper, he says what follows:

This will be delivered to you by Noland, who, you know, is a child of my own raising—true to his profession and firm in his attachments to Spain. I consider him a powerful instrument in your hands, should occasion offer—I will answer for his conduct. I am deeply interested in whatsoever concerns him, and I confidently recommend him to your warmest protection. I am, evidently, your affectionate

WILKINSON.

A copy.

MAN. GAYOSO DE LEMOS.

N. B.—Don Gayoso was then Governor of Natchez, and the same year was made Governor of Louisiana.

Mr. RANDOLPH stated the following to be an extract of a letter signed “T. Power,” whose handwriting, he said, could be identified:

“On the 27th of the same month [October last] appeared in the Richmond Enquirer a certificate given by myself to General Wilkinson in New Orleans on the 16th of May preceding. Immediately on my getting sight of this piece, which was the same or the next day, I addressed a note to his Excellency General Wilkinson, [No. 3.] Of this I did not keep a copy, and therefore dare not vouch that it is an exact literal transcript of the original; but I will be bold to say that it is nearly (or, to make use of the General’s own language, *substantially*) the same.

“Between my repeated declarations to many of my friends and acquaintances (I must say it with a blush) and this certificate, there is a manifest contradiction. And between this same certificate and the deductions to be drawn from my declaration before the Richmond Court, there is an apparent inconsistency, which it is now my task to clear up and reconcile.

“During General Wilkinson’s residence in New Orleans, last winter, I used occasionally to visit him. A few days before he left New Orleans, I waited upon him one morning, and after some conversation on certain transactions that had taken place at a former period in the Western country, and on the delicate situation in which his conduct during the winter was likely to place him, he asked me if I had any objection to give him a certificate that might help him to silence that foul-mouthed Bradford, and refute the assertions of the editor of the Western World. I replied without hesitation that I had none, and would give him one with pleasure, provided he promised me it should not be published. On this he assured me that the only use he proposed to make of it was to lay it before the President, with the view to prove the falsehood of the charges circulated against him, vindicate his character, and secure the confidence of the Executive. This, if not exactly, is *substantially* what the General said. He then desired me to sit down and write the certificate. I observed that I might not make it out entirely to his satisfaction; and that, as he best knew the points he wished should be embraced in it, he had better make it out himself, and I would copy it. To this he agreed. Next morning, I waited on his Excellency, and he presented me the certificate, which I copied, as it has been published, with a few alterations. One—a very material one—is that, after these words: ‘Do most solemnly declare that I have at no time carried or delivered to Gen. James Wilkinson’—I erased the words, ‘either directly or indirectly,’ and

declared to the General I could not insert those words. He did not insist, and contented himself with saying that he wished me to insert them if my conscience would allow it, but not otherwise. This is ingenuously exactly what passed between the General and myself at that time.

“Now let me with the same frankness and ingenuousness, without referring to any preceding or subsequent event, narrate the transaction of 1796, alluded to in my certificate, and concerning which I offered to give testimony in the federal circuit court in Richmond. It is the same that is the subject of the affidavits of Messrs. Derbigny and Mercier. That of the former gentleman is correct as to substance, for I actually did receive from Captain Don Thomas Portell, commandant of New Madrid, the sum of \$9,640 for General Wilkinson, towards the latter end of June or beginning of July, 1796, which was packed up in the manner described by Mr. Derbigny, and when I was stopped and my boat searched on the Ohio by Lieutenant Steele, under the orders of General Anthony Wayne, I had other sums on board, but this was the only one I had received for General Wilkinson. On my arrival at Louisville, determined not to expose myself a second time to military insult, and fearful of being overtaken by Steele on his return, and of being again overhauled, I landed my cargo, purchased a horse, and proceeded by land to Cincinnati. As I passed through Lexington, I published in Stewart’s Kentucky Herald my affidavit concerning this outrage, supported by those of the spectators of the transaction, Welsh, White, and Sansom; preceded by a few strictures on this military piracy, signed Impartial. And I now take this opportunity of clearing General Wilkinson of the charge of being the author of it, as is asserted by Bradford, of New Orleans, and declare it was written by myself, and that excepting Captain Campbell Smith, no person ever saw it before it was put into the hands of the printer.

“At Cincinnati I acquainted General W. with the circumstances that had occurred, and he gave me orders to deliver the money to Mr. Philip Nolan. These orders I punctually executed. Mr. Nolan conveyed the barrels of sugar and coffee that contained the dollars to Frankfort in a wagon. I there saw them opened in Mr. Montgomery Brown’s store. The sugar and coffee I afterwards sold to Mr. Abijah Hunt, of Cincinnati.

“I shall take no notice of Mr. McDonough’s affidavit. It does not refer to any thing alluded to in my certificate. That part of mine that has reference

to my mission to Kentucky and Detroit in 1797, I shall also pass over in silence, as it has no connection with the present subject.

“I will now endeavor, in a few words, to reconcile what may appear contradictory and inconsistent in my certificate, and the declaration I have just laid before you.

“Was I base and dishonorable enough to descend to tergiversation, captious logic, and sophistical evasion, I could maintain that this contradiction does not exist, and that I never did carry or deliver to General Wilkinson any cash, bills or property of any species. It is true I delivered a certain sum of money, by his order, to Mr. Nolan; but Philip Nolan is not James Wilkinson; *ergo*, I may with a safe conscience swear that I never delivered James Wilkinson any money, &c., but I scorn to make use of any such pitiful, contemptible and degrading mode of defence, and will allow for a moment that I did deliver to General Wilkinson the money in question. It is generally admitted that in politics morality is not to be measured by the same narrow scale as that which ought to regulate the moral conduct of men in their private concerns. The rigid stoic would, on a long run, make but a bungling politician; and the most austere moralist, if he has his country’s interest at heart, and is acting in a public capacity, would not hesitate to do that which, as a private man, and in private concerns, he would shrink and recede from with horror and trembling precipitation.

“Let us now for a while suppose that I was a secret agent of the Spanish Government, and that General Wilkinson was a pensioner of said Government, or had received certain sums for co-operation with and promoting its views, and that those views and projects were inimical to that of the United States, should I be worthy of the trust reposed in me by my Government, were I to refuse to give General W. any document that might contribute to raise him in the good opinion of the Administration of his country, blazon his integrity and patriotism, and fortify him in their confidence, and by their means enlarge his power of injuring them and serving us? Surely not; or if I did, I should deserve to be hooted at as an idiot.”

Mr. RANDOLPH then said it would be waste of time to comment on what he had read, but he conceived it his duty to tell the House that he had good

cause to believe that there was a member of this body who had it in his power, if the authority of the House were exercised upon him, if he were coerced, to give the House much more full, important, and damning evidence than that which had already appeared. He alluded to the gentleman from the Territory of Orleans, (Mr. CLARK,) whom he had now the pleasure to see in his seat. If the United States were in the critical situation which had been so often represented, and in which all considered them to be placed, in what position was the military force of the United States at this moment? Was it not proper that this business should be inquired into? He had been given to understand, long ago, that an inquiry on this subject was to be courted; it had not taken place. He had no more to say, but moved the following resolution:

Resolved, That the President of the United States be requested to cause an inquiry to be instituted into the conduct of Brigadier-general James Wilkinson, Commander-in-chief of the Armies of the United States, in relation to his having, at any time, while in the service of the United States, corruptly received money from the Government of Spain or its agents.

Mr. CLARK said he unexpectedly heard himself named, and he would observe that it had been long supposed, from his residence in Louisiana, his acquaintance with military officers, and the various means of information which he might have possessed while Consul at New Orleans, that he was acquainted with certain transactions which had taken place in that country. The knowledge which he had possessed he had endeavored to impart to the Administration at different times, both verbally and by a written correspondence, to which a deaf ear had been turned. As this information had not been attended to, he had refused to gratify curiosity on the subject. And, notwithstanding the gentleman's calling upon him, he felt himself bound to say that he would not be influenced by fear, favor, or affection, to give any information on the subject, except compelled by a resolution of the House.

Mr. THOMAS moved that the resolution offered by Mr. RANDOLPH should lie on the table; but a motion made to consider was agreed to.

Mr. RANDOLPH said, as it appeared by the declaration of the gentleman from New Orleans, that he did possess information, and as the House had a

right to it, he wished the Speaker or some other gentleman to inform him of the manner in which it might be obtained.

[No order was taken on this point.]

Mr. TAYLOR moved that the resolution be committed to a Committee of the Whole, not on to-day or to-morrow, but at a distant day, that time might be afforded for consideration.

After debate, Mr. TAYLOR withdrew his motion.

Mr. GARDENIER moved that it be referred to a select committee, with power to send for persons, papers, &c.

Mr. MARION moved to strike out that part of this motion giving power to a select committee to send for persons, papers, &c.

On the foregoing motions a very lengthy and somewhat desultory debate ensued of about five hours. The debate turned on many incidental questions, among which, whether Congress had a constitutional right to request the President to cause the proposed inquiry to be made? To this it was answered that Congress had as much right to make this request as to request the President to lay before them public papers—either of which requests he might refuse. It was also said, that in making this request, the House could not command more attention than was due to a respectable individual.

It was doubted whether a member could be called upon to give information in his seat, or at the bar of the House? In answer, precedents were produced of cases in which members of the House had been interrogated at the bar.

It was also contended, that if delivered in his place, the communication would be liable to commentary or reply, by any gentleman who might think proper to discuss it, in the same manner as any other speech.

It was made a question whether this information could be more properly received by a Committee of the Whole, or a select committee, or by the House? It was said on this, that it had heretofore been the course of procedure to empower chairmen of committees in such cases to administer oaths; that in the House a member could be compelled to give information if the House thought fit, but in Committee of the Whole he could not be compelled; that if information or evidence were to be received in the House,

it would perplex their proceedings by loading the table and journals with interrogatories, &c.

It was questioned whether it were proper to decide it now, to refer it, or to postpone it? On these points there appeared to be a great diversity of opinion—some thinking that the evidence which they had received was sufficient to induce them to pass the resolution without further consideration, being a mere request to the President to inquire; others wished further time and more evidence previous to giving their vote on the subject, considering it of great importance; others were in favor of a reference to a committee, to consider all the foregoing points as well as the propriety of the main resolution; some wished this committee to have power to send for persons and papers, to report to the House their opinions on this subject, together with evidence, believing that positive and satisfactory evidence should be produced before they adopted this resolution, and as it was impossible to understand precisely the evidence now produced from the mere reading of it; other gentlemen wished it referred to a committee without power to send for persons, papers, &c., as they conceived the House did not possess power to enforce their orders in such cases, General Wilkinson being a military and not a civil officer, whom the President alone had power to remove.

None of these points were decided either directly or by implication.

In the course of this devious discussion, the succeeding observations on the main subject were made by different gentlemen.

Mr. W. ALSTON had heard nothing in the documents read to-day impeaching the character of General Wilkinson more than what the newspapers throughout the Union had teemed with for two years, except, indeed, a letter from Mr. Power; and who was Mr. Power, or what credibility could be attached to any thing emanating from him? Every person in the United States who could read knew his character. He was opposed to coercing evidence or considering a resolution proposing an inquiry, even if he were in favor of the inquiry.

Mr. SMILIE thought the debate which had already taken place on a reference totally improper. He had heard sufficient evidence on this subject to convince him that such an inquiry was necessary; he did not think that there could be any further doubt on the subject. The House could not try

General Wilkinson; he must be tried by another tribunal. They owed it to the country and to General Wilkinson himself to request an inquiry, and he hoped there would not be a dissenting voice on the question of agreement to the resolution. He could not give an opinion as to the guilt or innocence of General Wilkinson, but he thought it absolutely necessary that an inquiry should be had.

Mr. GARDENIER was satisfied of the impropriety of proceeding on the consideration of any question of importance too hastily, more especially in a case so materially affecting an officer of high rank in the United States. He wished to have time to consider fully before he could vote on a subject of as much magnitude as this; they should not act from first impressions. If the subject were referred to a committee with power to send for persons, papers, &c., the testimony on the subject would come before them in a proper shape, and not with the inaccuracy which must always attend information given in this manner, but in a condensed form, in which its force might be fully felt. He did not wish to be precipitated into an inquiry too soon; neither did he wish an inquiry to be made because it was due to General Wilkinson. If this inquiry was courted by, and this motion intended as a favor to General Wilkinson, he was astonished that it had not been brought forward before. There certainly had been before ground enough shown for an inquiry into his conduct; but if General Wilkinson's conduct had so far evinced his purity as not to excite in the Administration even a suspicion against his character, if no inquiry had been made on the charges which had resounded from every part of the Union, Mr. G. did not wish now, merely for the sake of doing justice to that officer, to press an inquiry which the Executive had not thought proper to make. Neither did he wish rashly to decide on this question, because in doing this they would add the weight of their accusation to the cries of the whole nation; the united force of which no individual could repel.

Mr. CHANDLER said this was a subject which had been long before the nation, and with which they were all acquainted: if that officer was innocent, it was due to himself and his friends that an inquiry should be made; if he were guilty, it was due to the United States. The evidence produced was sufficient on which to ground an inquiry, and he was ready to decide without further time.

Mr. NICHOLAS had no doubt but an inquiry ought to be made; after what had been heard, if General Wilkinson were the lowest officer in the United States, he should be of opinion that an inquiry ought to be made, but he doubted whether this was a question on which they were now prepared to decide. For this reason he had seconded the motion for referring the resolution to a select committee, who could consider whether this subject came under cognizance of the House; he considered the House as a mere legislative body, except in the single case of impeachment. He was not prepared to say what was proper to be done with this resolution, but his first impression was against acting on it. It would open doors for receiving complaints of the misconduct of any officer; he did not think this power was lodged in the House, and he had no wish to assume powers which did not pertain to them. As to the question whether there should be an inquiry or not, no man could doubt. An inquiry must be made. Would it be said that an office of this importance should be suffered to be retained by a man who had received a pension from a foreign Government? He thought it could not; and, therefore, he wished an inquiry to be made into the truth of this charge.

Mr. BURWELL was decidedly opposed to reference to any committee whatever. It seemed to be the universal opinion that an inquiry ought to be had on the conduct of the Commander-in-chief of the Army of the United States; and it was highly important that the subject should be acted on speedily. If the nation was (as appeared probable) to be involved in war, it was necessary that the Commander-in-chief should possess the confidence of the Army, the People, and the Government.

Mr. JOHNSON said the good people of Kentucky were interested in this subject. Many reports to the prejudice of General Wilkinson existed there; nothing certain had appeared against him, but the people entertained doubts on the subject; there were circumstances which they wished to be investigated; if nothing could be found against him, the sooner his innocence was known the better. Knowing this, he should not hesitate to give his vote in such a manner as to dispose of the subject most speedily. The investigation was due to the people, and to the man himself.

Mr. MACON said if ever there had been a time since the year 1783, in which it was particularly necessary that those persons in office should have the confidence of the Government and of the people, that time had arrived.

Could it be expected after hearing the information which had been produced that the people would have confidence in General Wilkinson? It was as important that the Commander-in-chief should be free from suspicion as that the President or the House of Representatives should be unsuspected. The Commander-in-chief during the American Revolution was irreproachable; calumny never assailed him, and he of course enjoyed the full confidence of the people. The evidence which had been this day read, they were told, had neither been before the grand jury nor the court at Richmond, and there was certainly sufficient on which to ground an inquiry.

[An extended discussion took place, and continued, at intervals, until the 7th of January, when Mr. RANDOLPH withdrew his motion, to make room for the following from Mr. BURWELL of Virginia:

Resolved, That Mr. John Randolph, a Representative in Congress from the State of Virginia, and Mr. Daniel Clark, Delegate from the Territory of Orleans, be requested to lay upon the Clerk's table, all papers or other information in their possession "in relation to the conduct of Brigadier-general James Wilkinson, while in the service of the United States, in corruptly receiving money from the Government or agents of Spain."

This resolution was adopted by a vote of 90 to 19.

In compliance with this vote, Mr. RANDOLPH immediately laid on the table the documents he had read on the 31st, and Mr. Clark, on Monday the 11th, laid on the table the following statement:]

General Wilkinson.

DANIEL CLARK'S STATEMENT.

In obedience to the direction of the House of Representatives, expressed in their resolution of Friday last, I submit the following statement:

I arrived from Europe at New Orleans in December, 1786, having been invited to the country by an uncle of considerable wealth and influence, who had been long resident in that city. Shortly after my arrival, I was employed in the office of the Secretary of the Government—this office was the depository of all State papers. In 1787, General Wilkinson made his first

visit to New Orleans, and was introduced by my uncle to the Governor and other officers of the Spanish Government.

In 1788, much sensation was excited by the report of his having entered into some arrangements with the Government of Louisiana to separate the Western country from the United States, and this report acquired great credit upon his second visit to New Orleans in 1789. About this time I saw a letter from the General to a person in New Orleans, giving an account of Colonel Connolly's mission to him from the British Government in Canada, and of proposals made to him on the part of that Government, and mentioning his determination of adhering to his connection with the Spaniards.

My intimacy with the officers of the Spanish Government and my access to official information, disclosed to me shortly afterwards some of the plans the General had proposed to the Government for effecting the contemplated separation. The general project was, the severance of the Western country from the United States, and the establishment of a separate Government in the alliance and under the protection of Spain. In effecting this, Spain was to furnish money and arms, and the minds of the Western people were to be seduced and brought over to the project by liberal advantages resulting from it, to be held out by Spain. The trade of the Mississippi was to be rendered free, the port of New Orleans to be opened to them, and a free commerce allowed in the productions of the new Government with Spain and her West India Islands.

I remember about the same time to have seen a list of names of citizens of the Western country which was in the handwriting of the General, who were recommended for pensions, and the sums were stated proper to be paid to each; and I then distinctly understood that he and others were actually pensioners of the Spanish Government.

I had no personal knowledge of money being paid to General Wilkinson or to any agent for him, on account of his pension, previously to the year 1793 or 1794. In one of these years, and in which I cannot be certain, until I can consult my books, a Mr. La Cassagne, who I understood was Postmaster at the Falls of Ohio, came to New Orleans, and, as one of the association with General Wilkinson, in the project of dismemberment, received a sum of money, four thousand dollars of which, or thereabout,

were embarked by a special permission, free of duty, on board a vessel which had been consigned to me, and which sailed for Philadelphia, in which vessel Mr. La Cassagne went passenger. At and prior to this period I had various opportunities of seeing the projects submitted to the Spanish Government, and of learning many of the details from the agents employed to carry them into execution.

In 1794, two gentlemen of the names of Owens and Collins, friends and agents of General Wilkinson, came to New Orleans. To the first was intrusted, as I was particularly informed by the officers of the Spanish Government, the sum of six thousand dollars, to be delivered to General Wilkinson on account of his own pension, and that of others. On his way, in returning to Kentucky, Owens was murdered by his boat's crew, and the money it was understood was made away with by them. This occurrence occasioned a considerable noise in Kentucky, and contributed, with Mr. Power's visits at a subsequent period, to awaken the suspicion of General Wayne, who took measures to intercept the correspondence of General Wilkinson with the Spanish Government, which were not attended with success.

Collins, the co-agent with Owens, first attempted to fit out a small vessel in the port of New Orleans, in order to proceed to some port in the Atlantic States; but she was destroyed by the hurricane of the month of August of 1794. He then fitted out a small vessel in the Bayou St. John, and shipped in her at least eleven thousand dollars, which he took round to Charleston.

This shipment was made under such peculiar circumstances that it became known to many, and the destination of it was afterwards fully disclosed to me by the officers of the Spanish Government, by Collins, and by General Wilkinson himself, who complained that Collins instead of sending him the money on his arrival had employed it in some wild speculations to the West Indies, by which he had lost a considerable sum, and that in consequence of the mismanagement of his agents he had derived but little advantage from the money paid on his account by the Government.

Mr. Power was a Spanish subject, resident in Louisiana, till the object of his visits to the Western country became known to me in 1796, when he embarked on board the brig Gayoso, at New Orleans for Philadelphia, in company with Judge Sebastian, in which vessel, as she had been consigned

to myself, I saw embarked under a special permission four thousand dollars or thereabout, which, I was informed, were for Sebastian's own account, as one of those concerned in the scheme of dismemberment of the Western country.

Mr. Power, as he afterwards informed me, on his tour through the Western country, saw General Wilkinson at Greenville, and was the bearer of a letter to him for the Secretary of the Government of Louisiana, dated the 7th or 8th March, 1796, advising that a sum of money had been sent to Don Thomas Portell, commandant of New Madrid, to be delivered to his order. This money Mr. Power delivered to Mr. Nolan, by Wilkinson's directions. What concerned Mr. Nolan's agency in this business I learned from himself, when he afterwards visited New Orleans.

In 1797, Power was intrusted with another mission to Kentucky, and had directions to propose certain plans to effect the separation of the Western country from the United States. These plans were proposed and rejected, as he often solemnly assured me, through the means of a Mr. George Nicholas, to whom among others they were communicated, who spurned the idea of receiving foreign money. Power then proceeded to Detroit to see General Wilkinson, and was sent back by him under guard to New Madrid, from whence he returned to New Orleans. Power's secret instructions were known to me afterwards, and I am enabled to state that the plan contemplated entirely failed.

At the period spoken of, and for some time afterwards, I was resident in the Spanish territory, subject to the Spanish laws, without an expectation of becoming a citizen of the United States. My obligations were then to conceal, and not to communicate to the Government of the United States the projects and enterprises which I have mentioned of General Wilkinson and the Spanish Government.

In the month of October, of 1798, I visited General Wilkinson by his particular request at his camp at Loftus' Heights, where he had shortly before arrived. The General had heard of remarks made by me on the subject of his pension, which had rendered him uneasy, and he was desirous of making some arrangements with me on the subject. I passed three days and nights in the General's tent. The chief subjects of our conversation were, the views and enterprises of the Spanish Government in relation to

the United States, and speculations as to the result of political affairs. In the course of our conversation, he stated that there was still a balance of ten thousand dollars due him by the Spanish Government, for which he would gladly take in exchange Governor Gayoso's plantation near the Natchez, who might reimburse himself from the treasury at New Orleans. I asked the General whether this sum was due on the old business of the pension. He replied that it was, and intimated a wish that I should propose to Governor Gayoso a transfer of his plantation for the money due him from the Spanish treasury. The whole affair had always been odious to me, and I declined any agency in it. I acknowledged to him that I had often spoken freely and publicly of his Spanish pension, but told him I had communicated nothing to his Government on the subject. I advised him to drop his Spanish connection. He justified it heretofore from the peculiar situation of Kentucky; the disadvantages the country labored under at the period when he formed his connection with the Spaniards, the doubtful and distracted state of the Union at that time, which he represented as bound together by nothing better than a rope of sand. And he assured me solemnly that he had terminated his connections with the Spanish Government, and that they never should be renewed. I gave the General to understand that as the affair stood, I should not in future say any thing about it. From that period until the present I have heard one report only of the former connection being renewed, and that was in 1804, shortly after the General's departure from New Orleans. I had been absent for two or three months, and returned to the city not long after General Wilkinson sailed from it. I was informed by the late Mayor, that reports had reached the ears of the Governor, of a sum of ten thousand dollars having been received by the General of the Spanish Government, while he was one of the Commissioners for taking possession of Louisiana. He wished me to inquire into the truth of them, which I agreed to do, on condition that I might be permitted to communicate the suspicion to the General, if the fact alleged against him could not be better verified. This was assented to. I made this inquiry, and satisfied myself by an inspection of the treasury-book for 1804, that the ten thousand dollars had not been paid. I then communicated the circumstance to a friend of the General, (Mr. Evan Jones,) with a request that he would inform him of it. The report was revived at the last session of Congress, by a letter from Colonel Ferdinand Claiborne, of Natchez, to the Delegate of the Mississippi Territory. A member of the House informed me that the money in question

was acknowledged by General Smith to have been received at the time mentioned, but that it was in payment for tobacco. I knew that no tobacco had been delivered, and waited on General Smith for information as to the receipt of the money, who disavowed all knowledge of it; and I took the opportunity of assuring him, and as many others as mentioned the subject, that I believed it to be false, and gave them my reasons for the opinion.

This summary necessarily omits many details tending to corroborate and illustrate the facts and opinions I have stated. No allusion has been had to the public explanations of the transaction referred to, made by General Wilkinson and his friends. So far as they are resolved into commercial enterprises and speculations, I had the best opportunity of being acquainted with them, as I was, during the time referred to, the agent of the house who were consignees of the General at New Orleans, and who had an interest in his shipments, and whose books are in my possession.

DANIEL CLARK.

WASHINGTON CITY, Jan. 11, 1808.

DISTRICT OF COLUMBIA, *to wit*:

January 11, 1808.

Personally appeared before me, William Cranch, chief judge of the circuit court of the District of Columbia, Daniel Clark, Esq., who being solemnly sworn on the Holy Evangelists of Almighty God, doth depose and say, that the foregoing statement made by him, under the order of the House of Representatives, so far as regards matters of his own knowledge, is true, and so far as regards the matters whereof he was informed by others, he believes to be true.

W. CRANCH.

Mr. ROWAN moved to amend the resolution under consideration by striking out all that part after the word "Resolved," and inserting the following:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier General James Wilkinson, in relation to his having, at

any time whilst in the service of the United States, corruptly received money from the Government of Spain or its agents, and that the said committee have the power to send for persons and papers, and compel their attendance and production—and that they report the result of their inquiry to this House.

The SPEAKER declared the amendment to be a substitute, and of course not in order.

Mr. RANDOLPH said he was decidedly of opinion that the gentleman from Kentucky ought to have an opportunity of taking the sense of the House on his motion: he therefore withdrew the resolution under consideration: when

Mr. ROWAN moved the resolution as above stated.

Mr. BACON said, notwithstanding the evidence which had just been read, he would give the reasons why he could not yet vote for this House to act in any manner on this subject, more especially as proposed by this resolution. It was not to be concealed that the impressions made upon his mind by the statement of the gentleman from New Orleans were very considerable; but the impressions which that or any other statement were calculated to make, were very different from the question of what it was their duty to do in relation to it. He hoped that they would not be so much impressed by it (for it contained a great deal he must confess) as to suffer it to impel them into a path wide of their constitutional limits. He did not mean to express a definite sentiment as to the guilt or innocence of the officer involved.

He would not, under the privilege of his seat, on the one hand blazon the merits of General Wilkinson to the world, nor on the other, declare that he had sufficient evidence of his guilt. He would leave it to the unbiased decision of the proper tribunal.

Mr. B. observed the other day, and would now repeat it, that it was not within their power to adopt the resolution then under consideration, or that now offered by the gentleman from Kentucky. He then and now conceived that the offence with which General Wilkinson was charged, might be cognizable by more than one department—certainly by the Executive, from his being a military officer. He could say nothing about the inquiry now instituted one way or the other; for if the constitution did not authorize them to complete an inquiry, they had no right to interfere with it, being the

exclusive province of the Executive. It struck him further, that if the facts in this statement should be proven on a full examination to be true, (and he did not call its correctness in question, for he had heard the same things from other people,) he could not see why it was not a case cognizable by a judicial tribunal. The constitution expressly forbade any person holding an office under the United States to take a pension or donation from a foreign power. The act of receiving money from a foreign power, therefore—the charge made against General Wilkinson—was a crime against the supreme law of the land, and cognizable by the judicial authority. If, therefore, we could, as proposed, instruct, request, or in any manner interfere with the Executive with respect to that portion of the inquiry which appertains peculiarly to the Executive, as the only power competent to remove this officer, why may we not in the same manner interfere with the jurisdiction or cognizance of the Supreme Court? He could see no difference; with equal justice they could interfere with one as with the other.

Gentlemen who were in favor of an inquiry in this form, could not have considered the subject so maturely as they ought. This was a Government of distributive powers. One class had been delegated to the Representative body, one to the Executive, and another to the Judiciary. If they once began each to invade the other's jurisdiction, the distributive system was destroyed. It has been said that we are the Representatives of the people; that it is our duty to see that the Republic take no harm. This expression was calculated perhaps to captivate the public ear, and acquire popularity, as well as to captivate the House. But whatever they might think of what ought to have been provided, they ought to consider what was. I do not think, because we may on this, or any other occasion, suppose that we could do a great deal of good, we ought to take any steps towards effecting an object until we contemplate our particular powers in relation to that object. It has been said that this House is the grand inquest of the nation. I do not know what is meant by this expression; but if I understand the meaning of the term, it conveys the same meaning as grand jury. Now, Mr. B. said, he could not agree to any position that this House was legitimately, on general subjects, the grand inquest of the nation. With respect to impeachments, and in that case alone, were they the grand jury, for then the two Houses acted in a judicial capacity—this House being the grand inquest to inquire, and the Senate being the petit jury to judge of their presentment. Now, if this House were the grand inquest to inquire into this, or a similar case, in which

an inquiry might seem to be conducive to the interest of the nation, and were to present a result, where was the jury to judge of the truth of their verdict? Was it to be tried by the Senate? That was not pretended to be the course.

On all these accounts, therefore, whatever was the impression which the paper this morning laid on the table might be calculated to produce on their minds, he thought they ought sedulously to attend to the constitutional limits of their duty, and not conclude, merely because they might in any case act beneficially, that they had the power to act in such case.

He had before observed, that he would not express an opinion; but he would say that an inquiry ought to be had; it will, it must be had, and it should be a full and impartial inquiry. If the inquiry which had been instituted were but the semblance of an inquiry, for one it would not satisfy him, or the people, or the nation; it ought not to satisfy them. Gentlemen had said that a military court of inquiry would not be competent. Mr. B. did not know what might be their particular power as to sending for persons; but if that court had not sufficient power, it was in the power of the House to clothe them with it. He thought they might, though he would not say that they ought to do this. As a court of inquiry might have been, or could be, clothed with this power; and, adverting to what he had before said, that it was a case cognizable by a judicial tribunal; and if so, that a judicial tribunal had all the power that this House could exercise in any criminal case, and more than they had in this, he should vote against every resolution going to express a conviction that this House had any power or right whatever to act on a subject solely within the constitutional right of the Executive or Judiciary.

Mr. RANDOLPH said, if the gentleman who had just sat down had not given his hasty impressions, but left his good understanding free to operate, his objections to the resolution would have vanished. The great mistake made by every gentleman who opposed this measure on constitutional grounds, was this: that they looked upon an inquiry made by this House, through the organ of one of its committees, as leading to the punishment of the individual implicated, and that where this House was not competent to inflict punishment, it was incompetent to make inquiry; this was the great stumbling-block, which had impeded their apprehension. But he would ask the gentleman from Massachusetts whether this House was not competent

to make an inquiry for its own legislative guidance? Was it not competent, as well in its capacity of supervisor of the public peace, as to obtain a guide for its own actions, to inquire into this matter? Was not the House clothed with the power of disbanding the army? Now, suppose a committee of the House, upon inquiry, were to report, perhaps, that not only the Commander-in-chief, but the whole mass of the army, were tainted with foreign corruption, or were abettors of domestic treason, could any man assign to himself a stronger reason than this for breaking an army on the spot? Did not the gentleman know, or rather did he not feel, that this House had the right of refusing the supplies necessary for the army? And could a stronger reason be given for a refusal to pass the military appropriation bill than that they were nourishing an institution which threatened our existence as a free and happy people? Let me, if it is in order, ask the gentleman from Massachusetts to turn his attention to the proceeding of which we have official notice in another branch of the National Legislature, an inquiry into the conduct of one of its own members. Did they not all know that that man's offence was punishable by a civil tribunal? But the inquiry was not there made with a view to a trial, not to usurp the powers of the judiciary, but to direct that body in the exercise of its acknowledged legislative functions. Inasmuch as they possessed the power to expel one of their own members, to amputate the diseased limb, they possessed the power, and exercised it, to make an inquiry. Now, the gentleman from Kentucky had just as much right to institute an inquiry which might lead to the exercise of the legislative powers of this House, which might cause the disbanding of the present army, the erection of another, or the refusal of supplies, as to institute an inquiry into the conduct of a member with a view to his expulsion, or of an Executive officer, with a view to impeach him before the Senate.

Mr. R. therefore presumed that any inquiry which this House might choose to make into the conduct of any officer, civil or military, was not an interference with the powers of any of the co-ordinate branches of Government; they were left free to move in their own orbits. If a crime had been committed against the statute law of the United States by such officer, the judiciary were as free to punish it as it was free to punish a member of this House, into whose conduct, upon suspicion of treason or misdemeanor, inquiry had been made, with a view to his expulsion. The Executive likewise was left free to exercise his discretion; he was left free to dismiss

this officer, to inquire into his conduct himself, either with his own eyes or ears, or by a military court; to applaud, or censure.

Did they take possession of the body of this officer by an inquiry into his conduct? Did they interfere with the court of inquiry now on foot, but totally incompetent to the object? Gentlemen, indeed, had said, that if that court did not possess the power of compelling the attendance of witnesses, we might clothe it with that power. In expressing this opinion, the gentleman from Massachusetts had not been more considerate than in expressing his first opinion. Could any one conceive a more dreadful or terrible instrument of persecution than a military court, clothed with the power to coerce the evidence, and the production of papers of private citizens? Clothe them with this power, and there is not a man in the United States who may not be compelled to go, at whatsoever season, to the remotest garrison, on whatsoever trifling occasion, at the will of a court martial, or a court of inquiry, leading to the establishment of a court martial.

In the course of the present year, Mr. R. said it had been his lot to receive, from no dubious or suspicious source, information touching, not, to be sure, the immediate subject on which an inquiry had been moved by the gentleman from Kentucky, but one intimately and closely connected with it. He meant the project, through the instrumentality of the Army of the United States, to dismember the Union; and he had no hesitation in saying—and it had been the opinion of a large majority, if not of every one of those of whom he had been a colleague—that the Army of the United States was tainted with that disease; and that, so far from the Army of the United States having the credit of suppressing that project, the moment it was found that the courage of that Army had failed, the project was abandoned by those who had undertaken it, because the agency of the army was the whole pivot on which that plot had turned! This was in evidence before the grand jury, who had the subject in cognizance last spring. He said that these conspirators were caressed at the different posts of the United States, in their way down the river, and by officers of no small rank, that they received arms from them, and the principal part of the arms these men had with them was taken from the public stores; and under a knowledge of these circumstances, was he not justified in the belief that the whole Army of the United States was connected in the project? He did not mean every individual, for there were some who could not be trusted, and some who

were at posts too far distant to be reached. That those who were confidants of the Commander-in-chief were interested in the conspiracy, no man who knew any thing of the circumstances could doubt. He, therefore, thought that the resolution moved by the gentleman from Kentucky was every way reasonable. Indeed, he did not know whether the resolution should not be so varied as to embrace not only a charge of that nature, but all whatsoever.

Before he sat down, he should have it in his power to give to the House something certainly very much resembling evidence in support of the justice of his suspicions on this subject. On the 26th of January last, the House would perceive by the Journals, a Message was received from the President of the United States, “transmitting further information touching an illegal combination,” &c., printed by order of the House, and which he now held in his hand. In this Message is contained the following affidavit:

“I, James Wilkinson, Brigadier General and Commander-in-chief of the Army of the United States, to warrant the arrest of Samuel Swartwout, James Alexander, Esq., and Peter V. Ogden, on a charge of treason, misprision of treason, or such other offence against the Government and laws of the United States, as the following facts may legally charge them with, on the honor of a soldier, and on the Holy Evangelists of Almighty God, do declare and swear, that in the beginning of the month of October last, when in command at Natchitoches, a stranger was introduced to me by Colonel Cushing, by the name of Swartwout, who, a few minutes after the Colonel retired from the room, slipped into my hand a letter of formal introduction from Colonel Burr, of which the following is a correct copy:

““PHILADELPHIA, 25th July, 1806.

““DEAR SIR: Mr. Swartwout, the brother of Colonel S., of New York, being on his way down the Mississippi, and presuming that he may pass you at some post on the river, has requested of me a letter of introduction, which I give with pleasure, as he is a most amiable young man, and highly respectable from his character and connections. I pray you to afford him any friendly offices which his situation may require, and beg you to pardon the trouble which this may give you.

““With entire respect, your friend and obedient servant,

A. BURR.

“‘His Exc’y GEN. WILKINSON.’

“Together with a packet, which he informed me he was charged by the same person to deliver me in private. This packet contained a letter in cipher from Colonel Burr, of which the following is, substantially, as fair an interpretation as I have heretofore been able to make, the original of which I hold in my possession.”

Mr. RANDOLPH said he should certainly have abstained from noticing the circumstance he was about to mention, and which he had believed to be of general notoriety, had it not been that within a very few days past, a gentleman, (with whom Mr. R. was in habits of intimacy, and whose means of information were as good as those of any member of the House,) to his utter surprise, informed Mr. R. that he was totally ignorant of the fact.

Mr. R. said he held in his hand an actual interpretation of this ciphered letter, which was made in the grand-jury room at Richmond, by three members of that body, for their use, and in their presence; and it was necessary here to state, that so extremely delicate was General Wilkinson, that he refused to leave the papers in possession of the grand jury: whenever the jury met, they were put into their hands, and whenever they rose, the witness was called up, and received them back again. Here was a copy—rather a different one from that which, “On the honor of a soldier, and on the Holy Evangelists of Almighty God,” was as fair an interpretation as General Wilkinson was able to make. A comparison of the two would throw a little light on the subject. In the printed copy of the last session might be read, “I (Aaron Burr) have actually commenced the enterprise—detachments from different points,” &c. In the original the words had been scratched out with a knife, so as to cut the paper—“I have actually commenced”—not the enterprise, but “the Eastern detachments.” Now mark; by changing the word *Eastern* into *enterprise*, and moving the full stop so as to separate *Eastern* from its substantive *detachments*, the important fact was lost, that, as there were Eastern detachments under Colonel Burr, there must have been *Western* detachments under somebody else! Now, with a dictionary in his hand, could any man change “Eastern” into “enterprise,” and move the full stop, under an exertion of the best of his

ability? Again: the printed copy says, “every thing internal and external favors views;” the original has it “favors *our* views.” The word “our” perhaps could not be found in any English dictionary! The printed version says again, “The project [this is the best interpretation upon his oath which a party who had never suffered the papers to go out of his hand could make] is brought to the point so long desired.” The real interpretation is, “the project, my *dear friend*, is brought to the point so long desired.”

Mr. R. said, exclusive of other and direct evidence, tending to show the dependence which these conspirators put on the army of the United States, and that it was eventually their sole hope and support, and that the moment they found they were to be deprived of it they changed their purpose—exclusive of this, and that the conspirators were received at Massac and the other forts below, and of their there getting arms and stores, there was something in this suppression of words in the letter that spoke to his mind more forcibly than volumes of evidence, the implication of a man who, had he been innocent, would have given all the evidence in any letter he professed to interpret. This suppression did certainly convey to the mind of Mr. R. an impression, which he had never attempted to conceal, of the guilt not only of the principal but of many of the inferior officers of the Army. But guilt is always short-sighted and infatuated. Not content with that dubious sort of faith which it might sometimes acquire when not brought to the trial, it had attempted not only to occupy the middle ground of doubt and suspicion, but to clothe itself with the reputation of the fairest character in the country, and in so doing, had torn the last shred of concealment from its own deformity. It stood now exposed to the whole people of the United States; and he left the House to say whether they would shut their eyes and ears, as they had been almost invited to do, against conviction.

Mr. SMILIE wished to know of the gentleman from Virginia whether there was not a motion before the grand jury to find a bill against General Wilkinson?

Mr. RANDOLPH said he had introduced this subject in order to suggest to the gentleman from Kentucky the propriety of modifying or amending his resolution. He would now give the information required by the gentleman from Pennsylvania, and hoped he should not be considered as intruding on the time of the House in so doing.

There was before the grand jury a motion to present General Wilkinson, for misprision of treason. This motion was overruled upon this ground: that the treasonable (overt) act having been alleged to be committed in the State of Ohio, and General Wilkinson's letter to the President of the United States having been dated, although but a short time, prior to that act, this person had the benefit of what lawyers would call a legal exception, or a fraud. But, said Mr. R., I will inform the gentleman, that I did not hear a single member of the grand jury express any other opinion than that which I myself expressed of the moral (not of the legal) guilt of the party.

Mr. SMILIE said he would not detain the House on this subject; he had the other day taken an opportunity to state his sentiments on the subject, that in his opinion there was no power in the House to proceed in the business. The same sentiments he yet entertained; and when gentlemen told him that it was necessary for the public safety that this House should exercise such powers, and at the same time they could not point out a single expression in the constitution vesting the House with this power, he could not consent to vote with them: nor had a single gentleman who had spoken, attempted to show that they did possess these powers. The gentleman from Virginia had spoken of their power to disband the army; if the gentleman chose to bring forward a resolution for that purpose, Mr. S. said he would meet him. He had also told them that they had a power to refuse supplies: Mr. S. said he agreed with the gentleman in this: but when they stepped out of the road, and assumed a power not vested in them, he could not go along with the gentleman. Was it not the duty of the President alone to inquire, who possessed full power to act on the information which might be the result of an inquiry? Certainly it was. The officer interested in this discussion was undoubtedly subject to trial by a court martial, and no doubt also by a court of justice; for if he was guilty of the crimes laid to his charge, they were of a high nature, and would subject him to the cognizance of the civil law.

But he would ask gentlemen, if they succeeded in passing the resolution upon the table, what was next to be done? Did the House believe that they could remove or punish a military officer for misconduct? If they could not do this, and he presumed no gentleman would contend for this, Mr. S. could see no reason for an inquiry. Were they to become mere juries for a court of justice—mere collectors of evidence—for it was admitted that they could not act upon it after it was collected? He believed the courts of justice were

possessed of sufficient authority without this House volunteering their assistance.

Mr. S. remarked what would be the effect of this motion, which was substantially the same as that proposed by the gentleman from New York, and rejected by a large majority. It would answer the purpose of holding up this man to suspicion for years to come, for aught he knew, without producing any other effect. He was willing to inquire; he had seen from the beginning of the business that an inquiry must take place. There had been a number of papers laid upon the table relative to this; he was willing to transmit them to the proper department, there to be made use of, and he hoped the House would go no further. For in regard to the proceedings which had taken place, they had exercised a right which did not appertain to them in proceeding in the business at all; they had no right to beset the character of the man; and he rested his objections on this point, that no man could show him an authority for it. He was very sorry, because he thought it would produce effects of a serious nature, to hear a gentleman this day denounce the army as corrupted throughout. He must tell that gentleman that he could not credit the assertion. They had tried (without meaning to express any opinion as to the officer now involved) their officers and found them trusty. And to hold them up as unworthy of trust at this time, in a crisis like the present, was impolitic and unjust. If gentlemen knew of any particular officers who were corrupt, why could and did they not lodge information against them, not by clamor here, but by proof before the proper authority?

Mr. S. in conclusion declared that he should not vote for this resolution; for, in any way, a procedure by this House on the subject would be incorrect.

Mr. RHEA, of Tennessee, called for the reading of the letter of ——— Duncan, contained in the evidence laid before the House this session relative to the late trial at Richmond; it might be satisfactory in explaining the differences between the version of the ciphered letter by the grand jury and the translation made by General Wilkinson.

Mr. LOVE said, that although the form of the question had been varied, by the resolution of the gentleman from Kentucky, (Mr. ROWAN,) yet the principles of decision remained nearly the same as on the original

resolution; the same objections applied, as to the subject embraced by the present form, and, so long as it thus remained, those objections would continue to influence his determination.

These grounds of difficulty had been attempted to be removed by the gentleman from Virginia, (Mr. RANDOLPH,) by arguing, that the investigation of the subject might lead to measures which no one would doubt it was competent to the House to act on. By pursuing the inquiry, it was said, it might be found that it would be expedient to disband the army, or withhold its necessary supplies: this, said Mr. L., is begging the question. The terms of the resolution, in their present shape, cannot possibly conduct a committee to any such inquiry: it is confined to a single object; it is, whether the present commander of the army has been guilty of corruptly receiving money from Spain. The charge alluded to is understood to be of an ancient date; it is not suggested by any one that the army is tainted with this crime, specially set forth in the resolution: the charge, if proven, could not then be a cause for disbanding the army, or withholding the necessary supplies. If an object of this kind is contemplated let it be so stated, and an inquiry into the grounds of such proposition, however strange in idea, would only be the exercise of a constitutional right.

The resolution, Mr. L. repeated, called the attention of the House to a single fact, it exhibited a charge already made penal, both by the military and civil code; it respects a character over whom we have no constitutional control, by impeachment or otherwise. If an improper character is commissioned to the command of our armies, and continues so, let the responsibility fall where the constitution has placed it, on the Executive; the attention of the Legislature must be called to other things than judging of the merits or crimes of the soldiery. But it is objected that the military tribunal appointed to make an inquiry on the demand of the person accused, and which the House understood was now engaged in the performance of that duty, has no power to compel the attendance of witnesses, or the production of papers. He would not for a moment so far impeach the patriotism of those gentlemen, who have declared themselves possessed of knowledge on the subject of the charge, as to suppose they would not attend the respectful summons of a tribunal erected by our own laws, for the investigation of crimes which they admit are of importance to their country. Those gentlemen surely too well understand the rights of others to object to

a cross-examination; but if a military court is not possessed of a power sufficient to compel, if it should be necessary, the attendance of witnesses, the common judicial tribunals are so; the civil, as well as the martial code, has cognizance of such offences as are suggested; the same effect, as it respects a military officer, would follow the establishment of guilt before either tribunal. If gentlemen object to a military court, which the law has instituted, let them resort to a civil one; it is there they may without apprehension or difficulty make those disclosures which the good of their country requires; it is not here that a power is found, either to prosecute or punish the offences of military men. He hoped the time of this Legislature would be better employed than in the usurpation of the powers of the Judiciary or Executive, in the investigation of criminal charges against military men, whom they could neither hear the defence of, nor punish their crime, if proved.

Mr. L. said, that as to the truth and weight of the charges made against the military character in question, he felt no disposition to decide; to determine a man guilty of crimes of great enormity, without a hearing, without examination or testimony, and without a possibility of defence, was so hostile to every principle of justice, and common humanity even, that he had not permitted his mind to enter into any investigation of fact, or his feelings to enlist in the prosecution; much detail of circumstance had been used, which ought to put the House extremely on its guard against the influence of feeling in deciding the present question. A gentleman had the other day said, that he felt no delicacy towards a man, whom he had on his oath been obliged to say was guilty of misprision of treason; it was thus intimated that the grand jury of Virginia district, who investigated the subject of Burr's conspiracy, had agitated the question of General Wilkinson's criminality; (setting aside the observation which might well be made that Burr's conspiracy was no part of the present inquiry) it appeared to Mr. L., that the question having been agitated, and no presentment being made of the officer now charged, a considerable portion of the grand jury must have said in like manner, on their oaths, that that officer was not guilty of misprision of treason; but to-day the same gentleman has informed us, that the reason why no presentment was preferred against Wilkinson was, that he escaped by a legal exception in his favor; that although the immorality of his act was complete, (as well as he could understand the gentleman at the distance he was from him,) the offence could not be

located, or some other legal defect. Mr. L. said he confessed he was not well informed of the proceedings of the grand jury, he had heard some noise which he had scarcely listened to about them: he had never before heard, that the principal officers of the army were leagued in Burr's conspiracy: he would say, however, that the grand jury assembled on that occasion, was as able and respectable a one as ever sat on any former occasion of the kind, and he confessed he was surprised to hear they had omitted to exercise a general power, which, when it appeared to them the officers of our army were actually conspirators against the Government, as we are now informed, it became imperiously their duty to exercise, by making a presentment of the dangers of the country: any general evil a grand jury may present, if they believe it to exist only in intention. The acts of a legislative body, and some he believed of Congress itself, had been presented by grand juries as of evil tendency; and one instance at least has occurred of a grand jury having presented the very court which presided over it. Certainly such an evil as a general conspiracy of the officers of our army required some public exhibition of the offence; even if it was such in them as well as the commander, as not to be brought, in the opinion of the jury, within the form of an efficient prosecution. Mr. L. said, he was sorry that he too had been led into the notice of facts by the surprising things he had heard. He hoped unnecessary delay would be avoided. The time occupied in the discussion of this dispute had already, he would presume, prevented some of the committees from reporting on subjects of the first consideration. The present eventful and threatening aspect of foreign affairs demanded attention; he particularly apprehended it might have prevented the report of the bill for arming the militia, as well as other subjects of national interest, from being taken up. Let us then, said Mr. L., meet this question, decide upon it, and send to the proper departments the information which will enable them to act in the manner we are told they have attempted, under the laws in existence. The question which they solely ought now to consider was their right to act. He believed there was no man in that House who did not, after what had been said, wish a thorough investigation, but certainly the mode to be pursued was obvious and easy. He conceived it would be entirely sufficient if the papers and information were transmitted to the proper department, and should, if the resolution was negatived, beg leave, if he could get the floor, to offer a resolution, with a preamble, detailing the reasons which governed him in his vote, by which it

might appear, that although he felt as much anxiety as any man that the proper tribunals should act on the subject, yet his objection to the present mode proposed, arose from a source above mere matters of expediency or temporary feeling.

Mr. L. then said, as it was not in order in the then stage of the debate, to propose his resolution, he would read it, in order that the House might be apprised of his views. He then concluded by reading the following resolution:

Resolved, therefore, That the papers and information laid on the Clerk's table of this House, relative to General James Wilkinson, be referred to the Secretary of the War Department of the United States.

Mr. LYON said, notwithstanding the impression made upon his mind by the statement read this day, he should vote in the same way as he should have done before he heard it, if the power of the House to make an inquiry were not called in question. He would as soon cut off his right hand as to say that this House had not the power to call in question the conduct of the Commander-in-chief. Was this House prepared to say that they had not the power to inquire whether or not the Commander-in-chief has sufficiently the confidence of the people and of the Army? He would not commit himself in this way; and, after what had been urged as reasons for voting against the resolution, he could not promise how he should vote. The question was altogether varied by the motion now under consideration; the former and original question was, whether they would request the President to perform certain duties; it was now moved that they should perform these duties themselves; and he should certainly vote in favor of it, if it were contended that this House had not the power to pass it.

As to the creed of the gentleman behind him, (Mr. LOVE,) he could not subscribe to it; it was too long for his comprehension; but if it were intelligible, he would tell the gentleman behind him that he could not agree with him.

He should be satisfied to see what the court of inquiry would do in this business; and if they did not do what would satisfy the nation, he should be perfectly willing to proceed in the inquiry. He thought that then, feeling as

his colleague (Mr. ROWAN) must feel, it would come properly before the House. Mr. L. had long had a suspicion of this man, and his mind was much at variance on the subject. None of his feelings would induce him to surrender the right of the House to inquire, and if this were made a general ground of opposition to the motion, he should assuredly vote for it.

Mr. TAYLOR confessed that the importance of the subject was sufficient to claim his ardent attention, and from the consideration he had given it, he was opposed to the resolution, and felt it a duty not to give a silent vote on a measure, which by the terms of the resolution offered was not to inquire on a general subject, (which even on this subject unconnected with any individual, but as he might be incidentally concerned, might be excusable,) but to inquire about the conduct of a single individual; or in short and plain terms to denounce the man; a man, too, holding an office out of the immediate control of this House, amenable to other tribunals, and liable, if guilty of all that has been asserted against him, to the sentence of death, both by our civil and military courts.

This measure of denouncing an individual whom this House cannot impeach, said Mr. T., is then a new case, and one which, if adopted, will establish a precedent dangerous to this Government, dangerous to the life and liberty, the honor and reputation of the citizen, and calculated in its effects to put at hazard every institution and sacred provision in the constitution under which we profess to act.

We shall in the first place interfere with the Executive Department—with which department the constitution has expressly intrusted the care, the responsibility of watching over the army; and in respect to the inquiry proposed to be made by a committee of this House, when we have made it, we can pass no sentence, we can ground no impeachment against the denounced; we should then have to come back and acknowledge our imbecility, by asking, or requesting the President to do that which we found ourselves unable to perform.

We assume to ourselves the responsibility which properly attaches to that department. I rejoice that here the maxim is monstrous and exploded, that the Executive can do no wrong; that here the ministers are not liable for the acts of the superior, but the superior accountable for the acts of his ministers and agents. If General Wilkinson is the monster in iniquity his enemies state

him to be, if the President has continued him in employment after he had evidence positive of his guilt, or if, as has been charged, he has turned a deaf ear to the proof about to be offered by an ardent, a disinterested friend to his country, why has not this blazing patriotism burst out in a direct and not an indirect impeachment of the Executive? But the sense of the nation is too well known to venture at this thing. No, say the advocates of the resolution, this has nothing to do with confidence in the Executive—and yet if the Executive has a spark of that patriotism which he ought to possess, if he is not the protector and upholder of a knowing traitor, would he dare to disregard the information, if legally substantiated, which the gentleman from Virginia and the delegate from Orleans had laid on your table? If confidence has nothing to do with this, why did not these gentlemen hand in to that department of the Government which had the constitutional cognizance and final control of this business, all the information they had on this subject? Why make this House the great gun from which to thunder their denunciations and fulminations against an individual, when there was a shorter and more easy way of getting at their object? A corrupt Executive would desire the very measure proposed. Interfere with his functions, assume his responsibility—what would be the result? You denounce the agent, the tool of such an Executive, (the Colonel Vernon of Cromwell, for example.) You order, or you request, that his conduct should be inquired into. Well, in obedience to your order, this corrupt Executive appoints a corrupt board of officers. The conduct is inquired into, and the accused comes out glossed over with an honorable acquittal from this court, and ready and more fitly prepared to execute the ambitious designs of his protector. Ask of the Executive why is this so? He answers, I have obeyed your orders, the responsibility is yours and not mine. This will be the effect of our travelling out of our defined orbit and taking upon ourselves what never was intrusted to us by the constitution under which we act—already, when gentlemen say that we are not to know that a court of inquiry is ordered in this case, but which every one does know, is now sitting—I say, already do they anticipate the result, and in a fore-handed way make it a theme of abuse against that Executive, with which they tell us confidence or diffidence has nothing to do in this question.

But to be done with these words, so offensive to the chaste ears of the supporters of this measure. Mr. T. said he would ask these gentlemen if they would allow their own judgment, views, and conduct to be judged of by

those who by duty were compelled to decide upon the measures they proposed? They surely did not claim that infallibility which they denied to others. Well, then, said he, place them in one scale, with all their acts or with any particular act, and place the Executive in the other, with all or with any of his acts. Nay, sir, take the present subject only as a criterion. Let the nation hold the balance. I have no hesitation in saying that their scale would kick the beam. This I am compelled to say; I have more confidence in the present Administration than I have in those who brought forward and now support the presentation. I seek for nothing but truth—I would not kiss my hand for any thing that the Executive could do for me or mine. I am not one of those politicians who expect pay for doing nothing.

I come now, said Mr. T., to my second grand objection to this measure—that it will interfere also with the Judiciary Department of our Government. Treason and perjury have been alleged against this individual; by what tribunal are these crimes cognizable? Certainly by the courts of law. The constitution has guarantied to every citizen the right of a fair and impartial trial by his peers, a jury unbiased of his countrymen—will this right be preserved to General Wilkinson after the denunciatory speeches which have been uttered on this floor are published? Will this right be preserved to him, when the whole continent has been searched not only for all that Burr could collect, but for a new enlistment, a host of witnesses against this man? Your committee of denunciation collects the testimony, the committee makes report of the whole to this House, and it is published. I say, will not this be prejudging the man, and condemning him, before he has been brought before your judicial tribunal, to which he is amenable if guilty of all that has been urged against him on this floor? After such a procedure would there be a possibility of this man's obtaining a fair trial, of his enjoying that right which is secured to him by the sacred provisions of the constitution, and which even in a country far less jealous of the liberties of the citizens than ours ought to be, he would have secured to him?

I come now, said Mr. T., to my third objection to this measure—and which is nearly allied to the last—and that is, that in our military courts too you deprive this man of a fair trial. Every observation I have made in respect to the right of a fair trial by jury, I contend applies equally strong to the trials in our military courts. But this man is a soldier, he is Commander-in-chief of your standing Army, therefore he is fair game—therefore we

must hunt him down. Let us see what power the constitution gives us in this respect—we have the power of disbanding the Army at any time by denying the vote of supplies—we are forbid to part with that power for a longer term than for two years, we can then disband the Army, in its climax of misconduct and disaffection, in spite of the Executive. Mr. T. asked was this the object at present? If it was, why did the gentlemen make the terms of their resolution wide enough to embrace the whole Army? But he gave them the credit due to their candor—they drove openly and above board at the man.

There was another power given to the Legislature of the United States by our constitution—to pass laws for the regulation and government of the Army. Had this power been exercised? It had. Had the Legislature been restricted in the severity of the laws enacted for this body of men? They would see by looking over them. Mr. T. said he had looked over them. One hundred and one articles were contained in the statute book, every one of which (except about half a dozen) were distinct definitions of crimes. Of the statute book he wished to speak respectfully; the severity of this code might be necessary; but duty compelled him to speak of it as he found it. It would seem as if the Legislature in penning this law had borrowed the pen of Draco, dipped in blood. Every step they took, from article to article, was marked with blood, with scourges, and with death. No less than sixteen definitions were there contained of crimes capital and punishable with loss of life. After having armed the courts, which, said Mr. T., are appointed to sit in judgment on these soldiers, (and remember that not only the standing Army, but the militia also are at times subject to these rules,) with the power of life and death placed in their hands, the scourge, the halter, and the musket, for lacerating and destroying the infractors of these articles, the Legislature, with all this severity, tempered the whole with one divine, one beneficial principle. This box of Pandora contains hope—the hope of a fair, impartial, and unbiased trial, by their comrades, by their peers. But this hope, by your present resolution, is proposed to be destroyed: as if the gloom around the arrested soldier was not sufficiently dark, you now are about to establish a precedent, which whenever used will shut out every gleam of light. Would it be surprising that men thus proscribed, marked out as the fit objects on which to pour out your vials of wrath, should in time become disaffected, should turn their arms against their country? Yes, by the course proposed you prejudge a citizen—you mark your victim. What

despotism can be worse than this? The pious Parliament of England who brought Cromwell into power did this very thing. They were not content with the uncertainty of the proceedings of the criminal courts of that day—they appointed a committee, (as is proposed now, sir,) a court of high commissions, to take care that the courts of law and the military courts should let none go whom they had marked for destruction. How did this business end? The very pious and country-loving Parliament, who were so intent upon the public good as to break down and trample on every opposing impediment either of law, religion, or morality, and all for the public safety, (the very motive we hear now urged,) were kicked out by Cromwell and that very army they had supported at one time and proscribed at another; and were sent, according to the language of that day, to seek the Lord elsewhere. And their degradation produced gratulations from every part of the Commonwealth to the Protector, and confirmed him in as absolute power as the Emperor of the French by similar means has at this day acquired.

Why should I go back, said he, to the days of Cromwell. The effects of the mistake in this respect of a gallant and infatuated nation now exist. History need not record it for our instruction; the fatal error happened in our time. It would be too painful to travel from step to step, and detail the whole of the misfortunes of this gallant people. I will take, I think, the most interesting incident in the French Revolution—the point of time which decided that France was not to be a Republic. The Girondists, who were the most enlightened, the most virtuous, perhaps the only real Republicans in France, denounced Marat. Marat and his friends made head against their opponents and in turn denounced them. Marat was destroyed by an enthusiast, but his party prevailed. Yes, from the rostrum in the conventional hall proceeded the poison, from the National Convention was administered the dose which annihilated all true Republicanism in that country—the system of prejudging the criminal before his trial. How was this denouncing system improved upon? At first, indeed, there was kept up the show of a trial in the courts below, but the victim was nevertheless as certainly marked, or certainly doomed to destruction. But the orators in the Convention, having a long session, and finding nothing better to employ themselves in, multiplied the victims so fast, that to be possessed of a handsome house or estate, a beautiful wife, sister, or daughter, was crime sufficient to incur denunciation—the courts became so crowded with

victims, that to expedite the business, instead of formal trials, the courts condemned *en masse*: ten, twenty, or fifty, were delivered over to the public executioner, with only the ceremony of passing in review before the judge; a motion of his hand, or the waving of his *bonnet rouge*, was a sufficient signal for the executioners to lead the denounced to the guillotine.

We have a constitution, (said he,) we have laws enacted for the prevention and punishment of crimes. The rights of our citizens are, I hope, sacredly guarded by the provisions contained in them. Shall we then adopt this revolutionary measure?

All history shows—the experience of all ages ought to have impressed this important truth on our minds—that in religion anathemas, in politics denunciations, in popular assemblies, have led to the same slaughter-house—fell intolerance and bloody persecution. Shall we now throw aside our chart and compass, and venture in this wide, boisterous, and dangerous sea of expediency?

Look at the constitution—search for this denunciatory power vested in this House. What is it? We have a right to impeach a civil officer for misconduct. What punishment can we demand for him when convicted? Dismissal from office, and disqualification from holding any future office of trust and profit. In nothing does the wisdom, the inspiration of the framers of this instrument more appear than in this restriction. They well knew the danger of introducing personal feelings and resentments, of party rage and fury in this body; of gathering here armed with the power of destroying one another.

I have said, on a former occasion, that this House had no power itself; its committee cannot have the power of sending for persons, papers, and records; it is nowhere directly given; it cannot be derived incidentally, in a case, the cognizance of which is not given to us by the constitution. I then stated the cases where this incidental power is, *ex necessitate rei*, derived, viz: 1st. For collecting testimony whereon to form articles of impeachment. 2d. Testimony may be thus collected in deciding on the expulsion of a member, 3d. Where an election is contested.

The gentlemen who support the resolution have been desired to show the power of the House for this purpose in this constitution or in any law. They have not done so. They are obliged to resort to expediency, and that

expediency, I have contended, will not hold them out. But, say they, the courts of inquiry and courts martial have no power of collecting testimony, and we must do it for them. Will the depositions taken before this House, or before your committee, be evidence in your courts? They will not. To sum up the whole, although I must acknowledge that the motives which actuated the mover and myself are, and must be the same; I declare I think he means as well as I, the good of his country; yet I would defy him to instance a more oppressive, a more unfair mode of procedure in the Spanish inquisition than the preliminary trial, for it is a trial of General Wilkinson, now carrying on, on this floor, and about to be prolonged by hanging it upon tenter hooks before a committee. Gracious God! what innocence can withstand this mode? He is charged with being a Spanish pensioner in 1796—again, on the river Sabine—a conspirator with Burr—a perjured man—a conspirator against the liberties of the citizens whom he arrested as traitors and coadjutors with Burr. These, denunciations are enforced with eloquence, mixed and commixed, compounded and animadverted upon by as great talents as any in the nation. No notice is given to him to attend and make defence. Thus, with accumulated denunciations, but with but one document before us which can look like evidence, and that *ex parte*, this House is to be pressed into a vote which is to fix the stamp upon the character of the man, is to mark him as the victim of the courts below. If he were a demon I would not use him thus unfairly.

TUESDAY, January 12.

General Wilkinson.

The House resumed the consideration of a resolution moved by Mr. ROWAN, for the appointment of a special committee to inquire into the conduct of Brigadier-General Wilkinson, with power to send for persons and papers, and to compel their attendance and production, which was depending yesterday at the time of adjournment: Whereupon, Mr. ROWAN moved to amend the resolution, to read as follows:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier-General Wilkinson, in relation to his having, at any

time, while in the service of the United States, corruptly received money from the Government of Spain, or its agents; or in relation to his having, during the time aforesaid, been an accomplice, or in any way concerned with the agents of any Foreign Power, or with Aaron Burr, in a project to dismember these United States; and that the said committee have power to send for persons and papers, and to compel their attendance and production; and that they report the result of their inquiry to this House.

A motion being made to amend this resolution, which gave rise to much discussion, Mr. ROWAN withdrew it, and Mr. RANDOLPH immediately renewed his original motion, in these words:

Resolved, That the President of the United States be requested to cause an inquiry to be instituted into the conduct of Brigadier-General Wilkinson, Commander-in-chief of the Armies of the United States, in relation to his having, at any time, while in the service of the United States, corruptly received money from the Government of Spain, or its agents.

He said he had withdrawn it only to give the gentleman from Kentucky an opportunity of taking the sense of the House on his proposition; to do which, in his opinion, every gentleman had a right. He perceived that the gentleman from Kentucky was about to be deprived of taking the sense of the House by an evasion of the question, and now renewed his own motion, which he had only withdrawn with an intention to renew it if that of the gentleman from Kentucky should not be adopted. He would here say, that though he did not agree with all the doctrines of the gentleman, that he thought all his arguments which bore upon this case were unanswerable.

The House agreed to consider Mr. RANDOLPH's resolution—51 to 36.

A further extended and heated discussion took place, interrupted by calls for the question.

The question, on Mr. RANDOLPH's resolution, was then taken by yeas and nays—yeas 72, nays 49, as follows:

YEAS.—Evan Alexander, Lemuel J. Alston, Burwell Bassett, William W. Bibb, William Blackledge, Thomas Blount, John Boyle, William A.

Burwell, William Butler, John Campbell, Epaphroditus Champion, Martin Chittenden, Matthew Clay, Howell Cobb, John Davenport, jr., Joseph Desha, James Elliot, William Ely, John W. Eppes, Barent Gardenier, Francis Gardner, James M. Garnett, Charles Goldsborough, Edwin Gray, John Harris, William Helms, William Hoge, David Holmes, Benjamin Howard, Reuben Humphreys, Richard M. Johnson, Walter Jones, James Kelly, Thomas Kenan, Joseph Lewis, jun., Edward St. Loe Livermore, Edward Lloyd, Nathaniel Macon, Robert Marion, Josiah Masters, Daniel Montgomery, jun., Thomas Moore, Jonathan O. Mosely, Gurdon S. Mumford, Thomas Newton, Timothy Pitkin, jr., Josiah Quincy, John Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, John Rowan, John Russell, Dennis Smelt, Samuel Smith, John Smith, Richard Stanford, William Stedman, Lewis B. Sturges, Peter Swart, Samuel Taggart, Abram Trigg, George M. Troup, Jabez Upham, James I. Van Allen, Nicholas Van Dyke, Killian K. Van Rensselaer, Daniel C. Verplanck, Jesse Wharton, Marmaduke Williams, Alexander Wilson, and Richard Wynn.

NAYS.—Willis Alston, jr., Ezekiel Bacon, David Bard, Joseph Barker, Robert Brown, Joseph Calhoun, George W. Campbell, Peter Carlton, John Chandler, Richard Cutts, Josiah Deane, Daniel M. Durell, William Findlay, James Fisk, Meshack Franklin, Isaiah L. Green, John Heister, James Holland, Daniel Ilsley, Robert Jenkins, William Kirkpatrick, Nehemiah Knight, John Lambert, John Love, Matthew Lyon, William McCreery, William Milnor, Nicholas R. Moore, Jeremiah Morrow, John Morrow, Roger Nelson, Thomas Newbold, Wilson C. Nicholas, John Porter, John Pugh, John Rhea of Tennessee, Mathias Richards, Ebenezer Seaver, James Sloan, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, John Taylor, John Thompson, Archibald Van Horn, Robert Whitehill, Isaac Wilbour, and James Witherell.

Mr. EPPES said he had stated on a former day, in his place, that no information had at any time been received by the present Administration which went to charge Brigadier-General Wilkinson with being a Spanish pensioner. This statement was made in reply to a gentleman from Kentucky, who thought it unnecessary to forward to the Executive the evidence exhibited against General Wilkinson, on the ground that this evidence was already in possession of the Executive Department. A fact so important to

the public ought not to rest on the assertion of any individual. If corruption has at any period of our political existence fixed its fangs on this Government, if men known to be Spanish pensioners have at any period been honored with confidence by any administration, it is proper the people should understand at what period this confidence commenced, and by whom it was reposed. So far back as the year 1789 or 1790, information was forwarded to the Executive Department of this Government, that a combination between citizens of the United States and the Spanish Government had been formed, for the purpose of dismembering the United States. The information (together with the names of most of the persons concerned in the combination) was forwarded to the first Administration formed under this Government, at the head of which General WASHINGTON was placed. It was known to the second Administration under Mr. ADAMS, and additional information forwarded to him by Mr. Ellicott. If General Wilkinson was originally concerned in this combination, he must have been appointed to office by the first administration under this Government, and continued by the second, with a full and complete knowledge of this fact. The present Republican party found General Wilkinson in office, and abundant proof can be produced that he possessed the confidence of the two preceding Administrations. If he was originally a member of the old Spanish combination, or has, at any period prior to the year 1801, been guilty of any act calculated to destroy the public confidence, let the responsibility rest on those who appointed and continued him in office. We have seen in one State of the Union a member of this combination removed from the important office of judge, on the ground of being a Spanish pensioner. A charge of the same kind is now made on oath by a member of this House, against an officer of the United States. It is time that all the information possessed by the Government of the United States on the subject of this combination, should be brought fairly before the public. With a view to obtain this information, he offered the following resolution:

Resolved, That the President of the United States be requested to lay before the House of Representatives all the information which may at any time from the establishment of the present Federal Government to the present time, have been forwarded to any department of the Government, touching a combination between the agents of any foreign Government and citizens of the United States, for dismembering the Union, or going to show

that any officer of the United States has at any time corruptly received money from any foreign Government or its agents; distinguishing as far as possible the period at which such information has been forwarded, and by whom.

Mr. RANDOLPH seconded this motion.

After a few objections to this resolution from Mr. QUINCY, on account of its being too comprehensive, not giving the President power to withhold confidential correspondence, the question was, on motion of Mr. RHEA, taken by yeas and nays, and carried unanimously, every member present, to the number of one hundred and twenty, voting in the affirmative.

Mr. ROWAN said that although a decision on his resolution had been eluded, out of respect for the opinions of gentlemen who objected to particular parts of it, he had modified it, and offered it as follows:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier-General Wilkinson, in relation to his having at any time whilst in the service of the United States, either as a civil or military officer, been a pensioner of the Government of Spain, or corruptly received money from that Government, or its agents; and that the said committee have power to send for such persons and papers as may be necessary to assist their inquiries; and that they report the result to this House, to enable this House the better to legislate on subjects of the common weal, and our foreign relations, and particularly our relation with Spain, as well as on the subject of the increase of the Army of the United States and its regulations.

A motion to consider this resolution was negatived—60 to 46.

Mr. HOLLAND moved that a committee be appointed to wait upon the President with the resolutions this day adopted.

Mr. LOVE moved that the evidence or information laid before the House relative to the conduct of General Wilkinson be transmitted to the Executive.

On motion of Mr. ROWAN, seconded by Mr. RANDOLPH, the words “copies of” papers, &c., were inserted; and the resolution for transmitting

copies of the papers was agreed to without a division.

The motion for appointing a committee to wait on the President with these resolutions and copies, was agreed to without a division. Messrs. RANDOLPH and EPPES were appointed the committee.

FRIDAY, January 15.

Government Contracts.

On motion of Mr. BASSETT, the House went into Committee of the Whole on the resolutions submitted by him some days ago relative to the contractors.

The first resolution being under consideration, as follows:

Resolved, That provision ought to be made by law to prohibit the officers of Government from making any contract, on behalf of the United States, with any person being a member of either House of Congress, or with any other person for his or their use:

Mr. BASSETT said he presumed that this proposition possessed sufficient intrinsic merit not to require the aid of extensive talents or laborious exertions of any gentleman to advocate it. He assumed it as an axiom, that fundamental principles must rest for their security on the purity of the Representative body. He should, however, trust the support of this measure to its own importance.

The resolution was carried—59 to 15.

TUESDAY, January 19.

Naturalization Laws.

Mr. BURWELL begged leave to offer a resolution to the consideration of the House, on the subject of which it was not his intention now to make any observations; it was upon the subject of the naturalization laws of the

United States. Upon examination of the constitution, it would be found that Congress had now, since the 1st of January, 1808, full power to act on the subject, and dispose of it in such manner as the public good might require. It was now in their power to exclude foreigners from the country altogether, or admit them under such restrictions as might be deemed consistent with the public interest. He therefore hoped the resolution would be agreed to, and give him an opportunity of introducing such a bill as he contemplated, and on which the House might then decide. The resolution is as follows:

Resolved, That a committee be appointed to inquire into the expediency of amending the act of Congress, passed the 14th of April, 1802, entitled “An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.”

The resolution was agreed to, and Messrs. BURWELL, QUINCY, MACON, G. W. CAMPBELL, SMILIE, FISK, and J. MONTGOMERY, were appointed the committee, with leave to report by bill, or otherwise.

The Militia.

On motion of Mr. M. CLAY, the House went into a Committee of the Whole, on the bill more effectually to provide for the national defence by the militia of the United States.

The first section being read, as follows:

“That all the militia of the United States, liable to do duty, over twenty-one and under —— years of age, shall be deemed and held in requisition, and called the junior class of militia. And the President of the United States shall be, and he hereby is, authorized, on the appearance of national danger, to order out the same, or any part thereof, to any part of the United States or their Territories, for not more than one whole year at any one time. And whensoever a part of the said junior class shall, by the President of the United States, be called into actual service, such call shall commence with those that are lowest in number, as to age first, and so in rotation: the same shall not be compelled to do duty a second time until the whole of the said

junior class shall have served one tour; and when called into the actual service of the United States, they shall be armed and equipped by the United States. For this purpose two hundred thousand stand of arms complete, shall be deposited in such places as the President of the United States shall direct, and whensoever the whole, or any part of the said junior class of militia, shall be called into actual service by the United States, and shall be armed and equipped by the same, it shall be lawful, and they, and each of them, are hereby permitted to retain the said arms and accoutrements, as their own property, any law to the contrary notwithstanding.”

Mr. M. CLAY said it was necessary to fill the blank in the first section, before they proceeded any further, and it was incumbent on those who were friends to this project, to show that there were defects in the militia law as it now stood; and, if they could prove to the House that the system offered was better than the old one, he presumed there could be no objection to the bill under consideration. At all events he wished gentlemen to take a serious view of the subject; it was a great national question, on which the salvation of the country depended. He would endeavor to bring forward the best testimony that could be had to prove that the present system was defective, and he hoped he should be able to do it. I will commence with the adoption of the constitution under which we are now acting. We find that President WASHINGTON always kept this subject in the view of the National Legislature. This shows that there was something in his opinion to do; it was not his business to tell us what it was, but ours to find out. If gentlemen will take up the Presidential communications from the commencement of the Government, they will find that the subject has been uniformly recommended by each successive President of the United States to the present time. I state this as a strong evidence that, in their opinion, a change was wanting somewhere. Next to this I will call your attention to the communications made from the State Executives to their Legislatures. We find also, that the State Legislatures, almost every year, and in every session, have had the subject under their consideration, and turned it over in one way or the other. This proves that there is in their opinion some defect. We must now remedy that defect if we can; it behooves us to do so; and if I shall be fortunate enough to point out the propriety and mode of making this alteration, I shall have done my duty. We will go further back than the

adoption of the constitution; we do not recollect the whole body of the militia ever to have been brought into action to such effect as our strength of numbers would have warranted, if the militia had been properly organized; there was a defect somewhere, which should be remedied without going either to one extreme or another. If gentlemen will turn their eyes to the bill on the table, they will find that our project is to steer between the two, not to harass the militia, but to render them fit for efficient service, by taking only those that can be best spared from home, and, when in actual service, can be most relied on. History itself furnishes no instance, let the mode of warfare be what it might, where the whole body of the militia were ever called into actual service, and kept there for any length of time to advantage. If there was much marching and fighting, the old men with families would soon find the way home; they could not be relied on for a length of time. I remember often to have heard this complaint made before the Revolutionary war; when we were at war with the Indians. Nay, further, if we go among the savages, we find that they do not all turn out to battle, and leave their women and children only behind; they take neither old nor young men, I mean their lads, to battle, but such only as may be useful in the field.

When we recur to the times of the Revolution, which every old gentleman recollects, and every young one has heard of, every one then in service will attest the fact, that wherever the body of the militia were called on to march, old and young together, the old men soon found their way into the hospital; they would complain of old rheumatisms, &c.; they would often fatigue and break down the young men by imposing on them the additional burden of their knapsacks.

My object is to leave at home the senior and minor classes as much as possible; nothing but imperious necessity and imminent danger should call them to the field, and that within their own State, or in the neighboring State. I wish not to derange the state of society, which must be the case if the whole body of the militia are called out at once. During the last war, we saw not only fields and neighborhoods, but whole States, laid waste from being deprived of their cultivators. I wish to avoid this evil; I wish to leave men enough at home to cultivate the earth and take care of the crop. It is well known to gentlemen of the Revolution, that while we lay at Valley Forge, in Pennsylvania, at Middlebrook, in New Jersey, and at other places,

we were almost in a state of starvation, because all hands, meaning the whole body of the militia, had been called out, and cultivation and manufactures neglected. I have seen (and an awful sight it was) not less than five thousand men on parade at a time, in the midst of winter, almost naked, without shirts or shoes; of times have I seen them march on the frozen ground barefoot, marking their footsteps with blood as they marched. At the times here spoken of, the Army was reduced to the awful necessity of going into the adjacent country and threshing out the grain from the straw, and, while thus engaged, the poor and almost naked women, with their helpless babes crying round them, would ask, with tears running down their withered cheeks, for God's sake not to take all, telling the soldiers that that was their all, and when that was gone they must starve; that they had no money, nor wherewith to get money. Now, my object is to avoid such another scene—not only on this account, but in some of the Southern States, we have an internal enemy, an enemy within our own families. There should always be a sufficient force left at home to awe and keep that enemy down. By taking out the junior class only, we shall always have a sufficient number left to quell and keep down insurrection at home. We shall presently show that we have a sufficient number of young men under the age of twenty-six and over twenty-one, to meet the enemy whenever they are called on. We have three great points of assault, New York, Charleston, and New Orleans, and I shall I trust be able to show that we have a sufficient number of young men of the junior class to keep up a continual force, if necessary, to meet all attacks. It behooves me now to show what disposition I intend to make of the minor class—young men under twenty-one years of age. It is not my intention that they shall be called into service, except in case of the utmost necessity, and then only within their own State. We find, from report, that to be the rock on which the Emperor of France has split. He takes his men when in their infancy, from the age of eighteen. They ought to be left until they are twenty-one, to lay in a sufficient stock of information to carry them into life. Let them learn trades or attend to their studies; for we consider the trade or profession which a man learns in his youth, whether mechanical or mental, as a fortune; and therefore we do not wish to interrupt them until they have completed their studies or trades, except imperious necessity should require it. It is necessary that every man should have somewhat from which he may receive subsistence during his passage through life. During his minority he

lays up by learning a trade or profession, a principal, the interest of which supports him after he attains the age of twenty-one. We also well know that young men under twenty-one cannot stand hardship; they may do some service; they may march about a little, but their system is not matured; they cannot undergo fatigue. We also know that it will almost take two men of eighteen years of age, each, to cope with one of twenty-five in bodily strength.

We shall now proceed to show the numbers of each class, as nearly as they can be ascertained from the census of 1800. We have taken the authority of the best statistical writers for the progressive numbers.

The census of 1800 gave of males from twenty-six to forty-five, 432,193. I am not very particular as to fractions, they being of little consequence. The annual increase from 1790 to 1800 was about three and one-half per cent., which we will assume for the increase since the last census, being seven years. This will give us an increase since 1800 of 105,882, which added to the number by the last census, makes 538,075. From these deduct, unfit for service, as nearly as we can ascertain, 35,000 or 40,000. We have taken, for the sake of equal numbers, 38,075; which leaves 500,000 men, who may be relied on if the danger should be so great as to call for all men over twenty-six and under forty-five.

By the census of 1800, those over twenty-one and under twenty-six, were between 190,000 and 200,000 men. To this add, for the increase since, by the rule just laid down, 49,400; which will make 249,000, under twenty-six and over twenty-one. Deduct from this number 8,000 or 9,000, for those unfit for service. For the sake of round numbers deduct 9,000; which will leave 240,000 able men. We will suppose wanting at any one time, 30,000 or 40,000 at each of the three great points I have mentioned, which would still leave enough at home to supply the succession and deficiencies. Out of this class of men, then, between twenty-one and twenty-six, could be called out sufficient for service, at any one time, from 90,000 to 100,000, and leave double that number still in requisition. If, however, it should be thought that 240,000 would not be a sufficient number, we have only to take all under twenty-seven instead of twenty-six. Those between twenty-six and twenty-seven, added to the others, would form a body of 280,000 men, without taking any under twenty-one or over twenty-seven. It is about this time of life, twenty-six or twenty-seven, when a man begins to know

mankind; they have then sown their wild oats, as we generally say; they then wish to settle and see a family rising up before them; they feel vigorous, and wish to show their activity and strength, in running, tumbling, and wrestling; they think themselves great men; they wish to travel and see the world; they have a roving disposition. This is the moment to lay hold of them and make them good soldiers. I know well that it will be said by some that it is an invidious distinction to stop at twenty-six or twenty-seven. Why may not the same be said of stopping at forty-five or beginning at eighteen? It is said that this classification will tear up the old militia system. I do not care how soon it is plucked by the roots; we have had enough of it. Why persist in a system which we cannot get along with? What is the consequence? To show what that is, it is only necessary to read the report of the Secretary of War. Under an exertion of all the energies of the commanding officers, after the insult of the 22d of June last, on the Chesapeake; after the Executive officers had exerted themselves to procure the best information upon the subject of the militia held in requisition, what is the result? The report just mentioned will show that you cannot rely with confidence on the militia in its present state; nor can you on volunteers. The last will do for a moment at the commencement of a war. In case of invasion they will do very well for the moment. They do not go out with a view of brushing their own coats, washing their shirts, and to cook their victuals; they expect to call for the best of every thing at every house. Some gentlemen volunteers went down lately to Norfolk from Petersburg and Richmond. They conceived themselves on a level with the officers; it would not do; they came home disgusted, and you will not get them to go again. What was the case during the last war? When a large troop of volunteers was raised (I know the fact, I had a brother among them, and can therefore speak of it) they came prancing to General WASHINGTON. The old General asked them what they could do? "Fight for our country," said they. "Will you go into camp with the Army and do regular duty?" They answered "No." "You have my thanks, then, gentlemen," said the veteran, "go home again." This was only to make a show, they intended nothing else; they may do for a moment; but there must be method and regularity in our Army. It will not do to have a large body of men collected for any purpose without it. And therefore it is, that as the great mass of our militia now stand, no reliance can be placed upon them. It will not answer to rely on regular troops. It is easy enough to raise a standing army, but it is difficult to

disband them. We had at the close of the last war an awful testimony of the truth of this. Nothing but the vast weight of character of General WASHINGTON, who, descending from his high office of Commander-in-chief, mixed with them as a brother soldier, could have prevented them from revolting. See what a clamor is now raised, and rumors afloat through the country, about your standing army of 3,000 men. Get a man sufficiently popular for Commander-in-chief of a large standing army, and what sort of government should we soon have? We may shudder even to think of what might be the result. Look at the contrary side, as now proposed to regulate the militia. You take them from the bosom of their families for one year. At the end of that term they will be anxious to return home. Mutiny will not arrest them. With avidity they will return; a tear of joy will bid them welcome.

Gentlemen say the bill does not give us detail sufficient. We can fix all this when we have once passed upon the principle. This I repeat; nearly one year has elapsed since the outrage committed on the Chesapeake, and yet no return of volunteers or militia. This goes to show that volunteers are not to be relied on, and also that the militia laws are defective.

I hope we have shown that we have strong reasons to suspect that the present militia system is not the best that can be devised. We have shown this from the best testimony in our power from the adoption of the constitution to this day. From the communications of the President of the United States to Congress, and from State Governors to the State Legislatures, it may be seen that the subject has almost always been introduced and recommended to the consideration of the Legislatures. If this is not the best system that can be adopted, I am willing that any gentleman should propose a better. Let us see any other system, we will examine it thoroughly and act with our best judgment on it. This is a time when the whole United States are in danger, and some modification of our present system must be made.

Towards the close of the last war the militia began to fight very well. In Kentucky the fighting men were numerous. After the attempt of the army at the close of the war, to turn their arms against their country, Government placed their soldiers when out of service on the frontier, with the natives on their borders, with whom we were then at war. Virginia gave lands to her soldiers which were in the background. Why? Because it would not do to

fix these men of seven or eight years, standing among the body of the people. We will give them this land, said the officers of Government, and let them go and fight the Indians. The reason was, that they had served seven or eight years in the regular army. This fungus, a standing army, was applied on our frontiers as a breastwork and safeguard, to keep off the savages; we wanted to keep them out of the way. We could have burnt up the Indian towns and put an end to the whole race immediately; but we did not wish to do it; we wished to keep our old soldiers fighting till they cooled off from the habit of inactivity acquired by service in the war.

We have endeavored to show that volunteers will do but for a moment, and that when there is nothing to do, and they can have both male and female waiting upon them. They cannot be relied on in war. They are not the kind of troops for service when invaded by a powerful enemy. Volunteers may do for sailors or marines, if they choose to go to sea. We have endeavored to show that classification is the only mode by which they can be relied on for the real service of their country; that old men are not the best for service; that young men under twenty-one ought to be kept at home till they get enough of experience to serve them through life; and that young men, over twenty-one and under twenty-six, have a propensity to be in action, to serve their country and to acquire fame.

Some gentlemen make objections to the mode of officering. I have no doubts upon that subject; the thing will work well—this the constitution has reserved to the States themselves. When officers are wanting, young men can always be found peculiarly qualified to conduct their companions to the fight—young men of high standing and weight of character. The soldiers, having themselves choice of their commander, will choose one out of many candidates, as there always will be, in whom they can confide. I presume, young men of first talents and enterprise will have preference. Let them have a man to command them of their own age. They will say one to the other, I know this man; I have known him from my youth, and can confide in him.

As a reward for the services of these young men, after a campaign is ended, let them keep as their own property the arms with which they fought, which will be handed down from father to son: “This is the piece I fought with.” Let it be engraven on the barrel, this belongs to such a one, he earned it by serving his country at such a time. After men have served one year,

sufficient numbers will be found to replace them, who will be anxious to see the country, and travel over the Union, emulous of fame: and when they have served a tour will long to return to their kindred, loaded with an honorable pledge of the service done their country.

It is certainly a desirable thing that the physical strength of the country should be applied in the most advantageous manner to the protection of the country. We admit that some men marry early. In this case let them hire men as substitutes from their own class. This substitute may serve out his time and return. By that time another young man may have married, and his substitute, being accustomed to service, may go out a second term. By the adoption of this principle of classification you get the best blood of the country, that which you can rely upon. You will not see your hospitals filled with old men disabled by the rheumatism and gout; nor will you see children in the ranks, trembling at every leaf that falls around them, not sufficiently hardened to lie out upon the ground covered with ice and snow. If we go on in the same bungling manner as heretofore, we shall never have an efficient militia; you will annually receive the President's Message recommending the subject to your consideration.

I hope gentlemen will think with me, and not impute impure motives—the fact is, I have two sons that will soon be twenty-one, and I love them as much as any man can, and perhaps can say what few can. The first property I gave each of them was a gun; and have enjoined it on them in my will, that it I was given them to defend that country which their father had assisted in delivering from bondage. My son's gun will impress on his mind that he must fight when his country calls for his services; it is his fortune.

I hope gentlemen will take a serious view of the subject—that every man will lay his shoulder to the wheel, and rise up to the East and West, South and North, to prepare for the protection of his domicil. Gentlemen have said that this was a new project, that it will create confusion now, when the service of our militia is most wanting. It is because of the crisis that I have at this moment brought the matter forward. The present system is acknowledged to be defective; we wish to make it as efficient as possible—that our countrymen may know who must march at a moment's warning.

In Virginia, during the last war, young men, merchants, lawyers, and doctors, went out to battle, stayed two or three weeks, took sick, and went

home. As long as every door was open, the hand of every man giving them friendship, and caressed by every woman, they stood their ground; but when dependence was placed on them for service, they were off. I recollect a circumstance of some new militia just come into camp on the eve of a battle. The time of battle soon came; these men were placed in front; but no sooner did the redcoats, as they called the English, come within one hundred yards, than they threw down their arms and ran as though their lives depended altogether on their heels for preservation. When they were asked, where are you going, boys? Did you ever see the like, said they, we cannot stand them. When the redcoats come now it will be just the same. Substitutes towards the close of a war become good soldiers. I know that substitutes are objected to by some gentlemen, they wish every man to stand in his own place, all to stand on the same footing. In my humble opinion this would be bad policy, because all men have not the same gifts. Some cannot fight, from religious principles—others cannot fight for the want of nerve. The bill has made provision for such, if they cannot fight let them furnish a substitute. We know all men are not gifted alike: the strength of some lies in one way, and in others another; Samson's lay in his hair. Now on this floor, some gentlemen of strong minds, who think a great deal, never talk; while some who talk incessantly, appear never to think at all. It certainly would be a great economizing of public time and money, for some to think more and talk less. I am not in the habit of public speaking, not being mechanically bred to it; I nevertheless offer my mite in support of the proposed system. It is a great project; and although not fluent of speech, yet I am willing to be tested by my votes and actions, from the year 1776, the time I commenced my political career, to the present day; and I defy any man to say that I ever gave other than a republican vote, or did any other than a republican act, while acting as a public man. I know the word republican is with some a hackneyed word; but I mean the true electric principles of Republican Government. I went young into the army myself, I was never out of it, after I entered it, until the conclusion of the war. I have been thirty-two years in public life. I mention this to show that I am entitled to claim a knowledge of mankind.

You may exercise your militia from the age of eighteen, till they arrive at forty-five, and after the whole twenty-seven years mustering they will not know the manual. My object is not to call out any man until he is wanted; and when they are wanted, to call them out, and in one fortnight they will

be ready for service, and in a month may take the field, already soldiers—comparatively speaking. There will attend this system no expense in time of peace. I have seen a number of projects for taking legions into camp for six months at a time. The project will not do. When you take your men to the field, let them think of nothing else but fighting—not even of women. These half-way soldiers, half regulars and half militia, would be of no account. They would be a heterogeneous mass, fit for neither the one thing nor the other.^[56]

WEDNESDAY, January 20.

General Wilkinson.

THE PRESIDENT'S ANSWER TO THE HOUSE RESOLUTIONS.

The Message from the PRESIDENT OF THE UNITED STATES was then read, as follows:

To the House of Representatives of the United States:

Some days previous to your resolutions of the thirteenth instant, a Court of Inquiry had been instituted at the request of General Wilkinson, charged to make the inquiry into his conduct which the first resolution desires, and had commenced their proceedings. To the Judge Advocate of that court, the papers and information on that subject, transmitted to me by the House of Representatives, have been delivered, to be used according to the rules and powers of that court.

The request of a communication of any information which may have been received at any time since the establishment of the present Government, touching combinations with foreign agents for dismembering the Union, or the corrupt receipt of money by any officer of the United States from the agents of foreign governments, can be complied with but in a partial degree.

It is well understood that, in the first or second year of the Presidency of General Washington, information was given to him relating to certain combinations with the agents of a foreign Government for the

dismemberment of the Union; which combinations had taken place before the establishment of the present Federal Government. This information, however, is believed never to have been deposited in any public office, or left in that of the President's Secretary; these having been duly examined; but to have been considered as personally confidential, and therefore retained among his private papers. A communication from the Governor of Virginia to President Washington, is found in the office of the President's Secretary, which, although not strictly within the terms of the request of the House of Representatives, is communicated, inasmuch as it may throw some light on the subjects of the correspondence of that time, between certain foreign agents and citizens of the United States.

In the first or second year of the Administration of President Adams, Andrew Ellicott, then employed in designating, in conjunction with the Spanish authorities, the boundaries between the Territories of the United States and Spain, under the treaty with that nation, communicated to the Executive of the United States papers and information respecting the subjects of the present inquiry, which were deposited in the Office of State. Copies of these are now transmitted to the House of Representatives, except of a single letter and a reference from the said Andrew Ellicott, which, being expressly desired to be kept secret, is therefore not communicated; but its contents can be obtained from himself in a more legal form; and directions have been given to summon him to appear as a witness before the Court of Inquiry.

A paper "on the commerce of Louisiana," bearing date the eighteenth of April, one thousand seven hundred and ninety-eight, is found in the office of State, supposed to have been communicated by Mr. Daniel Clark, of New Orleans, then a subject of Spain, and now of the House of Representatives of the United States, stating certain commercial transactions of General Wilkinson, in New Orleans; an extract from this is now communicated, because it contains facts which may have some bearing on the questions relating to him.

The destruction of the War Office by fire, in the close of one thousand eight hundred, involved all information it contained at that date.

The papers already described, therefore, constitute the whole of the information on these subjects, deposited in the public offices, during the

preceding Administration, as far as has yet been found; but it cannot be affirmed that there may be no other, because the papers of the office being filed, for the most part, alphabetically, unless aided by the suggestion of any particular name which may have given such information, nothing short of a careful examination of the papers in the offices generally, could authorize such an affirmation.

About a twelvemonth after I came to the administration of the Government, Mr. Clark gave some verbal information to myself, as well as to the Secretary of State, relating to the same combinations for the dismemberment of the Union. He was listened to freely; and he then delivered the letter of Governor Gayoso, addressed to himself, of which a copy is now communicated. After his return to New Orleans, he forwarded to the Secretary of State other papers, with a request that, after perusal, they should be burnt. This however was not done; and he was so informed by the Secretary of State, and that they would be held subject to his orders. These papers have not yet been found in the office. A letter therefore has been addressed to the former Chief Clerk, who may, perhaps, give information respecting them. As far as our memories enable us to say, they related only to the combinations before spoken of, and not at all to the corrupt receipt of money by any officer of the United States; consequently they respected what was considered as a dead matter, known to the preceding Administrations, and offering nothing new to call for investigations, which those nearest the dates of the transactions had not thought proper to institute.

In the course of the communications made to me on the subject of the conspiracy of Aaron Burr, I sometimes received letters, some of them anonymous, some under names true or false, expressing suspicions and insinuations against General Wilkinson. But only one of them, and that anonymous, specified any particular fact, and that fact was one of those which had been already communicated to a former Administration.

No other information within the purview of the request of the House, is known to have been received by any Department of the Government, from the establishment of the present Federal Government. That which has been recently communicated to the House of Representatives, and by them to me, is the first direct testimony ever made known to me, charging General Wilkinson with the corrupt receipt of money; and the House of

Representatives may be assured that the duties which this information devolves on me, shall be exercised with rigorous impartiality. Should any want of power in the court to compel the rendering of testimony obstruct that full and impartial inquiry, which alone can establish guilt or innocence and satisfy justice, the legislative authority only will be competent to the remedy.

TH. JEFFERSON.

JANUARY 20, 1808.

The said Message, together with sundry documents accompanying the same, were read, and referred to Mr. JOHN MONTGOMERY, Mr. NICHOLAS, Mr. UPHAM, Mr. SMILIE, Mr. TAYLOR, Mr. G. W. CAMPBELL, and Mr. JEDEDIAH K. SMITH, with instructions to report thereon by bill, or otherwise.

[The following are the documents communicated with his Message by the President:]

WAR DEPARTMENT, Jan. 2, 1808.

In compliance with a request from Brigadier-General James Wilkinson, the President of the United States has directed a court of inquiry to be instituted, for the purpose of hearing such testimony as may be produced in relation to the said General James Wilkinson's having been, or now being, a pensioner to the Spanish Government, while holding a commission under the Government of the United States.

Colonel Henry Burbeck, as President, Colonel Thomas H. Cushing and Lieutenant-Colonel Jonathan Williams, as members, are hereby directed to meet at the city of Washington, on Monday, the 11th day of the present month of January, as a court of inquiry, for the purpose above stated; and, after a full investigation of such evidence and circumstances as may come to their knowledge, the court will report to this Department a correct statement of its proceedings, together with its opinion on the amount of testimony exhibited.

Walter Jones, Esquire, District Attorney for the District of Columbia, will be requested to act as Judge Advocate or Recorder to the court.

H. DEARBORN, *Secretary of War*.

Col. HENRY BURBECK, *President Court of Inquiry*.

RICHMOND, May 31, 1790.

SIR: The enclosed copy of a letter from the Spanish Governor of New Orleans to a respectable gentleman in Kentucky, was handed to me by Mr. Banks of this city. As the subject of this paper appears interesting to the United States, I have taken the liberty to forward it to you.

I am, with the highest respect,

Your most obedient servant,

BEVERLY RANDOLPH.

NEW ORLEANS, Sept. 16, 1789.

SIR: General Wilkinson having represented to me, that you had it in contemplation to settle in this province, and that your example would have considerable influence on many good families of your country, I think it my duty, in order to forward the intentions of my royal master, to inform you that I shall receive you and your followers with great pleasure, and that you have liberty to settle in any part of Louisiana, or any where on the east side of the Mississippi below the Yazoo river. In order to populate the province, His Majesty has been graciously pleased to authorize me to grant to the emigrants, free of all expense, tracts of from two hundred and forty to eight hundred acres, in proportion to their property; and in particular cases of men of influence, who may aid these views, I shall extend the grant as far as three thousand acres. To all persons who actually become settlers, liberty is granted to bring down their property in the produce of your country, duty free; but the King does not agree to take your tobacco, and, of consequence, you must depend upon the common market of this city, as the province makes more than the quantity which the King allows me to take. I mention this particular to prevent disappointment. You will be exempt from taxation, and will be allowed the private exercise of your religion without molestation from any person whatever, and will enjoy all the rights, privileges, and immunities of His Majesty's other subjects.

In order to cultivate an amicable connection with the settlers of the Ohio, His Majesty has been graciously pleased, at the same time, to give liberty to the inhabitants of that country to bring down their produce to this city for sale, subject to a duty of fifteen per cent, on the value here; but to prevent imposition, and to distinguish between the real settler and the trader, the former, on entering their produce at the custom-house, will be obliged to subscribe to the conditions mentioned in the proclamation, of which General Wilkinson carries a copy for your information.

Though unknown to you, General Wilkinson has taught me to respect your character.

It is, therefore, I subscribe myself, with great esteem, your most obedient and humble servant,

ESTEVAN MIRO.

BENJAMIN SEBASTIAN, Esq., Kentucky.

Attest: S. COLEMAN, A. C. C.

NATCHEZ, June 17, 1796.

MY DEAR FRIEND: I received your favor of the 12th instant, in which you give me a proof of your sincere friendship by opening your heart, without reserve, on the interesting subject of the treaty. Following the same sentiments that have dictated to you the confidence that you have in me, I shall unreservedly, and in the most confidential manner, give you my opinion on the same subject.

I have powerful reasons to believe that the part of the treaty concerning limits will never be accomplished; and for that reason so little has been said on what otherwise should be detailed concerning the subjects and citizens of both countries. The State of Georgia is as much displeased as you express yourself, and several petitions have already been presented to Congress against the treaty.

In the time that the treaty was signed, the political affairs of Europe determined our Court to do any thing to keep the United States in a perfect neutrality, and thereby destroy a new plan that was forming to renew and continue a destructive war. The treaty with England had a different object. It

was to attract the Americans to their interest in such a manner as to have still in her power to keep them dependent; the plan has fallen through, and the British will no longer deliver the posts. Our treaty that was made to counterbalance that, will suffer equal difficulties; for the circumstances being altered, so will be the conditions on every side. Spain made a treaty with the Union; but if this Union is dissolved, one of the contracting parties exists no longer, and the other is absolved from her engagements. It is more than probable that a separation of several States will take place, which will alter the political existence of a power that could influence on the balance of that of others; therefore Spain, being deprived of that assistance which could arise from her connection with the Union, will alter her views. This is the political situation of things with regard to the treaty; besides that, there are other insurmountable difficulties with respect to the *Indians*, which render impracticable the execution of the part concerning limits; therefore, even when no change should happen in the United States, the treaty will be reduced to the navigation of this river.

Laying aside every obstacle, and only guided by the same principles that have affected you, I have already represented in the strongest and most energetic manner on the subject of real property; without a solution from Court, it will be out of our power to fulfil the contents of the treaty. When I told you that your property should not suffer in this Government, it was founded on all these principles, and several others that are not vanished. I have constantly been a friend to the country, and in this critical moment will not neglect its interests. Be sure, and assure all your neighbors, that I will do the needful, and that my exertions at all times shall be in proportion to the exigency.

With regard to the debts of this Government, they will continue to be paid in the manner prescribed; however, I shall act in such a manner as to have them cleared much sooner than what is expected. Every individual of this Government is just now attending their crops of cotton, that promise very advantageously; therefore in this critical moment they must not be disturbed, or they will suffer essentially. I am waiting anxiously for Mr. Dunbar to regulate several things in which he has had, and is to have an interference. I really believe that the Baron has him employed. I do not know for certain when the Baron is to go to the Havana, nor do I believe that he knows it. The first packet may perhaps throw some light on the

subject. The return of our Court to Madrid will be productive of some very great change in the administration of our affairs; therefore I wait that moment with impatience.

Nothing can affect the mortgage you have on Fuly's property; he has not yet appeared, but Mr. Ree acts for him.

I remain, with the most sincere friendship, my dear friend, your most obedient,

M. GAYOSO DE LEMOS.

Reserve this letter.

P. S.—In the other letter I express the reason of my new regulation, &c.

DANIEL CLARK, Esq.

Extract from a paper on the commerce of Louisiana, supposed to be referred to in a letter from Mr. Daniel Clark to the Secretary of State, of the 18th April, 1798, and written by him.

About the period of which we are now speaking, in the middle of the year 1787, the foundation of an intercourse with Kentucky and the settlements on the Ohio was laid, which daily increases. Previous to that time, all those who ventured on the Mississippi had their property seized by the first commanding officer whom they met, and little or no communication was kept up between the countries. Now and then, an emigrant who wished to settle in Natchez, by dint of entreaty, and solicitation of friends who had interest in New Orleans, procured permission to remove there with his family, slaves, cattle, furniture, and farming utensils; but was allowed to bring no other property, except cash. An unexpected incident, however, changed the face of things, and was productive of a new line of conduct. The arrival of a boat, belonging to General Wilkinson, loaded with tobacco and other productions of Kentucky, is announced in town, and a guard was immediately sent on board of it. The General's name had hindered this being done at Natchez, and the commandant was fearful that such a step might be displeasing to his superiors, who might wish to show some respect to the property of a general officer; at any rate, the boat was proceeding to Orleans, and they would then resolve on what measures they ought to pursue, and put in execution. The Government, not much disposed to show any mark of respect or forbearance towards the General's property, he not having at that time arrived, was about proceeding in the usual way of confiscation, when a merchant in Orleans, who had considerable influence there, and who was formerly acquainted with the General, represented to the Governor that the measures taken by the Intendant would very probably give rise to disagreeable events; that the people of Kentucky were already exasperated at the conduct of the Spaniards in seizing on the property of all those who navigated the Mississippi; and, if this system was pursued, they would very probably, in spite of Congress and the Executive of the United States, take upon themselves to obtain the navigation of the river by force, which they were well able to do; a measure for some time before much dreaded by this Government, which had no force to resist them, if such a plan was put in execution. Hints were likewise given that Wilkinson was a

very popular man, who could influence the whole of that country; and probably that his sending a boat before him, with a wish that she might be seized, was but a snare at his return to influence the minds of the people, and having brought them to the point he wished, induce them to appoint him their leader, and then, like a torrent, spread over the country, and carry fire and desolation from one end of the province to the other.

Governor Miro, a weak man, unacquainted with the American Government, ignorant even of the position of Kentucky with respect to his own province, but alarmed at the very idea of an irruption of Kentucky men, whom he feared without knowing their strength, communicated his wishes to the Intendant that the guard might be removed from the boat, which was accordingly done; and a Mr. Patterson, who was the agent of the General, was permitted to take charge of the property on board, and to sell it free of duty. The General, on his arrival in Orleans some time after, was informed of the obligation he lay under to the merchant who had impressed the Government with such an idea of his importance and influence at home, waited on him, and, in concert with him, formed a plan for their future operations. In his interview with the Governor, that he might not seem to derogate from the character given of him by appearing concerned in so trifling a business as a boat-load of tobacco, hams, and butter, he gave him to understand that the property belonged to many citizens of Kentucky, who, availing themselves of his return to the Atlantic States by way of Orleans, wished to make a trial of the temper of this Government, as he, on his arrival, might inform his own what steps had been pursued under his eye, that adequate measures might be afterwards taken to procure satisfaction. He acknowledged with gratitude the attention and respect manifested by the Governor towards himself in the favor shown to his agent; but at the same time mentioned that he would not wish the Governor to expose himself to the anger of his Court by refraining from seizing on the boat and cargo, as it was but a trifle, if such were the positive orders from Court, and that he had not a power to relax them according to circumstances. Convinced by this discourse that the General rather wished for an opportunity of embroiling affairs than sought to avoid it, the Governor became more alarmed. For two or three years before, particularly since the arrival of the Commissioners from Georgia, who had come to Natchez to claim that country, he had been fearful of an invasion at every annual rise of the waters, and the news of a few boats being seen was

enough to alarm the whole province. He revolved in his mind what measures he ought to pursue (consistent with the orders he had from home to permit the free navigation of the river) in order to keep the Kentucky people quiet; and, in his succeeding interviews with Wilkinson, having procured more knowledge than he had hitherto acquired of their character, population, strength, and dispositions, he thought he could do nothing better than hold out a bait to Wilkinson to use his influence in restraining the people from an invasion of this province till he could give advice to this Court, and require further instructions. This was the point to which the parties wished to bring him, and, being informed that in Kentucky two or three crops were on hand, for which, if an immediate vent was not found, the people could not be kept within bounds, he made Wilkinson the offer of a permission to import, on his own account, to New Orleans, free of duty, all the productions of Kentucky, thinking by this means to conciliate the good will of the people, without yielding the point of navigation, as the commerce carried on would appear the effect of an indulgence to an individual, which could be withdrawn at pleasure. On consultation with his friends, who well knew what further concessions Wilkinson could extort from the fears of the Spaniards, by the promises of his good offices in preaching peace, harmony, and good understanding with this Government, until arrangements were made between Spain and America, he was advised to insist that the Governor should insure him a market for all the flour and tobacco he might send, as in the event of an unfortunate shipment, he would be ruined whilst endeavoring to do a service to Louisiana. This was accepted. Flour was always wanted in New Orleans, and the King of Spain had given orders to purchase more tobacco for the supply of his manufactories at home than Louisiana at that time produced, and which was paid for at about \$9.50 per cwt. In Kentucky it cost but \$2, and the profit was immense. In consequence, the General appointed his friend Daniel Clark his agent here, returned by way of Charleston in a vessel, with a particular permission to go to the United States, even at the very moment of Gardoqui's information; and, on his arrival in Kentucky, bought up all the produce he could collect, which he shipped and disposed of as before mentioned; and for some time all the trade for the Ohio was carried on in his name, a line from him sufficing to insure to the owner of the boat every privilege and protection he could desire.

On granting this privilege to Wilkinson, the Government came to a resolution of encouraging emigration from the Western country, and offered passports to all settlers, with an exemption of duty on all the property they might bring with them invested in the produce of the country they came from under the denomination of settlers. All those who had acquaintances with a few persons of influence in Orleans obtained passports, made shipments to their address, which were admitted free of duty, and, under pretence of following shortly after with their families, continued their speculations. Others came with their property, had lands granted them, which, after locating, they disposed of, and, having finished their business, returned to the United States. A few only remained in the province, and they were the people who, in general, availed themselves least of the immunities granted by the Government. They possessed a few slaves and cattle, but had little other property, and they generally settled among their countrymen in the Natchez, and increased the cultivation of tobacco, at that time the principal article raised for export in the district. This encouragement given to emigrants and speculators opened a market for the produce of the Ohio. Flour was imported from Pittsburg; and the farmers finding a vent for all they could raise, their lands augmented in value, their industry increased, and they exported annually to Louisiana, for some time past, from ten to fifteen thousand barrels of flour, for which they generally find a ready market. When the first adventurers began to purchase, flour was to be had for from eighteen to twenty shillings, Pennsylvania currency, per barrel, on the Monongahela, but was of a very bad quality, and was only made use of for biscuit, or in times of scarcity. It gradually improved, and in 1792 the best kind was supposed equal to that manufactured in Philadelphia; but, being put up negligently, does not keep so long, and for that reason alone is not so much esteemed as Philadelphia flour.

The Court of Spain, informed by its officers here of the steps they had taken, and the motives which had induced them, otherwise ignorant of the situation of affairs with respect to Kentucky, and consequently easily impressed with the ideas they wished to inculcate, not only approved of what they had done, but granted a further permission to all the inhabitants of the Western country to export their produce to Orleans, where it was admitted on paying fifteen per cent. duty. This increased the intercourse, as many who would not before adventure, while it was a matter of favor granted by the Governor, now entered into commercial speculations; and,

from the Ohio, the province of Louisiana was not only supplied with a sufficient stock of flour, whiskey, and salted provisions, hemp, and, latterly, cordage, but a considerable quantity of some of them often was shipped from hence, as the produce of this province, to Havana and other Spanish ports; besides these articles, the produce of their lands, dry goods were secretly imported, and sold in the different ports along the river; and, although orders were given to the commandant of New Madrid, the first Spanish port below the mouth of the Ohio, to prevent such importations, and seize on all who transgressed these orders, it was easily avoided. Here the boats gave a manifest of their cargo, under which a passport was given; this was endorsed by the different commandants on the river as the boats passed; the owners might sell their cargoes where they pleased, and by the manifest which they were bound to deliver to the Government immediately on their arrival at New Orleans, their duties were calculated. These duties continued to be exacted at the rate of fifteen per cent. until after the arrival of the Baron de Carondelet, when, under the idea of facilitating certain political ideas of his own, he reduced them, on his own authority, to six per cent. This measure was highly disapproved of by Gardoqui, the Minister of Finance, who threatened to make him personally responsible for the difference, and ordered the duties to be placed on the former footing. The Baron, who was not easily diverted from a favorite measure, paid no attention to the Minister's first orders; he represented a second time, and again received a more positive order than the first. Despairing of being able to gain his point with him, and determined not to abandon it, he addressed himself to the King, through the Minister of State. His plans were approved of, and the duty fixed at six per cent., at which rate it still subsists: and this is the duty exacted on every thing imported from any of the American settlements on the Ohio or Mississippi for sale in New Orleans. This duty is far from being burdensome to the importer, on account of the low rate of estimation, and the facility with which, by various means, a considerable part of it is always avoided. Flour is valued but at four dollars a barrel; first quality tobacco, three dollars per hundredweight; other quality, two dollars; whiskey, thirty-seven and a half cents per gallon; and salt provisions and all other articles at a reasonable rate, as may be seen in the tariff which accompanies this, according to which the duties are calculated, and which naturally fall on the consumer. By degrees the importation of flour from the Ohio has almost put a final stop to any from the Atlantic States, and we

shortly expect that such quantities will be manufactured in the Western country, as to permit the merchant of Orleans to enter into competition with those of the Middle States at foreign markets. The quantity of different productions imported from the Ohio since the opening of that trade has varied considerably from year to year. In the beginning, tobacco was the principal export from Kentucky, and, at one period, from one thousand five hundred to two thousand hogsheads came down the Mississippi annually for three or four years; they, at the same time, exported a great quantity of butter, lard, and salt provisions. Within the last three years, the exportation of tobacco has considerably diminished, and flour seems to take its place. Hemp has likewise been imported from thence in considerable quantities; was formerly reshipped from hence to the Atlantic States, but what now comes is manufactured here. Cordage is likewise imported from Kentucky, where some rope-walks are set up; and, in future, it is to be presumed that little or no hemp will be exported from New Orleans: for the encouragement of the manufactory here, that article is exempt from duty on importation. In the year 1792, the King ceased purchasing the usual quantities of tobacco in Louisiana, which was formerly two millions of pounds, on account of some frauds in packing, and the general bad quality of the tobacco, as the planters, sure of having theirs received by the inspectors, on giving a small gratuity, made generally three cuttings, and put up every thing that ever looked like tobacco. This punishment was sensibly felt, as a great price was given for it, say nine dollars and a half per hundredweight. This culture ceased immediately on the eastern side of the Mississippi on this event taking place. The people of Natchez turned their attention to indigo, which they raised with success; but changed this branch for that of cotton, which now forms the staple article of their growth, and bids fair to be an object of the greatest importance; the crop of last year from that district is supposed to exceed three thousand bales, of two hundred and fifty pounds each, and the average price has been twenty cents per pound.

NATCHEZ, June 4, 1797.

SIR: As it is probable that this will reach you before my despatches of the 27th of last month, by way of New Orleans, I have enclosed duplicates.

About seven days ago, twenty-five Spanish soldiers arrived at this place, where they continued one night, and then proceeded up to the Walnut Hills. On the 28th of May, I received a letter from Governor Gayoso, No. 1, to which I replied on the 31st, No. 2. From Governor Gayoso's letter, it appears that the Baron de Carondelet is not well satisfied with his conduct; they are at this time not on good terms, and the breach has been widened by the artful management of a certain Mr. Power, now at this place, who was last season intriguing in the State of Kentucky for the Spanish Government; he is particularly patronized by the Baron. The transactions which the Baron alludes to, I suspect, are the arrangements I made with Governor Gayoso, by which the troops of the United States were brought into this district with his consent and apparent approbation. The difficulty of getting them away is now obvious both to himself and the Baron, and as it was done without consulting the latter, he feels an inclination to condemn the conduct of the former.

It is now reported by the Spaniards that a Minister Plenipotentiary has been sent by the Court of Madrid to the United States to inform our Executive that the country and posts now held by His Catholic Majesty on the east side of the Mississippi, above the thirty-first degree of North latitude, are not to be given up until a general peace takes place in Europe, and that, from the uniform pacific disposition of the United States there can be no doubt of his success. This report is credited but by few.

The citizens of the United States, who are trading on the Mississippi, are frequently treated with great insolence at the Spanish posts, and their property taken for the use of His Catholic Majesty, when wanted, and always at a reduced price. About three weeks ago, a cargo of flour, consisting of between three and four hundred barrels, was taken at the Walnut Hills from a Mr. McCluny, of Washington County, in the State of Pennsylvania, against his will, to be paid for in New Orleans at such price as the officers of Government see proper to give, which is generally three dollars per barrel less than the current price in market. A few days ago Mr. Francis Baily, a citizen of the United States, who had lately come on here with some goods, had a tender of a commissary's certificate payable at the treasury in New Orleans, which species of paper was passing at a discount of twelve per cent.; Mr. Baily declined taking the certificate as payment for the debt, and appealed to Governor Gayoso for redress, who immediately

decreed that the tender was legal. These cases are not singular; they are particularized because both the gentlemen mentioned will be in Philadelphia in the course of a few weeks, and I expect will make a point of substantiating the facts—both cases being a violation of the late treaty between His Catholic Majesty and the United States.

From the jealous and suspicious disposition of the Spaniards, I do not think it possible that any treaty or compact can be lasting between that nation and our Western people, while the former have any possessions on the east side of the Mississippi.

Dr. Watrous is now here. He was on his way from Fort Hamilton, on furlough, to the State of Connecticut, but Captain Pope and myself prevailed upon him to stay with us, until we have some intelligence respecting our continuance in this country.

I am, sir, with great esteem and respect, your friend and humble servant,

ANDREW ELLICOTT.

Hon. SECRETARY OF STATE.

P. S.—At the moment I was folding this, the enclosed proclamation, No. 3, by the Baron de Carondelet, was put into my hands. The various and contradictory reasons assigned by the Spanish officers for their delay in carrying the late treaty into effect, are too obvious to need a comment.

A. E.

NATCHEZ, June 5, 1797.

SIR: I have this moment received private information that Mr. Power, who I have mentioned to you in my communication of yesterday, is, by order of the Baron de Carondelet, to proceed immediately through the wilderness, to the State of Kentucky. There is every reason to believe that his business is to forward the views of Spain, by detaching the citizens of Kentucky from the Union. It has been hinted to me that Mr. Power will, in the first instance, pay a visit to General Wilkinson, who, we are informed, is now in Cincinnati.

I am, sir, your obedient servant,

ANDREW ELLICOTT.

Hon. SECRETARY OF STATE.

DARLING'S CREEK, November 8, 1798.

SIR: On the 10th of last month, having opened the boundary between the United States and His Catholic Majesty, from the Mississippi River to the thin pine country, we ceased carrying the line on in that accurate scientific manner in which it was begun, and from the end of the line, designated in the report which accompanies this, the work will generally be done with a common surveying compass, and corrected at the different navigable water-courses which it may happen to cross.

The line mentioned in the report is opened sixty feet wide, and passes through a country impenetrable to any but Americans. The labor has been equal to what would in our country have opened at least one hundred miles. The business, it is evident, will not go on with that rapidity we could wish; nothing, however, will be wanting on our part, and I think it will be completed the ensuing season. Governor Gayoso has evidently been brought into a co-operation very reluctantly, and certainly has no desire of having it pushed. Mr. Power, a gentleman well known for his intrigues in Kentucky and other parts of the United States, is the surveyor on the part of the Crown of Spain; he has attended but one week on the line, and I do not believe that he will attend another, during the execution of the work. He has, however, employed a deputy, who is Mr. Daniel Burnet, the same person who carried Mr. Hutchins's papers to Congress last winter; he has yet behaved very well. The others employed, Major Minor excepted, are of little consequence, except to disorganize and talk politics. The acting commissary is a Mr. Gensack; he was taken by the British at the Cape, and carried to Jamaica, from whence he made his escape to the United States, where he found safety, but, in the true character of his nation, he equally hates both Americans and British: he is sullen, reserved, and intriguing. There are no Spaniards concerned in the business, and but a few of the common soldiers. Major Minor and Mr. Burnet are Americans; the others, including the laborers, are generally French, or descended from French ancestors, or Roman Catholic Irish. When I look over this strange heterogeneous collection, I cannot help asking this question: "Can the

Spaniards really be serious in carrying the treaty into effect?" If they are, it is very extraordinary that there is not one of that nation employed above the rank of a common soldier.

I have always been of opinion that it was a happy circumstance for both countries that Major Minor was appointed Commissioner on behalf of the Crown of Spain; his prudence and sound judgment will, in all probability, enable us to carry the work through, which I am confident would not have been the case, had Mr. Power been appointed to that trust, as was proposed by Governor Gayoso, and to which I pointedly objected, as did Mr. Dunbar also.

If our surveyor had been a man of prudence and talents, our difficulties would have been much less; but his want of information, extreme pride and ungovernable temper, constantly furnish the opposite party with weapons. He has insinuated that the work is erroneous, and that Major Minor and myself have combined to injure both Governments, and wantonly lavish away public money. He himself has been the only idle person on the side of the United States; his whole attendance on the line as surveyor would not exceed one week. His insinuations, I am confident, would have but little weight with the people of the United States, but the case is very different with the Spaniards, naturally jealous, and uninformed in science, particularly so far as it relates to astronomical operations.

On Friday, the 12th of last month, General Wilkinson arrived at our camp, and continued with us until Sunday, the 14th. We had much conversation on the state and situation of the country; his ideas respecting both appeared very correct so far as I was able to determine. He informed me that he had seen some of Mr. Freeman's correspondence with Captain Guion, which, in his opinion, came fully within the meaning of the late sedition law; and recommended, in the most serious manner, that he should be immediately suspended from his employment on the line. This, added to the opinion of Governor Sargent, (who spent a number of days at our camp,) Colonel Bruin, and many other respectable gentlemen, determined me in taking that measure. The surveying at present is done by Mr. Gillespie, the chain-carrying by Mr. Ellicott and Mr. Walker. General Wilkinson has removed Mr. McClary from the command of my escort; his conduct was far less exceptionable than that of Mr. Freeman, and when he did err it was generally the effect of bad advice.

Mr. Freeman left our camp on the 30th September, at the very time we were changing our system of carrying on the work, and in which the compass only is used, without giving me any notice of his departure, that arrangements might be made to meet the want of a surveyor. He was absent until the evening of the 17th ultimo, and on the morning of the 18th he was furnished with a note of suspension. He has constantly conducted himself in that same independent way.

The reference, No. 9, which was in cipher, in my communication of the 14th of November last, contained an account of an extraordinary plan; but that plan, in my opinion, is now given over, and the knowledge obtained of the country, its strength, and the disposition of the inhabitants, will be turned to the advantage of the United States by some of the principal characters concerned. It is the best they can now do. That the plan is given over may be collected from No. 1, which for particular reasons is in cipher, and ought to be secret. It cannot be considered as a literal translation, which you will see by the introduction, but it conveys accurately the ideas contained in the letter from which it is extracted.

The plan of Baron de Carondelet, mentioned in my communication of 27th of June last year, was correct as there stated; the particulars I have since obtained, and will be detailed to you by a gentleman, in the course of a few months, who was in the secret of the whole business. That you may not be at a loss when that gentleman calls upon you, he will have a letter of introduction from me, with an official communication, and a number of questions in the same cipher with reference to No. 1. His answers to those questions will convince you that my information has constantly been correct.

I shall leave this place (where I have only halted to draw up this communication) to-morrow, and proceed to the Pearl River, where the guide line will be corrected. I shall then proceed down the river to Lake Maurepas, from thence into Lake Pontchartrain and to New Orleans, where I expect to arrive about the 1st of January next. From New Orleans I shall follow the coast to Mobile, and again correct the guide line as run by the surveyors. From Mobile I shall follow the coast to Pensacola; I shall pursue the coast to the Chatetucka, and ascend the river to the guide line; as soon as that is corrected, I shall proceed to the mouth of Flint River and from thence to St. Mary's.

You will easily perceive that my design in following the coast is to obtain an accurate knowledge of its situation, the navigation of the different rivers we shall have to ascend, and to correct the geographical positions where it may be necessary. My map of the Mississippi, corrected by a great number of observations, is now made out in the rough, and ready for copying.

The astronomical observations which I have made since I left Philadelphia, will make a large and not uninteresting publication.

Our business now goes on with the greatest harmony. That part near the coast, in which, as an American and friend to my country, I feel myself the most interested, will be nearly completed before Mr. Freeman can join us, if the President should disapprove of the measures which have been taken with him; and in that case I must request the favor of being permitted to return home. All that his friend General Mathews, Colonel Pannell, and a few others, can say of him, must be negative evidence; they may say what he has done; but what they say he has done in forwarding our business must be from his own report. They have not been visitors at our camp, where the only information founded upon facts could be had. He has not made a single observation since we came into this country, though he endeavored, after my course at the beginning of the line was furnished, one whole week without success. He is, nevertheless, by General Mathews and Colonel Pannell, declared not inferior to Newton! This is not strange; they may possibly have less scientific knowledge than he has, and the solemn air and dictatorial manner of a professional schoolmaster may have contributed much to establish his character with them. His abuse of me I disregarded, till his caballing got into the camp; the consequences then became more serious, and the measure which I took was founded upon the best of motives—the service of my country, *and I have but one*, added to a natural desire to live in peace with all mankind. I have but few observations to add to the depositions respecting his conduct which are forwarded with this. Mr. Robins, one of the deponents, is superintendent of the laborers, and always with them. Mr. Collins, another of the deponents, is as worthy a man as any in the United States, and assistant to Mr. Anderson; he constantly resides in the laborers' camp. Mr. Lindsey likewise resides in the camp; he is a gentleman of veracity, and agent for the contractor. These gentlemen have been with us from the commencement of the business to the present time, and perfectly acquainted with the conduct of Mr. Freeman, and superior to

his art, which he frequently exerted with them in vain. Similar depositions to those forwarded might be obtained from the gentlemen of the Spanish camp, but it appeared to me improper. You will see I have omitted taking those of Mr. Gillespie and the chain-bearers; it might be said they were interested. And, as Mr. Anderson has been equally abused with myself, on that account his has not been taken. You will see by the depositions that I rise early: it is generally before the break of day; from that time until dark I rarely sit down one hour; after candle-light I am generally engaged until 10 o'clock in writing and arranging my observations.

I hope the citizens of the United States begin by this time to be weaned from their attachment to the French nation. For my part I have experienced so much want of principle and integrity among them, and their partisans in this country, both individually and collectively, that my prejudices against the whole nation are so strong, that it is with difficulty I can guard my expressions so as not to give offence.

The arrival of General Wilkinson has created considerable alarm in the Spanish colonies below, and Governor Gayoso has directed that the militia within his Government be immediately armed. The fears and jealousies of the Spanish nation will certainly, in the course of a few years, occasion the loss of all the country on this side of the Mississippi, to the Crown of Spain.

The whole of my correspondence on various subjects, since my communication of the 29th of July last, would make a large volume, and as there is but little of it immediately interesting to the United States, I shall only refer you to Nos. 2, 3, 4, and 5.

I am sensible you will perceive a great want of arrangement in this communication; but at the same time I am equally so that you will excuse it, when I assure you that the whole packet, except Mr. Clark's letters and the correspondence with Governor Gayoso, is the work only of two nights and one day, and that in the woods, without any other table than a small instrument box, the weather cold and windy, and all my young men who used to aid me in copying many miles ahead on the line.

I am sorry that the report mentioned in the beginning of this is not forwarded; my part has been done some time, but the Spanish part is not yet ready, owing to the absence of Mr. Power. I shall write to you again from New Orleans. In the mean time, believe me to be, &c.

ANDREW ELLICOTT.

Hon. SECRETARY OF STATE.

P. S. Daniel Clark, Esq., of New Orleans, has lately spent a number of days with me in my camp; from him I have received much valuable information, which it will be unnecessary for me to detail, as he will give it to you himself in Philadelphia the ensuing winter. He intends to visit that city immediately after our interview in New Orleans.

There is not a gentleman of literature or science, and scarcely one of respectability in this country, with whom I have not been upon the most intimate footing ever since I came into it; and every attack that has been made upon me has arisen either from envy or misconception, to which I should never have paid any attention had the principles of opposition not entered our camp, and begun to embarrass our business.

A. E.

[Communicated to the House, February 4, 1804.]

To the House of Representatives of the United States:

In my Message of January 20th, I stated that some papers forwarded by Mr. Daniel Clark of New Orleans to the Secretary of State, in 1803, had not then been found in the office of State, and that a letter had been addressed to the former chief Clerk, in the hope that he might advise where they should be sought for. By indications received from him they are now found. Among them, are two letters from the Baron de Carondelet, to an officer serving under him at a separate post, in which his views of a dismemberment of our Union are expressed. Extracts of so much of these letters as are within the scope of the resolution of the House are now communicated. With these were found the letters written by Mr. Clark to the Secretary of State, in 1803. A part of one only of these relates to this subject, and is extracted and enclosed for the information of the House. In no part of the papers communicated by Mr. Clark, which are voluminous, and in different languages, nor in his letters, have we found any intimation of the corrupt receipt of money by any officer of the United States from any foreign agent. As to the combinations with foreign agents for dismembering the Union, these papers and letters offer nothing which was not probably

known to my predecessors, or which could call anew for inquiries, which they had not thought necessary to institute, when the facts were recent, and could be better proved. They probably believed it best to let pass into oblivion transactions which, however culpable, had commenced before this Government existed, and had been finally extinguished by the Treaty of 1795.

TH. JEFFERSON.

FEBRUARY 4, 1808.

Extract of a letter from the Baron de Carondelet, dated

NEW ORLEANS, July 10, 1796.

I suppose, sir, that you are now at the Bluffs, and in possession of a command which requires firmness, vigilance, conciliation, and prudence, as well with regard to the savages as to the Americans; for the evacuation of that important post is not yet so certain as not to admit of doubt, at least so long as the savages remain attached to us. Besides, it is proper to keep in view that the neighboring States, that is to say, Kentucky and Tennessee, are interested that it should remain in our power, for political reasons which cannot be trusted to paper. You must, of consequence, keep them in those sentiments, by treating their inhabitants, to whom the liberty of the navigation is granted, with kindness and regard. Let the friendship of the Chickasaws and the satisfaction of the Americans who navigate the river, be the basis of your conduct; as for the rest, I have not yet received any official news from the Court concerning the treaty, which we know nothing of but through the American gazettes.

All the appearances of an approaching peace in Europe have vanished; but it is probable that we shall not have war with the English. Fourteen French ships of the line, with ten thousand men, are actually to take possession of the Spanish port of St. Domingo; and France and Spain appear more united than ever. The Spanish inhabitants have lost their slaves.

Extract of a letter from the Baron de Carondelet, dated

NEW ORLEANS, Sept. 12, 1796.

In answer, sir, to your private letter of the 10th of last month, I will acknowledge to you that I was under the belief that the Fort of St. Ferdinand was badly constructed, but not to the degree that you point out to me. You must, however, without augmenting the expenses which its evacuation would render useless, put it in a state to maintain yourself there until I receive new instructions from the Court. Should the Court think proper, as may very well happen, not to evacuate our posts on the Mississippi, I will despatch a courier to you in all haste, that you may change the situation of the fort, which ought to be done with all diligence, and so as that it be again sufficiently intrenched to prevent its being surprised or attacked before it is in a state of defence; for this purpose I will send immediate and secret orders to New Madrid and to St. Genevieve, that carpenters, masons, &c., should instantly be sent to you, and you may also count on a reinforcement of troops, which I will send to you by the galley *Philapa*, which I am causing to be rebuilt without noise; all these dispositions, I repeat to you, ought to be prompt and secret. I expect the answer of the Court in ——.

If His Majesty, on the contrary, should persist in it that the evacuation of the forts must take place, it will be done in the most simple mode, towards the commencement of January. In the mean time you must prepare the minds of the Chickasaws, and of the inhabitants of Kentucky and Tennessee, for one or the other of these events. You ought to make the latter understand that their natural interest leading them to separate at some day (*un jour*) from the Atlantic States, the occupation of our posts on the Mississippi by the troops of the latter could not but be disastrous to them, since they would cut off all communication between them and us, from whom alone they could, in that case, hope to receive assistance.

Extract of a letter from Daniel Clark to the Secretary of State, dated

NEW ORLEANS, March 8, 1803.

As a proof that expectations of assistance from ourselves against our own Government have been always relied on by the Spaniards, and that they have constantly looked to a division of our Western States from the General Government, I now forward you an order to receive from Washington Morton, Esq., of New York, a sealed packet which I left in his possession

when I set out for Europe, and which I then mentioned I would show you at my return, not thinking, at that time, that circumstances would occur so soon as to render the disclosure a measure of immediate necessity. Among other papers of less importance in this packet, is a small part of the correspondence of the Baron de Carondelet with the officer commanding Fort St. Ferdinand, at the Chickasaw Bluffs, in which he suffers his plans and views to be clearly perceived, and which were solely aimed at our destruction; the remainder are, as well as I recollect, copies of talks and letters to and from the Chickasaw Indians; and, by the Baron de Carondelet's letter to the officer, you will perceive that the fact I advised you respecting the annual pension of five hundred dollars to Uguluycabé cannot be disputed.

Should you think these documents of sufficient importance to require my presence in Washington to elucidate any part of them, I shall immediately sacrifice all private business of my own, and hasten there; and, in the mean time, will endeavor to collect, from undoubted sources, such other information relative to this subject as may be acceptable.

Although for four or five years past I had a perfect conviction that the intrigues of the Spaniards with the Western country were not for the time dangerous, on account of the incapacity of the Governors of this province, and their want of pecuniary means, yet, fearful of what might happen in future, should more enlightened and ambitious chiefs preside over it, I could not last year resist the temptation of hinting my suspicions of what had been formerly done in this way to the President at an interview with which he honored me, and I even went so far as to assert that a person supposed to be an agent from the State of Kentucky had been here in the end of 1795 and beginning of 1796, to negotiate on the part of that State, independent of the General Government, for the navigation of the Mississippi, before the result of the Treaty of St. Lorenzo was known, wishing that this hint might induce the President, to cause inquiry to be made into the circumstance, which he could easily find the means of investigating; but as he made no other inquiry of me respecting it than merely in what year the thing happened, it struck me that he must have had other information on the subject, and that he thought it needless to hear any thing more about it. By great accident I have lately learned something which induces me to suppose that any information he may have received

respecting the measure alluded to has been incorrect, and given with the view of misleading him, and I request you will mention the subject anew to him, that you may know how far I am right in my suspicions. The information I possessed on the subject, could not, from the way in which it was obtained, be accompanied with what would be proof to convict the person concerned, or I should have openly accused him in the face of the world; but to me it amounts to a moral certainty of his guilt, and my conduct to him showed, on all occasions, how much I detested his object and his person. The same want of proof positive, sufficient to convict him, prevents me at present from naming him; but if inquiry is diligently made about the influential character from Kentucky, who at that period was so long in Natchez, and afterwards here, what his business was, and what was the idea entertained of him, enough will doubtless be discovered to put our Government on its guard against him and others of his stamp, and against all foreign machinations in that quarter in future.

Communicated to the House, April 25, 1808, by Daniel Clark.

Pursuant to the resolution of the House, calling on me for testimony relative to General Wilkinson's receipt of money from the Spaniards, I now lay before it some original papers, corroborating the statement which I have already given:

No. 1. The first is the translation of a letter, in Spanish, from Thomas Power to D. Thomas Portell, dated at New Madrid, June 27, 1796, and containing the reasons why it was proper for Portell to deliver to Power, without an order in writing from General Wilkinson, a sum of money which had been placed for that purpose in Portell's hands by the Spanish Government of New Orleans. The original letter is subjoined in the handwriting of Mr. Power, with which I am acquainted.

This letter explains the deposition of Derbigny, and also makes mention of the letter in cipher from General Wilkinson to Gayoso, then Governor of Natchez, of which a translation, in the handwriting of Gayoso, has heretofore been laid before the House. It may be proper to add that I am well acquainted with the handwriting of Gayoso, in which the translation is written, and that he has been dead more than eight years.

No. 2. A translation of Portell's answer to the foregoing, dated Madrid, on the same day, June 27, 1796. The original is subjoined in the handwriting of Portell, with which I am acquainted.

The object of this correspondence seems to have been to furnish to Portell the means of explaining to his superiors his motives for delivering the money without a written order.

Nos. 3 and 4 are two original papers in the handwriting of Philip Nolan, with which I am well acquainted. Nolan was the confidential agent of Gen. Wilkinson in 1796, and has been dead several years.

These two papers are stated by Mr. Power to be secret instructions given to him by General Wilkinson, after the latter received money from Portell, mentioned in Nos. 1 and 2. The instructions, according to Mr. Power's statement, were given in the handwriting of Nolan, as a measure of precaution against the danger of detection. The six hundred and forty dollars, of which they make mention, are stated by Mr. Power to be a part of the sum received, for Wilkinson, of Portell, which Power, after his arrival in Kentucky, was obliged to use for the expenses of his journey.

No. 5. Is the translation of a letter to the Baron de Carondelet from Mr. Power, dated at New Orleans, May 9, 1797, after his return from Kentucky. The original letter in Spanish is subjoined. It is in Mr. Power's handwriting, with which I am acquainted. It explains the affair of the six hundred and forty dollars, mentioned in the secret instructions, Nos. 3 and 4, and refers to and quotes those instructions as the instructions of General Wilkinson.

No. 6. Is the translation of the Baron de Carondelet's answer to this letter. The answer is in Spanish, and in the handwriting of Don Andres Armesto, Secretary to the Government, which I know. It is signed by the Baron de Carondelet, with whose signature I am acquainted.

DANIEL CLARK.

No. 1.

Translation of a letter from Thomas Power to Don Thomas Portell,
Commandant of New Madrid, dated

NEW MADRID, June 26, 1797.

Having received verbal instructions from Mr. James Wilkinson, the American General, to take charge of the money, which, by a letter, he received from the Secretary of the Government, Don Andres Armesto, under date of 7th or 8th of March last, of which I was bearer, he has advice, is deposited in this post, and being informed by the official letter which you have received on this business from the Governor General of the Province, of which you will be pleased to furnish me a copy, that said money is not to be delivered without an express order from the said Mr. Wilkinson, I find myself forced to relate circumstantially some particulars to smooth and remove the difficulty which the want of a written order on the part of the aforesaid General Wilkinson presents. Although this relation may appear an abuse of the confidence with which the Governor General of the Province and the Governor of Natchez, and particularly General Wilkinson, have honored me, I am persuaded that the urgency of the case which offers will serve me as an excuse and justification.

You are not ignorant of the fact, that Don Manuel Gayoso de Lemos being here in the month of September, of the year last past, he intrusted to me some despatches of the greatest importance for General Wilkinson, which I carried to Cincinnati, and I returned with the answers in the month of November. By order of the said Don Manuel Gayoso, I made immediately another journey to the Ohio, and I ascended it to Red Bank in search of Sebastian, who came with me to the mouth of the Ohio, where we met with the Governor of Natchez. At the end of December, I accompanied this gentleman to Natchez, and I went thence to New Orleans.

The principal object of my going down was to take charge, by order of General Wilkinson, of the money which you have now in deposit for him, which is shown by the letters which he wrote to the governors of this province and of Natchez; but, at my arrival, the money had been already sent off in one of His Majesty's galleys, for this place, which I learned from the Baron de Carondelet, the Intendant, and Don Andres de Armesto. I repeatedly treated on this business with the two last of these persons, urging forcibly the necessity of sending sugar, coffee, and powder, to New Madrid, to form a cargo to take to Kentucky with Wilkinson's money, hiding, by this means, the true intention of the voyage, and giving it the appearance of a commercial speculation. All this Wilkinson had before represented as indispensable for many reasons, particularly in order to avoid a misfortune

similar to that which had already occurred. At last the Secretary told me that the barge in which Mr. Aaron Gregg, the American officer, was to go up, was destined for this service, and that as for the crew, he would permit me to choose among the Creoles, residents in this post, those who might appear to me most worthy of confidence, so that I left New Orleans with the belief that at my return to this post I should find every thing disposed conformable to what I have just related. On arrival at Greenville, informed General Wilkinson of the steps which had no doubt had been taken, from whence has resulted, that he, like myself, was impressed with the belief that all the measures for executing this service with success had been taken. I cannot communicate all the motives why Wilkinson has not given me an order in writing; but one of them was, that he did not know the sum of money which you had to deliver to his order, the Governors not having written a word to him on the subject, the Secretary only saying that his money was deposited in New Madrid, without expressing the sum. In the letters in cipher, from General Wilkinson for the governors, which are here enclosed, he tells them that he has sent me to bring the aforesaid money, informing you that the No. 1 is for the Governor General of the Province, and the No. 2 for Don Manuel Gayoso. I will add that General Wilkinson, when I represented to him that on presenting myself without his order in writing, some difficulty might arise, authorized me, if the case required it, to write an order that you should deliver his money, specifying the sum there might be, signing it in his name, and giving you a receipt therefor. I cannot omit that the commission of General Wilkinson was so sudden, so urgent, that it was extended even to limiting my return to my destination by the first of August, of which I advise you that you may endeavor not to delay the service. I believe that the Governor General is not ignorant of the embarrassments of General Wilkinson, nor can he be ignorant that, for a long time past, he has been expecting this money, the delay of which has been the cause of much trouble to him, involving him in great difficulties; and I can assure you, confidently, that he will be very much disgusted with any delays in the expedition, which might be productive of serious injury. As for the mode of carrying the money, it is evident that to take it openly would be too scandalous a thing, if I were not to say that it would be madness. The unhappy result of the expedition of the unfortunate Henry Owen ought to serve as a beacon in order not to lose ourselves on the same rock, and to make us take another course less dangerous. I would wish you

to put a bag of one thousand dollars in a barrel of coffee or sugar, so that although the difference of the respective gravity, between silver, sugar, and coffee be very great, the quantity being so small, it will not be easily known. It will likewise be prudent to carry some barrels without money in order to sell them before arriving at Cincinnati, if it should so happen that any one should offer to buy these goods, because not to sell them when it might be done to advantage would excite suspicion; and to complete the disguise it would be well to take a certain quantity of powder and rum. If these dispositions should appear defective, I beg you to make such changes as may be to your mind. God preserve you many years.

No. 2.

Translation of a letter from Don Thomas Portell to Mr. Thomas Power,
dated

NEW MADRID, June 29, 1796.

Having well considered the contents of your letter of this day, I mention that I agree in every thing to the whole of the reflections you place before me; although at first sight it appears that I ought to wait the decision of the Governor General, as he prescribes to me in his official letter of the 20th of January of the present year, and of which I enclose you a copy, which you request of me. The circumstances which you expose are such, that they leave me nothing more to do than to tell you to forward me a memorandum of the number of pounds of coffee, sugar, barrels in which to fill the powder and rum you desire for your expedition, because, as soon as I receive it, I will get it ready as you desire, informing you that for the merchandise you must sign me an acknowledgment of having received it, and for the money a receipt as attorney of General Wilkinson.

In order that the barge may be ready, and as you may want it, I have written an official letter to the Lieutenant-colonel Vincente Folch, that he may send it as soon as possible, because as nothing was said to me of what you have now mentioned respecting it, Mr. Francis Langlois asked it of me for an affair of service, and took it loaded with corn to the Fort of San Fernando, and it has not been returned, although I have required it, thinking it might be wanted here; Don Vincente Folch having answered me, that if I had not orders to keep it, there were none to return it.

The two letters in cipher remain in my hands, which I shall forward by the first safe opportunity, with the distinction you point out, No. 1 to the Governor General, and No. 2 to the Governor of Natchez.

As for packing the money and arranging the barrels, as soon as they are ready, between you and myself, all this may be done without any one else acquiring a knowledge of it. God preserve you many years.

No. 3.

Instructions from Gen. Wilkinson to Thomas Power.

To proceed to Gallipolis: to make application and propositions to the leading characters there to induce them to move to New Madrid, with all the French of that settlement; to urge this point in such measure as to attract the attention of the public officers there, whose report to the Executive will immediately follow, and will account for his frequent missions to that place: to return as rapidly as possible; to load with flour and proceed without a moment's delay to New Orleans; in the route to see Newman, and to enter on the subject of his desertion; to inform him of the facts which have transpired, and the opinions prevalent; to urge his return, as the request of all his friends; to assure him of safety, and of such reward as he may demand; also that being pardoned for the imputed offence, no further process can lie against him for the same; that the oath which he was suborned to take, being made while in duress, is in itself a nullity, and cannot be offered in crimination of him; it will be necessary that he should take down his examination, founded on the interrogations furnished him; and if they prove material to the crimination of Wane and his associates, then he must embark N——n under a fictitious name at New Orleans for Philadelphia; and having arrived there, must lodge him in some retired place, and call upon me, under cover of the night, for further advice. You will hear of me at —— . If N——n cannot be prevailed upon to return under dispositions favorable to my views, then let his declaration on oath be circumstantially taken to all the points enumerated in the interrogations, in the presence of Dr. Flowers, Colonel Bruin, Daniel Clark, or any three or four of the most notorious, and of the most respectable Americans of the Natchez district. Let these gentlemen certify to two copies, and to the original, and let them be transmitted to me through different channels. P. to

take charge of the original. Mr. P. must take with him credentials from the Government of Louisiana, acquitting him of any political connection or agency injurious or hostile to the interests of the United States. He must carry to Philadelphia testimonials of his family and character, addressed to as many of the native respectable merchants of that city as possible: these may be readily procured from New Orleans and the Havana.

It is indispensable that P. should meet me in Philadelphia; for the rest let him rely on my friendship and address. To collect from Bradford every information respecting the Pittsburg insurrection, which may be employed, should it be found necessary, to disgrace certain persons: to bear no paper about him which carries my name upon it.

No. 4.

Employ the six hundred and forty dollars, *avec le cargaison*, to pay expenses and lay in a cargo of best flour *pour la ville*, where it will help to reimburse. In making your settlement, take care to secure me the six hundred and forty dollars advanced, and bring them with you. I have urged peremptorily the necessity of your presence at the metropolis. Bring me N——n, if, upon examination, you find his presence of more consequence than his deposition, when taken as directed. I believe he was caused to desert by O'Hara: probe him to that point. You are to bring me papers, but my name is not to be written or spoken. You must do the needful below to detect and expose past treachery or indiscretion, and to prevent either in future. I have referred particularly on this head. I shall expect you impatiently. Should I continue where I am I shall wish you near me. If I cross the water, you are to accompany: bring every credential of family and fortune to repulse the insinuations of —— . Trust something to my address, and put faith in my honor and affections to the grave.

No. 5.

Letter from Thomas Power to the Baron de Carondelet, dated

NEW ORLEANS, May 9, 1797.

Enclosed your Excellency will receive the documents relative to my last confidential expedition, made by your Excellency's order, on the Ohio, of

which I have already given you a narrative, as well verbal as in writing. The remarks which follow will serve for its elucidation.

I left New Madrid with ten oarsmen and a patron; the provisions which were delivered to the crew were, biscuit for a month; meat for a month; rum for fifteen days.

To disguise, as far as possible, the true object of the expedition, we had hired the people under the same conditions as are common in commercial voyages, so that the monthly rations allowed by the King did not even last fifteen days. The reason why I issued to the crew two extraordinary allowances of liquor daily, counting from the day we left Red Bank until our arrival at the falls of Ohio, was to encourage them to row with vigor, that Lieutenant Steel, whom I thought in pursuit of me, might not again take me, because, had I fallen into his hands a second time, I was lost. As respects the one hundred and fifty dollars, for the horse which I bought to make the journey from Frankfort to Cincinnati, and the expenses which accrued on this journey, they were indispensable for a double motive: to carry my complaint against Steel, for having offered so great an insult to our flag, and to give advice of my arrival to the American General, Mr. James Wilkinson, that he might take the necessary measures. I have to add that, the motive which has induced me to dispose of the merchandise which I received of J. and A. Hunt, in exchange for the coffee and sugar, was to give credit to the opinion which I myself had raised, that I had come to purchase horses to take to Natchez, in order to better the breed in that district. Besides this, as the occurrence with Steel had awakened suspicions, excited apprehensions, and attracted the attention of the inhabitants of the Western country, all had their eyes directed on me, so that I found myself obliged to do something which should please them, that it might serve me as a safe conduct to quit those parts, which by the this means I happily effected. The mare, of which statement No. 1 makes mention, was lost on my arrival at New Madrid in the woods, where she died of thirst, the excessive frosts having entirely frozen up the waters. The stud-horse I delivered on going down to Don Manuel Gayoso de Lemos, but he returned him to me a short time since, and I have him carefully kept until your Excellency is pleased to make some disposition respecting him. Of the sum of \$9,640, which I was to deliver to Mr. James Wilkinson, I have only delivered him nine thousand, having retained the six hundred and forty

dollars to avoid the unfortunate result with which I was threatened, and likewise to provide what was necessary for the crew during the voyage. The following are the documents which are enclosed:

No. 1. The account sale of the merchandise, laden, &c.

No. 2. Account of the expenses for the crew.

No. 3. Account and expenditure of the six hundred and forty dollars.

No. 4. Statement which shows in what manner the merchandise has been made use of.

No. 5. Statement which shows what is due to me.

No. 6. Invoice of J. and A. Hunt.

All which are accompanied with the obligation of Mr. N. Welch for one hundred and five dollars, and the two receipts of Mr. Boyd, the one for four hundred and sixty-six dollars and two-thirds, for the value of a horse; the other for two hundred dollars, for the value of a mare. The balance which appears in my favor, according to the statements Nos. 3 and 4, as well as the account of my monthly pay for fourteen months, I beg your Excellency will be pleased to direct that it should be remitted to me, or delivered to Mr. Philip Nolan, to whom I have given advice on the subject.

Mr. James Wilkinson, in the instructions which he has given me, directs that I should present to your Excellency the account of the expenses to which the six hundred and forty dollars have been applied, (and I have done so in the statement No. 3,) that he may be reimbursed said amount. The instruction says, "in making your settlement take care to secure me the six hundred and forty dollars advanced, and bring them with you." Although he charged me to take them to him to the United States, I am of opinion that no one is better suited to remit them than Mr. Philip Nolan, as your Excellency has now resolved that I should remain in this province; your Excellency will please to suffer me to assure you that in every particular I have acted with prudence, with honor, and the disinterestedness of an honest man, as well as with the zeal and fidelity which the King's service requires, and with the vigilance and activity, [here there is a line unintelligible.] I deserve nothing and expect nothing for having fulfilled the obligations of a good subject to His Majesty, unless your Excellency will be pleased to procure

me opportunities of displaying the inclination I feel of sacrificing myself for the prosperity of my country and glory of my Sovereign.

God preserve your Excellency many years.

THOMAS POWER.

No. 6.

Answer to the foregoing, dated

NEW ORLEANS, May 28, 1797.

There remain in my hands the six documents relative to the account of the last expedition which you made on the Ohio, and which you enclosed to me in your official letter of the 9th instant, and they are as follows:

No. 1. Account sales of the effects laden at New Madrid.

No. 2. Another of the expenses of the crew.

No. 3. Account of the expenditure of the six hundred and forty dollars.

No. 4. Statement which shows how the merchandise has been employed.

No. 5. Statement which shows the balances due to you, &c.

No. 6. Original invoice of J. & A. Hunt.

On account of it there will be delivered to you one thousand dollars, that you may make preparations for your journey in the new commission which I intrust to your care.

It is necessary to see how you can get rid of the horse with the least possible loss, as well as to recover the debt of Nicholas Welch, or have it recovered, for which purpose I enclose you his obligation; and likewise the proceeds of the merchandise, which, to the amount of three hundred and fifty-three dollars, you delivered to Don Pedro Derbigny, in order to give an account to the Court without these balances, which cause trouble and appear speculations, when they are no more than the effect of necessity, and the difficulty which these commissions cause in places where there are no resources, when you have to deceive the vigilance of spies.

As you finish these matters, and as soon as your present commission is fulfilled, you will give me advice.

God preserve you many years.

BARON DE CARONDELET.

To THOMAS POWER.

THURSDAY, January 28.

Mr. SOUTHARD, one of the members for the State of New Jersey, informed the House of the death of his colleague, Mr. EZRA DARBY, late one of the members of this House: Whereupon, the House came to the following resolutions:

Resolved, That a committee be appointed to take order for superintending the funeral of EZRA DARBY, Esq., late a Representative from the State of New Jersey.

Resolved, unanimously, That the members of this House will testify their respect for the memory of EZRA DARBY, Esq., late one of their body, by wearing crape on the left arm for one month.

Resolved, unanimously, That the members of this House will attend the funeral of EZRA DARBY, Esq., on to-morrow at twelve o'clock.

Resolved, unanimously, That a message be sent to the Senate, to notify them of the death of EZRA DARBY, late a member of this House, and that his funeral will take place on to-morrow, at twelve o'clock; and that the Clerk of this House do go with the said message.

Ordered, That Mr. SOUTHARD, Mr. MASTERS, Mr. PORTER, Mr. HELMS, Mr. NEWBOLD, and Mr. LAMBERT, be appointed a committee, pursuant to the first resolution.

SATURDAY, January 30.

Removal of Federal Judges on the Address of Congress.

Mr. G. W. CAMPBELL.—It has always been my opinion that in a free Government like ours, every department ought to be responsible for its conduct. The Constitution of the United States was evidently framed on this principle, and the preservation and security of the rights and liberties of the citizens and the due execution of the laws will be found to rest, in a great degree, on rendering public agents sufficiently and practically responsible for their conduct to the nation. That this is not the case with the Judiciary of the United States has been proved by experience. Your judges once appointed are independent of the Executive, the Legislature, and the people, and may be said to hold their offices for life. They are removable only on conviction by impeachment of high crimes and misdemeanors, and this mode of proceeding has been found in practice totally inefficient, and not to answer the purpose for which it was intended—that of rendering your judges duly responsible for their conduct. They may therefore be considered as independent of the rest of the nation, (and they seem to think so themselves,) as if this provision in the constitution, relative to impeachment, did not exist. No matter how erroneous their opinions—how dangerous to the public weal—how subversive of the interest of the people—how directly opposed to the laws of your country; yet, as it is neither a high crime nor misdemeanor to hold erroneous opinions, which they seem conscientiously to believe, they cannot be removed by impeachment—they are independent of the rest of the nation.

This subject has attracted the attention of the people in most of the States. The Legislatures of several States have passed resolutions declaring the necessity of amending the Federal Constitution, so as to render the judges, in practice as well as in theory, responsible for their conduct. The most numerous branch of the Legislature of the State which I have the honor to represent in part, have declared their opinion in favor of such amendment. In order, therefore, to bring this subject before the House, that the sense of the National Legislature may be ascertained thereon, I submit the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring therein, That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States,

which, when ratified by the Legislatures of three-fourths of the said States, shall be valid to all intents and purposes, as part of the said constitution: The Judges of both the Supreme and Superior Courts of the United States shall, after the —— day of ——, be removed from office by the President of the United States, on the joint address of both Houses of Congress requesting the same, three-fifths of each House concurring in such address.

This resolution was referred to a Committee of the Whole on the state of the Union.

MONDAY, February 1.

Another member, to wit, GEORGE CLINTON, junior, from New York, appeared, produced his credentials, was qualified, and took his seat in the House.

MONDAY, February 22.

Captain Pike.

Mr. J. MONTGOMERY observed, that to Captains Lewis and Clarke, who had explored the Western country, a compensation had been made; he held in his hand a similar resolution for remunerating Captain Pike for the important services he had rendered on an almost similar expedition, which he proposed, as follows:

Resolved, That a committee be appointed to inquire what compensation ought to be made to Captain Pike and his companions for their services in exploring the Mississippi River, and in their late expedition to the sources of the Osage, Arkansas, and La Platte Rivers, together with their tour through New Spain; and that they have leave to report by bill or otherwise.

Mr. MARION objected to the phraseology of the resolution, as sanctioning a general principle, to which he was not prepared to assent. The resolution did not go to inquire if any compensation, but what compensation, should be given; thus taking it for granted that some remuneration should be made.

Mr. M. wished it to be so modified as to inquire “if any, and, if any, what,” compensation should be granted.

Mr. MONTGOMERY acceding to this alteration, the resolution was adopted.

WEDNESDAY, February 24.

Removal of Judges upon Address from Congress.

Mr. WHITEHILL presented the resolutions of the Legislature of Pennsylvania, requesting their members in Congress to use their endeavors to procure an amendment to the Constitution of the United States, so that the Judges of the United States should hold their offices for a term of years, and be liable to removal by the President, on the joint address of a majority of both Houses of Congress; and that, on trials by impeachment, a majority of the Senate should be competent to conviction.

Mr. BARD moved to refer the resolutions to the Committee of the Whole on the state of the Union.

Mr. DANA opposed the motion. The resolutions were only instructions to the Pennsylvania delegation. This House had nothing to do with them.

After a debate of about two hours, the question was taken and carried—yeas 82, nays 27.

MONDAY, April 4.

A new member, to wit, ADAM BOYD, returned to serve in this House as a Representative for the State of New Jersey, in the room of EZRA DARBY, deceased, appeared, produced his credentials, was qualified, and took his seat in the House.

TUESDAY, April 12.

Frauds in Land Warrants.

Mr. RANDOLPH rose to give notice that he meant to bring forward a motion on a subject of considerable public interest, and in which in his opinion the honor of the Government of the United States was materially implicated. He held in his hand an application from a veteran soldier on the subject of his bounty land, and who had sent him a power of attorney to act for him—a man of unimpeachable character, and who had not been at the seat of Government since it was established—his name William Bryan. I found, said Mr. R., that his warrant, No. 9—, has been drawn and fraudulently located; I say fraudulently, because I am well assured that the party has not received any advantage from the warrant, and there is the strongest evidence of fraud. His warrant has been drawn and located, by whom I cannot discover; my researches were completely baffled by the memorable fire, which it is presumable owed its origin to a desire to cover frauds of this nature. I was referred from the War Office to the Treasury Office; for the only chance of finding out who had acted as attorney in fact for this old man, was, that the warrant ought to have been returned and on file there. On going there I found that the space on the record which the warrant ought to have occupied, was blank; and that no such warrant exists on the Treasury files. I believe this is far from being a solitary case, but that the cases are numerous, and many of those who have honestly earned a title to public land have been in this way defrauded, and the land sold to speculators who have reaped the benefit of it. I therefore give notice that I shall at a future day move for an inquiry into this subject.

Suspension of the Embargo.

The House then resolved itself into a Committee of the Whole, 55 to 20, on the resolution offered by Mr. G. W. CAMPBELL, declaring that the President of the United States ought, in the event of certain contingencies occurring during the recess of Congress, to be authorized to suspend the operation of the embargo.

Mr. G. W. CAMPBELL said he would state to the House, in a very brief manner, some of the reasons which induced him to bring forward this resolution.

It will be recollected, said he, that the causes which induced the passage of the law, imposing an embargo, were the orders of council by Great

Britain, and the decrees by France, which went in a great degree to cut off and destroy the whole commerce of the United States. In case those causes should be removed, I presume it will be thought necessary that there should be a power vested somewhere to withdraw the embargo occasioned by those orders and decrees. As therefore it is believed that we shall not be much longer in session, and it is at least possible that these orders and decrees may be removed, that Great Britain may revoke her orders of council or change them so as not to affect our commerce, and that France may revoke her decrees or change them so as to render our commerce secure, it is all-important that a power should be vested somewhere to give the people such relief as would be justified by this state of things. Suppose it were the case that any alteration should take place when Congress were not in session, some weeks, nay, some months must pass before Congress could be in session and a law pass for removing the embargo; the consequence of which would be that the country would suffer the pressure of the embargo for weeks or months longer than would be necessary; and I presume no member of the House will say that it would be proper to continue longer than necessary the pressure which the embargo must make upon them. There is I presume at least some reason to believe that the belligerent powers themselves are beginning to see their own interests injured. We see, by the latest accounts from Great Britain, that propositions are made in Parliament for revoking her orders. Should this take place, it is presumable that we also should revoke our regulations. This measure would also have a good effect in turning the attention of the people to the real source whence their present inconveniences flow; they will be taught to look to those circumstances which produced the embargo, a change of which would justify its removal. This would be a consideration of some importance. The mind of the public would be kept alive by the expectation that every day may bring the news which would induce Government to revoke the embargo, which no doubt bears hard upon the agricultural as well as commercial interests of the country.

The resolution as it now stands seems to me to embrace the principal grounds upon which we ought to authorize the Executive to suspend the operation of the law in question. If a general peace or suspension of hostilities take place in Europe, it would seem that there would be no danger from a suspension of the interdiction of our own vessels from sailing; but if no such event takes place, in the event of such alterations as

shall exclude American commerce from the operation of the orders and decrees of the belligerents, it will be proper that the embargo should be suspended, they being the grounds on which the measure was adopted. You must vest a power somewhere to ascertain whether such change take place or not. You cannot precisely determine the fact which shall authorize suspension; for were you to say that in case of a revocation of the decrees of France or England the embargo shall cease, you give a vast advantage to those nations—for they may revoke them to-day and reinstate them to-morrow, as their interests may dictate. It is therefore necessary to vest a power somewhere to ascertain not only the revocation, but a reasonable assurance that they will not be renewed. For this purpose it is essentially necessary that the President should be authorized to determine the changes which shall render our commerce safe, by the assurances which may be given that they will not again resort to similar measures. This I mention only as my general object; as to the expressions in the resolution I am not tenacious of them; and in any modification of them which shall promote the public good I shall certainly acquiesce. I have no object but one; that the public may see that we have not left our posts till we had done every thing in our power to relieve them from the distress of measures adopted by us and rendered necessary by the conduct of other nations.

I conceive this to be more important to the people on the seacoasts than to the people in the Western country. To the Western country a few weeks or months protraction of the interdiction, in the fall of the year, could not be of much importance; yet it would seem to me that in the commercial cities and towns, in the Atlantic States, a few days or weeks, much more so a few months' which might occur before Congress could convene, would be very important; and they would feel much uneasiness if, knowing such changes had taken place as would warrant the removal of the embargo, they were compelled to lie under its pressure until Congress could meet to revoke it. It cannot be expected, after the President shall determine to call Congress, that they can be convened here in less than three months. Such a resolution as this therefore would be beneficial to the commercial interest.

WEDNESDAY, April 13.

Suspension of the Embargo.

The House then went into a Committee of the Whole on the resolution.

Mr. LOVE said, to a proposition having for its object the removal of the embargo, at the first moment the public interests would permit, he had presumed there would have been no objection made either on that floor or by any man in the nation. In this presumption, said Mr. L., I am extremely sorry to be disappointed, and more especially so as the mode of opposition calls for a reply from those who have been the advocates of the system of policy pursued by the Government, during the embarrassing crisis it has been compelled to encounter.

The proposition before the committee is so familiar to those who have been long in the habits of legislation, from the frequent exercise of the general principle on which it rests, that nothing not already obvious to the minds of the greater part of this honorable body, I am sure, can be said in support of it. In the observations therefore, sir, which I shall trouble the committee with, it will not be necessary to say more than shall be proper in answer, only, to the objections which have been made at this time, to the exercise of the power contemplated by the resolution.

I have heard no argument yet urged against the right of delegating in any situation, or under any circumstances, the exercise of special powers which are acknowledged to be vested in a more general view essentially in the Legislature. The argument, if urged to such an extent, would evidently defeat itself, and go to destroy the operations of this or any other Government deriving the source of its authority from a Legislature. Our constitution has enjoined many duties on Congress, which without a delegation of the powers thus vested in it, could never be effected. An objection to the resolution under discussion on so broad a ground, would have been too obviously untenable. The question has not been thus directly met; but in opposition to the constitutionality of the delegation of power contemplated, a distinction has been taken between the authority which should be given to suspend a law, already in operation, and one which has not yet commenced its operation.

I listened, sir, with every possible attention to the argument made on this distinction. I am obliged to say there was no reason intelligible to my mind, offered in support of it. I will content myself therefore with expressing the opinion that the circumstance of a postponed or present operation, cannot

make a difference in the principle. In both cases the authority which delegates the agency is the same, it is the act of every branch of the Legislature, and there can be no distinction which would not apply to one equally with the other. It may in the manner of its exercise be assimilated to the powers of a Legislature to repeal a law already in existence, in contradistinction to the power of repealing one, the operation of which had been suspended. If such a position could be sustained (as a proper inference from our constitution) it would be vain; for if the Legislature have the right of repealing a law, they might in the same breath that they would repeal this, enact another which should provide in a manner so far in conformity with the practice acknowledged to be correct, as to be entirely exempt from the objection urged on the ground of this distinction.

When I compare the limited nature of the power now proposed to be delegated, with those almost unbounded trusts which it has been the constant practice of the Legislature to confide in the Executive Department, I cannot help feeling at a loss to account for the present opposition on any grounds of consistency. Those delegations of authority have not been confined in practice to either of the political parties which have at different times given a tone to the Government. The gentleman from Tennessee, who has introduced the resolution, has mentioned several instances in which this has been done; permit me to add others, in which it appears to me the principle has been carried further than in the present case.

By the constitution, the power of borrowing money is in express terms *exclusively* vested in Congress. Yet this has been only exercised by a delegation of it, from the commencement of the Government till the time has ceased when it was necessary to exercise it. I hope, sir, it may never be necessary to do it again; but if it should, I ask gentlemen how it will be effected but by the intervention of an agency, although the words of the constitution permit *Congress only* “to borrow money on the credit of the United States.”

Other powers of great importance, solely confided to Congress, have been delegated, and not as now contemplated, in a restricted and limited degree, but in terms of the broadest and most absolute discretion; many instances have occurred of this in constant succession ever since the revolution, in political opinion, which has taken place in the Legislature of the Union; for scarcely were the Republicans warm in their seats before

they made a delegation of the power to the President, more unlimited in principle and more dangerous in practice than that now advocated, for suspending the operation of the embargo law. In 1802 he was authorized to organize a military corps. In February, 1803, he was authorized to cause to be built several vessels of war, if the exigencies of the service should require it. In 1804 the same powers were repeated, and many others, equally dangerous and equally necessary, were delegated both these years. In March, 1805, he was authorized to permit or interdict at pleasure foreign vessels from coming into our ports. Compare the discretion either in extent or importance vested by those laws, with that now contemplated, and on the ground of precedent we are more than justified; even in the present session we have delegated the power of suspending or continuing a law, now certainly in operation, by authorizing the President to build and equip, or not, at his discretion, a number of gunboats, or he may, under the influence of the like discretion, for ever desist from the execution of it.

If this body is supposed to act under the regular impulse of any political principles, it appears to me, sir, that the numerous precedents to be found in our statutory code ought to have an effect. In those which I have mentioned, and many others which have been enumerated by the gentleman from Tennessee, the President was vested with the right, *ad libitum*, to continue, suspend, or terminate the operation of a law. In the present one the discretion is limited to the contingencies of peace in Europe, a suspension of hostilities, or such conduct and assurances on the part of the belligerents who have invaded our commercial rights, as will enable our vessels to pass with our produce in safety to a foreign market.

Let us now examine, sir, the other constitutional objection made by the gentleman from Virginia, (Mr. RANDOLPH,) that Congress have not the power to lay an embargo. If indeed this novel position be correct, the question is at an end, and the people of the United States would be justified in the resistance the argument invites. I had indeed understood the gentleman, as others near me did, to found his idea of the unconstitutionality of this embargo, on the circumstance of the laws imposing it being unlimited as to time. He defined an embargo to mean an inhibition for a limited time, and this unlimited nature of the present embargo was dwelt on by him with peculiar emphasis; but when a gentleman from Kentucky, (Mr. JOHNSON,) who followed him, had ably

exposed the fallacy of this distinction, and completely sent the argument home to its author, the distinction was abandoned by explanation. I understand the explanation of the gentleman; but as the object in pressing the unlimited quality of this embargo on the sensibility of the nation, cannot be mistaken, I have too, sir, for reasons alike obvious, thought it proper to mention it.

But, sir, as to the power to lay an embargo. The first motives for a union of the States, imply this as indispensable. It would be enough to show it to be a measure of general defence and protection, to give Congress a right to act on the subject; as such, sir, it expressly ranks among the provisions assigned as the great causes for the adoption of the Federal Constitution; for in the preamble to this instrument, the people say, they have adopted it in order “to provide for the common defence and general welfare.”

In the first paragraph of the eighth section of the first article, the same words are repeated; common defence and common protection to the external interest of the United States, are then the peculiar objects of its Government. An embargo under some circumstances is not only a proper but a necessary and indispensable means of common defence and protection; I might say that the present crisis is a strong illustration of such necessity. But if the right to lay an embargo is controverted, I would ask by what means is the Government in time of war, or expected war, under the authority of law to secure the property of its citizens, which it is the business of all Governments to do, towards all who claim under it the protection of their rights? Where is the power lodged, if not in the National Legislature, which shall prohibit your own, or even your enemies' vessels from leaving your ports, after a declaration of war? Are the States vested with, or do they generally retain the right to lay an embargo? No, sir, they cannot so far enter into the collisions of interests which would follow among each other by preventing the vessels from sailing from the ports of any of them. The effect of doing so would be too obviously an invasion of the general powers of commercial regulation solely intrusted to Congress. Can any man of rational mind suppose, then, that the Government of this country is really so defective in what is not only to common sense an obvious reason, but one of the express objects of its institution?

But to lay an embargo is unconstitutional, because Congress cannot lay an export duty! And it is argued by the same gentleman that the lesser

power being thus provided against, the exercise of the greater must of course be included in the prohibition; the minor forming an objection, the major is, *a fortiori*, inadmissible. How easily, sir, is this argument of inference retorted on the gentleman; for, according to a familiar and certainly plain course of reasoning, it would seem, that if the subjects are the same as is said, when the framers of our constitution made an exception of the lesser power, if they had intended also to except the greater, they would not have forgotten it.

The reasons which influenced the framers of that instrument to provide against the power of laying an export duty, were obvious; the provision was adopted in that spirit of mutual accommodation, which was so necessary to the harmony of the whole. It would be difficult, it was easily foreseen, to devise an export duty, which would not bear harder on some of the States than others; it was better therefore not to resort at all to a mode of taxation which would afford so fruitless a source of contention. The policy too of taxing exports was perhaps radically inadmissible; yet I cannot, for my life, discern how an export duty has been drawn into analogy with an embargo.

That the embargo was a curse, and continues to be a most calamitous one to us all, I have heard no one deny; but until now, I have not heard the assertion advanced that our Government, by its conduct, was the author of that curse. Yes, sir, many evils which the injustice of other nations has inflicted on the peace and honor of the United States are acknowledged to be curses of the most irritating and affecting nature; but the gentleman has said more for England and France, than either of them has before said for itself, when he attributes to his own Government the misconduct which has produced those evils. It was scarcely to be expected that any state of internal division or any views of whatever description would have produced on this floor an assertion which has thus put a new argument in the hands of our enemies in justification of their aggressions on us; it is more than our enemies have asserted. We have heard indeed from France and England that their decrees and orders, which make the present voluntary retirement from the seas necessary on our part, were the effect of an unjustifiable attack, which each has attributed in the first instance to the other. Each criminales the other, and not America, with being the author of the peculiar mode of warfare which has proved so destructive to the rights of neutrals. The very language of their orders and decrees assumes this position, and they are all

prefaced with the declaration, that their orders are enacted in the spirit of retaliation on each other, and not, sir, for any offence which our Government has been the author of, as the gentleman now tells the American people; for what purpose let the nation judge.

I may surely be permitted to express my surprise and astonishment at this assertion, sir, as it has never before been insinuated, on this floor at least; and as it forms so strong a contrast with the declarations which have been before made by the same gentleman, permit me to recall the gentleman's attention to his arguments in conclave, and to notice, if it will not be out of order, (which I presume it will not, as all which then took place has since been directed to be published,) the grounds of his opposition to the embargo at that time.

It is recollected by us all that the honor of presenting a resolution in conformity to the policy recommended by the President, in his Message of the 18th of December last, was an object of emulation between the gentleman from Virginia and one from Massachusetts, (Mr. CROWNINSHIELD,) whose absence from the House the nation has so much cause to deplore, and we all so sensibly feel. I thought it then, and still think it an honorable emulation, arising from a patriotic sense of duty. The gentleman from Virginia finally succeeded, and became the author of the resolution in this House for laying the embargo; scarcely had he, however, presented the resolution, the necessity of which he at the same time took occasion to observe he had long foreseen, and, for two years at least, before the period when it was recommended, (and, of course, sir, prior to the rejection of this noted London Treaty of December, 1806, now so much eulogized,) scarcely had he thus expressed his approbation of the embargo, till he again doubted its policy, and soon after denounced its justice, not yet, indeed, for any of the reasons we now hear, respecting the rejection of the treaty, but because it was a measure said, or insinuated, to be dictated by France; and that it was to have an injurious operation solely on England. It was in vain that the friends of the embargo urged the probable existence of the very grounds that measure now more strongly rests on; that the hostile determination of France to enforce her decree of November 21, 1806, would probably be followed by orders as harsh on the part of Great Britain; that this was the course of policy the adoption of which England had already announced, and its execution might, therefore, be fairly anticipated;

that the King's proclamation of the 16th of October, 1807, a copy of which accompanied the President's Message, was an evidence of the determination of that Government to offer no satisfactory accommodation of our differences, and of its determined usurpation of our maritime rights; to these arguments nothing was replied, but the repetitions in lengthened speeches of the same charges. The opinions then avowed, sir, by the advocates of the embargo, have met with support from the events which have since been developed, while the unjustifiable grounds of opposition are abandoned, even by their authors. But, sir, if there is any gentleman, who, with his eyes open to the situation of the commerce of the world, will say that the embargo ought to be removed, and that the policy is unsound, let me ask him to tell us what, in the embarrassing state in which we are placed by the efforts of France and England to involve us in their conflicts, we are to do? The gentleman from Virginia has hinted at arming our merchantmen! War, then, is the substitute; it is, indeed, the only one, I agree. To arm our merchantmen, leads to war—nay, sir, it is war, according to the interpretation nations have a right to put on such an act of a Government; it will be opposed by open war and undisguised hostility. If we are to have war, let it be in the direct tone and unequivocal language of a nation indignant at the insults it has received, not in the indirect manner of arming a few trading vessels, the masters of whom would choose for the nation its enemy, or involve us with both the belligerents at once, as their particular animosities might dictate; if we are to go to war, it might be well to fight one at a time at least. But, sir, I cannot but hope if our strong, but pacific policy is adhered to, cursed as it is said to be, it may yet preserve us from the conflicts of Europe. It is a curse, indeed, sir, under which we are compelled to labor, but what is the alternative? I have thought much, sir, on the subject; it has been my duty as well as that of every other gentleman to weigh it well. We hear its effects are severely felt, and we hear, too, what are the exertions of our opponents to seize the favorite opportunity which it is so well calculated to produce, to excite the sensibility of the people through the medium of their immediate interests. But remove the embargo, and we must arm our vessels, and war is at once declared. I have heard no one deny that this must be the alternative. Compare the evils, both of great extent. I admit, by the embargo, we lose half the value of the products of our country, or the receipt of it is suspended; by war, to admit the effect in this particular, no worse, at least it could be no better; but have we counted

the costs of the armies we are to raise, and to pay, of the supplies we are to furnish, of the loss of our blood, and the diminution of our strength, of the reduction of the profits of agriculture itself, by calling men from their domestic occupations, and lessening the number of hands for tillage—have we calculated the thousand other evils which follow in the train of war? To plunge into war, sir, to escape the curse of the embargo, would be truly fulfilling the adage of old—“out of the frying-pan into the fire.” I do not hesitate to say that, if we have patriotism enough to pursue our own interests, better would it be for this country to remain under the truly calamitous curse of the embargo for years, than at once to launch itself into war. But if we must at length, after all our efforts to prevent it, have war, let it be a war dependent on national sentiment, and arising from no doubtful necessity, which must be produced by the conflicts of our vessels at sea. We all know, and have felt that it has required the exertion of an unparalleled fortitude, to resist the emotions which have impelled us to acts of vengeance and redress for our injuries; let us not, then, seek for new causes, of doubtful necessity, to place us at once at war, as would be the case by arming our vessels. No, sir, let it be a cause which, in spite of our divisions, so earnestly of late fomented, must unite us in one spirit of opposition, in one sentiment of indignation against the enemy who shall attack us, with the spirit of unanimity with which a sense of injury will inspire us. I do not too highly estimate our strength, or, I trust, our patriotism, when I say, that no army which Europe combined could transport across the Atlantic, could long withstand the American arms. That we have had ample cause, of war, wanton, unprovoked cause, I had not, till now, supposed had been doubted; we are now, indeed, informed that our Government is to blame, and that the insults and injuries to which we have been subjected, are, in a great measure, attributable to its misconduct. What the object is, in making these assertions, let the nation judge; believing them groundless, I do not fear to be able to prove them so. The non-importation law has been mentioned as one of the subjects of just umbrage to England, and as having had an embarrassing effect on the state of our negotiations there. The gentleman has certainly but little attended to the documents which have lately been read in this House; if he had, he would there have found, under the sanction of authority which he is not presumed to doubt, that it was a measure one of our Ministers in London has given his most unequivocal approbation to.

It was said that our Ministers were suppliants at a foreign Court—our Government must place an efficient instrument in their hands; and a coercive system of policy is recommended, with a direct allusion to the enactment of the non-importation law before the rising of the Congress then in session.

We are told, too, that a principal cause of our embarrassments is the rejection of the treaty concluded by our Ministers in London on the 31st of December, 1806. This assertion has been made here, sir, with such earnestness that it requires examination. The treaty which has been rejected by our Government has been eulogized, and a month's discussion of it has been challenged; not, it is true, wholly on its intrinsic worth, or positive merits, but because the circumstances, also, under which it was concluded, made its provisions proper, and its adoption necessary. The Treaty of 1794, commonly called Jay's Treaty, I understood the gentleman also to say, would under the existing circumstances of December, 1806, have been proper for our adoption. This was, indeed, sir, a necessary preface to his defence of the rejected treaty, for it is certainly susceptible of easy demonstration, that it is, in its features and provisions, far more objectionable and defective than the Treaty of 1794; and, whether we take it on the ground of peculiarity in the circumstances of the contracting parties, or on its intrinsic merits, it has less claim to our assent.

In the first place, let us examine the circumstances under which those two treaties were made, and then compare their respective provisions. From the retrospect I am at this time able to take of our situations at those different periods, I cannot hesitate to believe that the circumstances under which the Treaty of 1794 was made, were more unfavorable for negotiation on the part of the United States at that time, both as they respected England and America, than they were in December, 1806. As they respected England, her situation was at the former period infinitely more commanding. By her combinations with the great powers of Europe, as early as 1792, or perhaps antecedent to that year, she was perfectly secure against any annoyance from France, her only enemy in 1794. The Treaties of Pavia and Pilnitz, to which, it is believed, England early in 1792 acceded, and which certainly laid the groundwork of the conventions and coalitions of the spring of 1793, had produced the effect of uniting in concert with her against France, the powers of Russia, Germany, Prussia, Spain, Portugal, and many of the

minor States of Europe. England, then, felt no apprehensions for her own safety, none for the abridgment of her commerce, and seemed to be but little sensible to her interests in cultivating a good understanding with America: her single enemy was confined to his own territories, and threatened even with famine. The United States, in 1794, had not long commenced their existence as a nation, and their new Government might be said to be scarcely more than in a state of experiment. The debts which had been created by the Revolutionary war, we had undertaken the honorable discharge of, and we were then laboring under the immense load; our resources were comparatively small, our embarrassments great, our burdens by no means in a course of alleviation, and our situation totally defenceless; the savages who bordered on our frontiers were numerous, strong, and fierce, and our armies had but recently suffered a dreadful carnage and terrible defeat; we were destitute of manufactories which could supply us with arms, or the means of filling our arsenals; a civilized nation of Europe, then great and powerful, bordered her colonies on our Southern frontier, and disputed with us the navigation of our rivers. Sir, if circumstances could ever sanction a dereliction of right, and a compromitment of interest, those circumstances, then, might be said to exist. Then, indeed, there might have been a semblance of apology, in our infant and crippled state, for leaning, in some measure, on the strength of a nation which was supposed to stand firm. I confess, sir, I would rather, even at that time, have had no treaty, than such a one as was then made; it has set a bad example. But what was our situation in December, 1806—adverting again to circumstances, which are made the test in this case, when the treaty, since rejected, was signed in London? Our strength and population increased to a most envious and flattering degree; our foreign debts discharged, and our domestic one, which we had honorably assumed the payment of, reduced—our credit established abroad, our Treasury overflowing, and our resources flourishing; manufactories of arms were every where reared, and had furnished the nation with the best means of defence; the savages on our frontiers were subdued, or civilized; our Southern frontier was extended and had grown strong: England, instead of her prosperity and powerful combinations of 1793, was left almost single-handed; the subordinate powers of Europe had become a part of France, the great nations were either under her control, or struggling in their last efforts of disastrous conflict: France, instead of being confined to the defence of her own dominion, was carrying on offensive

war, and England had been made to tremble for her own existence. What then are the circumstances alleged, to palliate the evils of such a treaty as was offered us? Was England about to be suddenly relieved in an instant from her embarrassments and burdens? How? We are told, indeed, that France had pushed her conquests too far, that her Emperor had so far stretched his arm of conquest, as to leave himself exposed to the most imminent danger at home; was it therefore that England elevated her hopes, and carried her demands? Stuff, sir, fit only for the cook-shops and coffee-houses of London; I should never have expected it to find its way into the semi-official letter which has been read to us, from a character who has deservedly stood high in the rank of politicians. But our own internal situation, threatened with conspiracy, the extent and magnitude of which was unknown, was another reason it has been suggested for hastening the execution of this treaty. How, in December, 1806, accounts so alarming could have reached England of the extent of Burr's conspiracy, I cannot but be at a loss to conjecture. The alarm at that time here, was not I believe very serious; not such, at least, as would have been a reason with any man in this country to have thrown ourselves into the lap of a foreign nation, or to have made a treaty which compromitted our rights, and left our interests unprovided for. I must say I think too much alarm was felt on this subject, and that it would at least have been as honorable a sentiment towards the people and Government of America, to have entertained an entire confidence in them, that without any great or dangerous effort they were capable of quelling the conspiracies which might be engendered against their peace. I assert that independent of circumstances which I have endeavored to show were more unfavorable as they regarded the United States, and far more favorable as they regarded England in 1794, than in December, 1806, the treaty of the latter date is worse than that of the former. The former did provide redress in some sort for previous injuries. That of the latter date contains no provisions for any kind of redress or compensation, which was due to us, for the very many spoliations which had been committed on our commerce—it offers no alleviation to the evils of the former—is silent as to the injuries and insults which we had sustained in our waters; totally, sir, although these were subjects of special instruction from our Government, and although we were told by our embassy that a treaty was concluded on the different points of commercial interest. Was it forgotten, sir, to what an immense amount America had suffered under the

different orders of the King in council, even from the very date of the former agreement for reparation? Were not our losses under the orders particularly of 1798, which gave rise to so much of the havoc our neutral commerce had groaned under, and which placed the nations of Europe in a better situation than the United States in the conveyance of colonial produce, known to our Ministers? It must have been recollected, for it was enforced in their instructions, how our vessels had been incessantly sent into the ports of Britain and her colonies for adjudication, and the unjust condemnations which had taken place, under the construction of those orders. It must have been recollected how far in the first instance the orders themselves had gone towards the subversion of the laws of nations. The time was, indeed, when a great jurist, Lord Mansfield, had declared, that neither the orders of the King in council nor even an act of Parliament which contravened the law of nations was binding on any one; this was said in the case of the Silesia loan, but those days were past. Sir William Scott has since told us, that the text of the instructions are his guide, and King George the Third is thus, by his single voice, to make and expound the law, which is adjudged to be paramount in modern times to the laws of nations. The adjudications, it is a well-known fact, have been in conformity to the Royal will, stimulated alone by the shipping interests of England; principles of adjudication have been established in the British Courts of Admiralty, which had on the most unjust pretensions wrested from our citizens many millions of their property. Why by this treaty give up our claims to reparation, as they were most emphatically, by signing a treaty which yielded no redress for them while the claims were still unsatisfied; by making a compact which wholly pretermitted them? It is said, sir, that the disputes respecting the colonial trade are adjusted by this treaty. How—by agreeing to a duty on exports? Where was our constitution, now so strongly pressed in discussion, when this stipulation was made; when it was solemnly covenanted, that we should directly invade one of its provisions by laying an export duty? And that, in addition to the deduction on drawbacks allowed by law, an export duty of one, two, or three per cent. should be imposed on colonial articles? Why make the extraordinary and vain stipulation too, contained in the fifth article, that we should have a right to lay the same export duty which England should have a right to impose, if we could lay none by our constitution?

The subject of blockades also, sir, was one on which some stipulation was made absolutely necessary, by the novel doctrines lately asserted, and insisted on by the nations of Europe; it was important that their extent should in some way have been defined, their nature described, when a blockade should be said to exist, and that it should not be a question left entirely to the discretion or interest of a belligerent, or the caprice of her officers. This single question had already led us at different times to the very brink of war with England. In June, 1793, she asserted all France to be in a state of blockade, and ordered our vessels to be captured which should attempt to enter any of her ports with our produce. France had in May of the same year issued an inhibitory order against our trade, of a nature but little less hostile, in consequence, as it was said, of the Russian convention made in London, I think in March of the same year. In the fall of 1793, the British had issued secret orders on the same principle of blockade, which entrapped our West India commerce, to an immense amount, before they were known by us to be in existence; this it was said was a principal reason for the proposition contained in a bill for prohibiting all intercourse with England, which had in the early part of 1794 received the sanction of the House of Representatives, and was rejected in the Senate but by the majority of one vote, and which was succeeded by Mr. Jay's mission. To the same class, too, may be assigned the British orders of May 1795, against our vessels laden with provisions, which brought President WASHINGTON to a stand on the British Treaty, and caused him, it is said, to demand a previous explanation, which was at that time I presume, satisfactorily made, but which has been since in innumerable instances violated, and the same vague and undefined principles of blockade enforced; at one time by declaring a blockade to exist from Brest to the river Elbe, at others by proclamations of blockade equally extravagant, and more than once by the declaration of the British naval commanders, that a whole kingdom should be cut off, at a stroke of the pen, from all the trade of neutral nations. But, sir, if the general and extensive evils which the new doctrine of blockades had superinduced, were not of sufficient importance to claim a stipulation against their exercise in future, there was one species of injury which seemed really to merit, and to claim indispensably, some notice either by redress or stipulation against its future practice. I know not how to class it; it may be assimilated to a modern blockade, inasmuch as it assumes a jurisdiction wholly ideal; I mean that which was a particular subject of complaint, from

the assumption made of a right by a British naval officer in the port of New York, in claiming jurisdiction and the exercise of the right of impressment, and of course every one less inimical to natural right, within the distance of the buoys from his ship. To this assertion of authority I see no disclaimer in this applauded treaty, or any hint at redress for the injury inflicted by the particular occasion on which it was exercised. If this new claim of naval sovereignty is insisted on, or thus tacitly permitted, it is time it should be so understood; for with the same propriety with which the British commander in New York claimed jurisdiction within his buoys, another might claim British jurisdiction from Boston to Charleston, if he could so far stretch a cable.

I come now, sir, to say something on the question of impressment, wholly omitted in the treaty, and which the gentleman from Virginia has said was informally and satisfactorily arranged by the note of the British Commissioners on that subject. He has said that their note contained a stipulation, "that they would order their naval commanders to abstain from the practice of impressments on board American vessels." I confess I was astonished at the declaration. It is true the printed document has not been furnished till just now. I presume the note of the 8th of November, 1806, to have been alluded to, because something like the same defence on this subject has been used by one of the American Commissioners in his late letter to the Secretary of State, (although, indeed, until I heard that defence read, I had not understood that any improper dereliction of the American interests had been imputed to our Ministers; I had always understood, and, except in the letter alluded to, and the arguments of the gentleman, I have yet understood from every source of information open to me, that it was not expected by our Ministers that the treaty could be ratified by the American Government, but that it was the best they could obtain;) I could not think the quotation of the gentleman correct as to the language of that note. I mentioned then, sir, to those who sat near me, that I had understood it to convey no promise to abstain from the practice of impressment, but a vague and unsatisfactory declaration that the British naval commanders should be instructed to use caution in the impressments they made; as it was said they had been always before instructed; by that means, sir, placing ourselves, if we choose to recognize this informal stipulation, in a worse situation than before, inasmuch as it was an unequivocal acknowledgment of the right of impressment, when exercised under the caution of a British officer. And

what, sir, is the language of this same note of November 8th—we have it now before us: “His Majesty’s Ministers give to Mr. Monroe and Mr. Pinckney the most positive assurances, that instructions have been given and shall be repeated and enforced for the observance of the greatest caution in the impressing of British seamen, and that the strictest care shall be taken to preserve the citizens of the United States from any molestation or injury; and that immediate and prompt redress shall be afforded upon any representation of injury sustained by them.” How, sir, let me ask, have those officers conducted themselves under these repeated instructions? To say nothing of the continued violations committed on our merchant vessels, we have indeed had a most notable example of the extreme caution which her naval officers had no doubt been instructed, and were determined to observe, in the mode of impressments, in that excessively cautious plan adopted by Admiral Berkeley, to effect his honorable and loyal purposes, in the memorable attack upon the Chesapeake. Then, sir, I must admit, that in pursuance of what I now believe were his orders, the most cool and deliberate caution was used. Our frigate, on an outward voyage, on the very day she left her port, in the usual unprepared state in which I am told vessels of war sail in time of peace, is with the utmost caution pursued by the British ship of superior force, in sight of several others. The American frigate is overtaken; her men, proved to be American citizens, are demanded of her, as of right being the subjects of the King. They are refused, and indeed, sir, I must acknowledge, with peculiar caution, before it was possible for our frigate to prepare for action and the defence of the honor of her flag, the British commander fires three broadsides into her, and commits the murder of fifteen or twenty other American citizens, and no doubt most cautiously compels the United States frigate to strike her colors, goes on board, and takes off three of the native citizens of our country, none of whom have to this day been returned!

But, sir, if this treaty, with its appendages, had contained in it provisions and stipulations which were responsive to our injuries, and which comported with our rights, is there a man in this nation, who consults the dignity and honor of his country, who could have wished its assent to it, subject to the condition dictated by the King of England, and transmitted by a note of the British commissioners annexed to it? The gentleman from Virginia has spoken of the insult conveyed by the letter of Champagny of the 15th of January, 1808, to our Minister in Paris; its terms have been

grammatically scanned. Sir, there was no need for this; we are at no loss for subjects of humiliation and insult, whether we look to France or to England. As early as 1793, attempts of the most unjustifiable nature were made to involve us in war by both these powers. Lord Grenville, so early as that time, expressly told our Minister, without disguise, that the British orders of November in that year were intended to have an internal effect upon the affairs of this country. Such has ever since been the conduct of the belligerents, constantly and undeviatingly pursued in the most disrespectful manner, towards us; such was certainly the object of the British Cabinet, in annexing the note of the 31st of December, 1806, to the treaty of that date; and certainly, sir, if a direct attempt to force us into war, is considered an insult to our independence, and an encroachment upon our rights of self-government, such was the language of that note, which, in open and unreserved terms, made it an indispensable condition to the ratification of the treaty, “that the Government of the United States, by its conduct or assurances, will have given security to his Majesty, that it will not submit to such innovations in the established system of maritime law,” as the French decree therein alluded to contained—his Majesty thus most graciously taking upon himself the right of determining for us what course of conduct we should pursue towards his enemy! I do not say, sir, that the letter of Champagny, which has been repeatedly mentioned with such asperity by the gentleman, is such a one as consists with the respect due to us; by some gentlemen its language has been construed to mean a proposition originating in a disposition of friendship, and to convey nothing more than an offer, founded on a supposition of the actual existence of war between Great Britain and the United States, and in that event, to take care of such of our property as should be exposed to capture, until there should be an opportunity of restoration; but to me, sir, I confess the language is not satisfactory. We have a right to expect from all nations something more, or something less than equivocal language. Our Government speaks in terms of friendship, and in the plain language which neither conveys a doubt as to its hostility or friendship; we have a right to expect the same frankness in others. But why, sir, should gentlemen who profess to feel, and I hope do feel only as Americans, suffer their sensibilities to transport them to battle with the Gallic Cock, while under heavier insults they seem disposed to succumb to the British Lion? Why is the letter of the British Minister of the 23d of February wholly forgotten, when we are undergoing the humiliating

revival of insults and threats? Is it less awakening to our national sensibility, and to the alarms of honor or interest, to be told, as we are by that letter, that his Majesty the King of England is disappointed in his just expectation that we should have gone to war with France, than to be told through our Minister at the Court of France that the Emperor of that nation expected we were at war with England? If insult was intended by either, it seems to have been measured by the same equal standard with which they have by their hostile orders measured their injuries to our commerce; perfectly in the spirit of retaliation, sir.

My astonishment, sir, has indeed been excited more than on any former occasion, when I have heard a gentleman condemn our Government for the rejection of a treaty, which provided no redress for former injuries, no security against future ones, and which, by the conditions annexed to it, would have infallibly, by stipulating resistance against a belligerent, directly have involved us in war; and that not a war of self-defence, but a war of alliance with one of the powers, for the purpose of resistance and offence against the other. War, sir, I hope will be avoided, notwithstanding the bold attempts to involve us in it, and which have been so steadily pursued by the contending nations. It will I hope be avoided, unless our self-defence shall render it indispensably necessary. Attack or invasion from France cannot be rationally contemplated. War with England, we must all agree, rests on more uncertain grounds; if any thing will prevent it, I believe it to be the course pursued by our Government. The resolution under discussion explicitly avows the terms on which we will consent again to renew our intercourse with Europe. If Great Britain is induced to relax, France must and will pursue the same policy. I think, sir, we have a right to believe, from the best information from England, that this relaxation will take place. I am aware of that disposition in the ruling party in England to go to war with us. I have no right to doubt the truth of the declaration of Mr. Monroe, that there is a party in that country strong and active indeed, as he has described it to be, who are disposed to hostility with us, and who are at all hazards determined to support the maritime supremacy of Great Britain; they are described to be the navy interest, the East India chartered companies, the West India traders, and the shipping interest—strong and active indeed, sir; they sit at the elbow of Majesty, and influence his ready will; but their temptations to war are removed by the embargo, and I hope will continue to

be so, until they rescind those orders which have cut us off from the commerce of the world.

But the power contemplated by the resolution, of meeting any friendly disposition on the part of the European powers, is to be withheld, because it would add too much to the already overgrown popularity of the President, who, like Julius Cæsar, has been offered the honor of a Crown! It is true, sir, the demonstrations of confidence in the present Chief Magistrate are general and sincere in many parts of the Union. At the time the only address of this kind was proposed, which I have ever understood originated in Virginia, I had the honor of a seat in her Legislature. It was introduced and supported by the description of politicians there denominated the *Republican minority*; in what spirit of sincerity I leave others to judge at this day. But, thank God, it was not permitted to progress; and thus the person to whom it was intended to be presented was saved the suffusion of a blush, which the evidence of such adulation from his own State would for its sake have infallibly produced.

On this occasion an attempt is made to alarm us, by the assertion that the administration of the Government is assimilating itself to that of a monarchy; and it is said that the power of the President is more dangerous than that of a British King. Has the gentleman weighed the extent of this assertion, or contemplated the powers of a British King? In power, unrestrained as he is by their constitution, (if constitution that can be called, which consists of unsettled and undefined practices, most of them originating, no one knows where, and founded on principles which cannot be traced to any rational ground—a constitution which, notwithstanding their declarations of rights, is perfectly incapable of restraint upon the Executive arm; which subjects the Parliament to the King; which makes it completely *his* Parliament, and deludes the people with the show of liberty, while they are governed by the single voice of a monarch—yes, sir, it is *his* Parliament,) has he committed any great act of outrage on the nations of the earth? He feels the pulse of *his* Parliament before he permits them to convene. *His* Parliament, I may again emphatically call it; for it is he who orders it into existence, and he who suspends its functions or dissolves it at will. If its pulse does not beat responsively to his wishes, he either dissolves it or postpones its meeting from time to time, as has been the policy with the present Parliament, which, if it had met at the time first appointed,

scarcely less than a revolution might have been apprehended, from the general ferment the execrable conduct of England towards Denmark had excited, and the head of our old master might have atoned for that unprecedented act of criminality; for, as such, it had been contemplated with abhorrence by a magnanimous people—a people who felt for the character of Englishmen in the commission of it. There are men there, sir, I acknowledge, who do honor to human nature. When we read the speeches of Erskine, and other great men in the present opposition, we may yet hope that there may be found enough of integrity in the nation to redeem its character from the stains of murder and robbery, which the conduct of its monarch has marked it with. Yet this is the King to whose power that of a President of the United States is said to be assimilating itself. By what instance, let me ask, does it appear that we are verging to the practice of a corrupt monarchy? Is it in the proposition involved in this resolution? No, certainly; for I have before proved that the same powers, and much more extensive and unqualified, have been delegated at every period of our Government, from its commencement to the present session. Is it from any other general assumption of power? No; for it is acknowledged by all that the present Administration has acted in perfect consonance with the powers of the constitution, and I will add, (what its enemies have before allowed,) with the most strict and unceasing regard to the interests and happiness of the people.

Why are we warned, sir, on this floor, against authorizing the President to do an act which may enhance his popularity so much as the removal of the embargo, and that it is another mode of adding to that influence already so overbearing? If, indeed, the embargo operates most distressingly, (as we all know it does, on every part of the community,) it is he who in the first instance, from the strong sense of duty, assumed on himself the responsibility (the *odium*, the gentleman would call it) of the measure. It is but fair, then, however ludicrous the charge in itself, that he should be left to regain the popular favor he is supposed to have lost. It will only leave him where he was.

But, sir, seriously, let me ask gentlemen to tell the nation, before we separate, what they will do. Is there any one so desperate, inconsiderate, or so wild in his opinion, as to say the embargo ought at the present time to be removed, while the hostile Orders of France and England are both enforced

with the utmost rigor against us, and when they have multiplied, and been extended in their effects since the expediency of the embargo was fully decided on? What is the obvious alternative? Either authorize its removal, when our safety will permit, or continue in session to wait that event. But why, sir, sit here, at the daily expense of many hundred dollars to the community, when we shall have transacted the business of the nation, merely because some gentlemen are now doubtful of the right or the policy of delegating to the President a power which has, in much stronger and more general terms, been before intrusted to him, and all who have preceded him? But, if any thing better than this can be devised, let it be submitted. For my own part, I promise to give it the attention its importance may merit. But, at the least, let us unite in the adoption of some measures for the safety and interest of our country, at this time so imminently jeopardized by the powers of Europe.

Mr. MASTERS.—Mr. Chairman, I shall not undertake to say that the rejected treaty is so advantageous as we had a right to expect. I do not hesitate to declare that, or even Jay's Treaty, is preferable to the present state of our affairs. If we take into our view all the relative circumstances of the British nation with France, Russia, and the other belligerent powers, and pay proper attention to the unprotected and defenceless situation of our country and our commerce, in forming our ideas of what we ought to expect from that nation whose navy commands the seas, can we then expect she will sacrifice that navy, or any part of her power, by conceding the point of search for her seamen on board of neutral vessels? It is inconsistent with their interest, and it is inconsistent with their superiority. This right of search for her own subjects, Mr. M. considered as the main block in the way of negotiation, which sound policy and interest require we should clear away. The British and American Commissioners had informally put this point on as good footing as he expected. Although the resolution under consideration is not properly limited and defined, he should not vote against it. His wish was to raise the embargo and arm our vessels. The nation could not bear the pressure. The embargo virtually inhibits all intercourse with foreign nations; the effects are and will be pernicious to the agricultural productions of this country, and produce will fall to the lowest ebb, and enforce the most unparalleled distress on the community. Commerce ought always to be left to the merchant, unshackled and unembarrassed, as much as possible. Our commercial intercourse is the principal resource, both of

revenue and commercial opulence. The embargo will tear up by the roots and annihilate the commerce of this country. And the effects will be heavy taxes, an exhausted Treasury, a diminished and ruined revenue. It weakens your own power, fetters your operations, and deludes your citizens; it devours not only the fruits but the seeds of industry. It will sink down and depress the nation to an absence of hope and a want of resources; it will be felt by the nation as a calamity, without deciding the general question of dispute. Prove to me the embargo is consistent with common sense, and will be the means of adjusting our differences with the belligerent powers, and I will then be an advocate for it. Though we have the constitutional right to lay an embargo, it is a matter which requires great consideration, whether the measure will have the effect to which it was seemingly intended. It may be good in theory; he esteemed it chimerical in practice, a mere speculative proposition. Wisdom is to be gained in politics, not by one rigid principle, but by looking attentively at causes and the effects they have or will produce; not by adopting that false philosophy, which seeks perfection out of that which, in its nature, is imperfect; which refers every thing to theory, and nothing to practice; which substitutes visionary schemes for solid tests of experiment, and bewilders the human mind in a chaos of opinions. Search all the histories of the world, and you will not find eleven hundred thousand tons of shipping, of one of the greatest commercial nations, embargoed for an unlimited time.

Mr. Chairman, the season of our severe trial is not at an end, nor are we yet relieved from the dejection and gloom which hangs over our heads; doubts and uncertainty mingle with the hopes and expectations of the people. If you bring our commerce into the situation of the Chinese, you will end in the wild state of nature, that mocks the name of liberty, and the human character will be degraded, instead of being free.

If you entertain a sense of the many blessings which you have enjoyed; if you value a continuance of that commerce which is the source of so much opulence; if you wish to preserve that high state of prosperity by which the country has, for some years past, been so eminently blessed, you lose all these advantages by continuing the embargo and neglecting to arm your vessels. Restore, then, confidence and vigor to commerce. You are at war with your own interest and every idea of policy; instead of protecting commerce you destroy it.

In whatever view the embargo presents itself, it appears to me to be fraught with impolicy; it was laid at midnight; that miserable scene was closed under the darkness which suits with it, and under the secret shelter of our own walls. If we are to go to war, you have, instead of warlike preparations and exerting every sinew of national ability, laid an embargo, and obtained just nothing.

The policy of France, as regards Great Britain, is to make a warlike non-intercourse, and we have, by a side-wind, fallen into the measure, adopted and sanctified it; we have abandoned the great highway of nations: our dispute with Great Britain is about commercial rights; we have given them up.

Is this country at that crisis when we shall surrender all those rights her citizens hold most dear? God forbid! I have contemplated upon the embargo, which is hazardous and impolitic, with great pain and anxiety, and I turn my face from it with horror. If there are any who improperly foster and countenance the threatening storm, whatever consequences may follow, they are answerable to their country and their God.

All the advocates of the embargo on this floor have admitted that it was oppressive and a curse. Take away this *curse* and arm your vessels. It does not follow, as the gentleman from Virginia (Mr. LOVE) supposes, that arming will involve us in a war. When Great Britain finds we resist the French decrees, she will revoke her orders of council. When France sees she cannot bring us into her views, she will revoke her decrees.

Mr. FISK wished to say a few words on this subject. I am very much surprised, said he, at the expressions of the gentleman last up, and the gentleman from Virginia, (Mr. RANDOLPH,) yesterday. They expressed sentiments which, if they once take root in this nation, will prostrate your liberties and rights at the feet of foreign Governments. The gentleman who just took his seat has observed, that the subject of impressment was the main block in the way of negotiation. Very true, it was, sir; it goes to the personal liberty and security of your citizens; and if you surrender that right, what do you expect those citizens will say to you? Do you expect they will greet you with, "well done, thou good and faithful servant?" What can the gentleman think when he recollects the sensation displayed at New York on the death of Pierce, in consequence of the exercise by Britain of the right

of impressment? Were those tears and lamentations feigned, or were they the sincere effusions of citizens feeling the injury done them, and burning with indignation at seeing their fellow-citizens murdered almost before their face? If we could believe what the gentleman now suggests, we should suppose that the liberties and lives of our citizens were of no value compared with commerce. Why do gentlemen tell us these things? Are they sincere? They cannot weigh life or liberty in the scales with sordid pelf; it is impossible.

It has been observed by the gentleman from Virginia, and it seems to have been intimated by the gentleman from New York to-day, that the question of impressment was by the rejected treaty placed on better ground than ever was expected; that something like security was afforded to the United States; something on which we could rely: and this assertion is brought in with no other view than as a defence of British measures and a crimination of our own. Let us see the language of the British Minister, in order to ascertain the fact. In the letter from Mr. Canning, dated October 22, he says, in answer to our Minister's pressing this same question for some security, "no engagements were entered into on the part of His Majesty, as connected with the treaty, except such as appear upon the face of it. Whatever encouragement may have been given by His Majesty's Commissioners to the hope expressed by the Commissioners of the United States, that discussions might hereafter be entertained, with respect to the impressment of British seamen from merchant vessels, must be understood to have had in view the renewal of such discussions, not as forming any part of the treaty then signed, (as the American Commissioners appear to have been instructed to assume,) but separately, and at some subsequent period more favorable to their successful termination." It would seem, however, from what was observed yesterday, that this was left, though informal, on such a settled basis, that it might have been satisfactory.

If my memory serves me, the Secretary of State says these vexations are greater than ever. The British Government was never serious in making any settlement against this practice. We find, in the first place, that the British Ministers never yielded that right. We find that Mr. Canning, in answer to our Ministers, tells them they were not to consider the late proclamation respecting impressments as any new regulation on the subject; that the proclamation was not considered in that light, but merely as conveying

instructions to the British commanders who might be at a loss how to act; that the proclamation had been framed for nearly three months, but never issued until that time. If it had been in existence for three months, it must have been framed at the very time that the attack on the Chesapeake was in view; that was to try the sentiments of this country, and they meant to steer their course by them. Therefore, it is not an instruction given to naval commanders, lest they should mistake their duty from the late incidents, because it was framed before the attack on the Chesapeake took place. It unfortunately happens that the British Government has not, in this case, covered its object.

I am a little surprised to hear gentlemen telling us that arming our merchant vessels would not produce war. Why arm, if they are not to defend themselves? If the belligerents defend their proceedings, will they not resist our vessels arming against their orders? Could it be done without being met by a declaration of war? But the gentleman from New York has told us that if we suffer our merchants to arm, the British would consider it a sufficient token of our resistance to the French decrees, and remove their orders of council. You have seen all the decrees and orders which make innovations on the law of nations, and subject our commerce to plunder. Are those of France the most hostile? Is the aspect of that nation the most hostile? Compare the letter of Champagny, which declares that our vessels shall be held in sequestration depending the measures of this Government, with the note of Canning, as well as the communications from Mr. Erskine, and what was the result? Look at the treaty which our Government is on this floor condemned for not signing, with the note annexed, declaring that if we submit to the decrees of France, His Britannic Majesty would consider himself bound not to observe the treaty. This note contained a threat; but it was nothing to what Mr. Canning, in observing to our Ministers on this subject, says: "His Majesty cannot profess himself to be satisfied that the American Government has taken any such effectual steps with respect to the decree of France, by which the whole of His Majesty's dominions are declared in a state of blockade, as to do away the ground of that reservation which was contained in the note delivered His Majesty's Commissioners at the time of the signature of the treaty; but that, reserving to himself the right of taking, in consequence of that decree and of the omission on the part of neutral nations to obtain its revocation, such measures of retaliation as His Majesty might judge expedient, it was, nevertheless, the desire and

determination of His Majesty, if the treaty had been sanctioned by the ratification of the President of the United States, to have ratified it on His Majesty's part, and to have given the fullest extent to all its stipulations."

With regard to this treaty, I have no idea of entering into its merits. The gentleman from Virginia, yesterday, seemed to be extremely anxious to justify the treaty. He might have postponed its defence until it was before us, or at least until it was assailed. I will observe that, whatever might have been the intention of our Ministers, they placed the United States in a very disagreeable situation, obliging them to declare that they had no right to negotiate such a treaty. It has given occasion to Mr. Canning to say, "some of the considerations upon which the refusal of the President of the United States to ratify the treaty is founded, are such as can be matter of discussion only between the American Government and its Commissioners; since it is not for His Majesty to inquire whether, in the conduct of this negotiation, the Commissioners of the United States have failed to conform themselves in any respect to the instructions of their Government." He then goes on to animadvert on the conduct of the American Ministers. Had they kept within the real limits of their own instructions, they never would have given occasion for this reflection on them.

On the score of informal negotiation it will be recollected that from the earliest days of the Government to the present time, the subject of impressment has been pressed upon the British Government, not only in times of war, but in times of peace. If there were in reality any foundation for the charge on our Government, of having sacrificed the interest of, or lost a security to, our seamen, by a rejection of this informal article, it will be only necessary to recur to the correspondence between our Ministers and the British Commissioners, and it will be found that not only formal, but informal articles were such as we ought not to have accepted; that reasonable concessions on our part were offered for the sake of accommodation and refused; that the Treaty of 1794 was, in some measure, proposed as the basis, but was not accepted by the British Ministry. Let me ask the gentleman for a single moment what were the terms offered in this treaty, which he regrets that the Government did not accept? Independent of its exceptionable provisions, it was accompanied by a note which contains a reservation to the British Government to regulate its own proceedings, and leaves us but two alternatives—either to declare war against France, or

suffer the British Ministers to rule us. What do they offer us now? If we will trade as they please, and pay them a duty on all our exports, we may carry on our commerce. Is it possible that any man who professes himself an American could accede to this? The spirit of 1776, refusing to pay a duty of two per cent. on tea, would certainly not now yield that for which they then contended, and become again tributary to the British Government. This is not all. Even this admired treaty, which the gentleman from Virginia so much regrets, allows us to trade to the colonies if we will pay tribute. Was it not easily discoverable that two, three, four, or five per cent. would be laid upon the trade, and virtually prohibit us from carrying on this commerce altogether? It was better than prohibition: but if we would not tax it, they would prohibit it altogether. What right had they to demand this? Certainly none, and yet gentlemen wish to raise the embargo, to embrace these regulations, open all our ports to this fettered commerce, and will not place it in the power of the Executive to suspend the embargo. I am a little astonished that gentlemen who consider the embargo as the heaviest curse which could befall this nation, should be against any measure for removing its pressure. But so it is. Here permit me to say that I admire the flexibility of the gentleman's sentiments. It must be well known to every gentleman in the House, that a gentleman from Virginia, in combating measures which were then carried into effect, as the non-importation law, said, that if we take measures at all, they should be strong measures; none of your milk-and-water measures, but an *embargo*; which would be an efficient measure. This same gentleman, at the present session, exclaims against the Executive influence which produced the embargo. At this very session we cannot forget the scramble between him and another gentleman in this House, (Mr. CROWNINSHIELD,) as to who should have the honor first to propose the measure; he even urged expedition in the measure, as he had a bill ready prepared. In the course of deliberation on the subject, he urged it as the only thing which could promote the national interests; and persisted in this, till one of his colleagues informed us of the effect which it would have upon Britain. He then rose and told us that he had done with the measure; that the measure was partial—not unconstitutional—that it was a new invention; that it was expressly aimed at Great Britain, and this was the great objection. But *now* we are told that the British Government will ask nothing better of us than giving up the carrying trade. But, unless the gentleman can prove that they are the carriers for their enemy and for us, he will find it

difficult to prove that it favors England. Really I am at a loss to see the difference between the proposed measure and that which the gentleman so long since supported for authorizing the President of the United States to suspend the non-importation law. But the gentleman disclaims the influence of precedents. The gentleman has another objection—that it proceeds from a recommendation from the Executive. The gentleman took the liberty to pay a compliment to the President of the United States for declining a re-election; but he expressed great resentment against those States which solicited him to retain his station. I consider this as the highest mark of respect for the course pursued by the present Administration. But it seems, although totally irrelevant to the subject under discussion, the gentleman from Virginia has undertaken to question the motives of all who have joined in the request. The man who has the vanity and arrogance to suppose that he is superior to all mankind, may boast of his republicanism, but he possesses none. I envy him not his sensations. It will be recollected that the constitution has not denied the right of a President, for two successive terms, again to be elected. The legislatures, then, did not travel out of their constitutional course, and it would have been as modest in the gentleman from Virginia—to say no more of it—to have let the subject alone.

In regard to the constitutionality of this measure, which has been questioned, the bill supported by the gentleman from Virginia two years ago, was to enable the President to do a thing at a distant day, if he should think it expedient. What is the object of the present resolution? To put the whole commercial interest at the discretion of the President? Certainly not. If certain events take place, the President is to be authorized to suspend the operation of the embargo law. We command; he obeys. He is the agent, we the principal. The law, giving power to suspend the non-importation law, was more vague than this resolution. In that he had a perfect discretion, there was no landmark laid down in the law. Here there is. The distinction taken by the gentleman from Virginia is a distinction without a difference. The principles of both are the same. The powers given, and the consequences of the exercise of those powers, are the same.

But it seems that the gentleman from Virginia has undertaken to arraign all the measures of Government taken for some time past. A few days ago he was violently opposed to the raising a military force. At the present moment he draws consolation from the circumstance that both Great Britain

and France are hostile to us. If he really feels a satisfaction in the hostile attitude of both powers, he ought certainly not to complain of the acts which he says have placed us in that situation. I cannot conceive how a man can with propriety arraign the conduct of an Administration, when he says their measures have produced the very effect for which he is so gratified. We learned from his observations the other day, and it was insinuated again yesterday, that the raising of an army was against the interest of the country. In 1805 and 1806, he was in favor of strong measures against Spain, for he said in the same proportion as we took measures against Spain, Great Britain would respect our rights; because France and Spain being one and the same, measures taken against one were also against the other. But the effects of strong measures seem now to be viewed in a different light. If it was just then to raise an army against France or Spain to make them respect our rights, it is certainly proper now to take strong measures against both France and England, except the gentleman show that the dispositions of nations as well as of men have changed since that time. At the present time the military spirit is a horrid thing; at that time, it was a very pleasant thing.

For a single moment let us consider the embargo. The gentleman says it is unconstitutional. That the constitution having prohibited the power of laying a duty on exports, denies the power to prohibit exportation altogether. There is no difference in this respect between the non-importation law and the embargo. If the argument be true, you must allow trade at all times, whether it furnish a means of annoyance against yourselves or not. Is it not a well-known fact, that Great Britain is in the utmost want of supplies for that navy which murders your citizens and blocks up your ports; and, therefore, you partially disarm them. However gentlemen please themselves and amuse the people—for that will be its only effect—with the idea that the embargo is a pleasant thing to Great Britain, we find that, even by the debates in their Parliament, their orders are considered as measures so hostile, that they expect a declaration of war. How happens it that we become their apologists? that their conduct strikes gentlemen on this floor in a more favorable light than it does the Britons themselves? They consider them as too strong. These members of Parliament must be much mistaken if some gentlemen in this House are correct.

To return to the embargo. I believe most religiously, that had it not been for sentiments expressed in this country so favorable to Great Britain; had it not been for insinuations that it was impossible for us to maintain this measure, before this time we should have been treated with respect by Great Britain. I cannot, while up, but notice what must be obvious to all—that not only in this House, but abroad, every attempt has been made to show that this measure is improper, unjust, and injurious. The table of this House has been loaded with petitions against the embargo; it is known from what source. Another circumstance attends them, that, though they come from different quarters, they owe their existence to one parent, and come from one land. It is very easy to sow the seeds of discord and discontent, if persons industriously and insidiously apply themselves to that object. Whenever a measure has been attempted against Great Britain, we have found what rancorous opposition it has met with. We are now asked to raise the embargo. What encouragement have we to do it? The Treaty of 1794 sacrificed our most important rights. Did it conciliate that Government? Did she even then respect your rights? From that moment to the present, your flag and citizens have been constantly violated. More than three, four, or five thousand seamen, have been impressed into their service. Is it possible that gentlemen can criminate the Government of the United States for not accepting a treaty which gave no security against this? Certainly not. The gentleman told us yesterday that we were contending with a great commercial nation, and had very little to offer in exchange for what we ask. Was it necessary to make this apology for Great Britain? I have thought very differently. Was our commerce of so many millions “nothing?”

Let us now consider the other point which is taken, that the circumstances attending the treaty alter the aspect of it—for this treaty is, to say the best of it, no better than Jay’s, which the gentleman says he so much abhorred. When Jay negotiated his treaty, almost all Europe was in arms against France; Spain, and Italy, then independent nations. When this new treaty was formed, Italy, Spain, Holland, Switzerland, &c., were at the feet of France; and that war which was engendered at the Court of St. James between Prussia and France was decided. Prussia was overwhelmed, and the knowledge of it reached our Ministers before signing this treaty. Germany was at peace. In this situation, was the attitude of Great Britain so imposing as to justify greater sacrifices than were made in 1794? It was not. It was believed and said in this country, that the arms of Bonaparte would

conquer the world. Why, then, make this sacrifice? Had we any assurances, if that treaty was ratified, it would be held sacred? On the contrary, doubts were expressed and conditions annexed to it. Has not her conduct since justified a refusal of more than informal stipulations? At the moment when she attacked Copenhagen, she had a treaty with Denmark. She first attacked the town, and then offered terms of accommodation, which were of course refused. What can be said in justification of that outrage? There was, as we were told the other day, some supposition that the fleet was about to be delivered up to France. It was no such thing, sir; it was justified on the supposition that the Treaty of Tilsit contained some secret articles, and the British Government did not know what they were. When she had taken the Danish fleet and burnt the city, she asked the mediation of Russia to secure a peace between them. Can we believe her sincere in these things? If she really believed there were such secret articles, is it natural to believe that she would ask this mediation to restore friendship between her and the injured nation? If we could not see a treachery through this mist, we must be blind. But I would not have noticed the subject, except that a disposition has been manifested to criminate our Government, and prejudice the minds of the nation, instead of looking to the real cause.

I should have supposed, after what has been communicated to us, no one would have accused this Government of a want of justice in its negotiations with foreign powers. Whoever has read the instructions of the Secretary of State to our Ministers, must be convinced to the contrary. Even on the subject of impressments, they were instructed to press it in such a manner as not even to irritate the feelings of Great Britain. A peculiar solicitude has been displayed in all our proceedings to maintain friendship. It has been all in vain. We have been driven to the last alternative, either to shut up our ports for a while, or to fight. What do gentlemen now ask? That we should open our ports to Great Britain alone; for that would be the effect of raising the embargo. Has it been in the power of our Government to make a settlement? No. Are gentlemen willing to put up with what has happened? The terms which Great Britain has offered, it would have disgraced any people to accept. After she has attacked your national ship, shed the blood of your citizens, and obliged you to exclude ships of war from your ports, she requires that you rescind your proclamation before she will even tell you what satisfaction she is willing to make. She says, I have abused you; humble yourself, succumb to me, and I will make such satisfaction as I

think fit. This is the nation for whom you are to lift the embargo, and these the favors you are to receive in return. I had rather see this nation again tributary to them than sacrifice so great a proportion of their independence, than acknowledge that all we have done is wrong, and all they have done is right. I consider that whenever this nation is reduced to such a state of apathy as to endure these things, our independence is not worth a straw. You have certain rights—first principles. Recede from them, and you open yourself to perpetual violation; if persisted in, they will prostrate your independence. With these sentiments I cannot consent to repeal the embargo, and the opposition to this resolution seems to be founded in a wish to do that.

Mr. KEY.—I rise on this occasion with great embarrassment, because in no instance of my political life, has any measure called on me to act, in which the interests of my country were more deeply involved. In common with my fellow-citizens of Maryland, I feel a total aversion to the continuance of the embargo, and I am confident I speak the almost unanimous sense of my constituents in calling for its repeal. However proper some of them might have considered it in the first instance, as an experiment from which good might result, yet all now are satisfied that nothing short of its immediate repeal will save them from great distress, and that a long continuance of it will induce bankruptcy and ruin. I am willing, sir, to admit, that those who advocated the embargo were actuated by the purest motives, and had the best interests of their country at heart—that they adopted it as a measure from which great permanent good would result; but time, which tests the correctness of political measures, has sufficiently elapsed to convince them of their error—at least it has impressed on my mind a conviction, that we deeply suffer, whilst those it was intended to operate on, lightly feel its effects. I was originally opposed to the measure—I still am opposed to it; although I anxiously wish its immediate repeal, yet I am compelled to vote against the present resolution, because in my heart and judgment I believe it is so worded as to violate, if adopted, the Constitution of the United States—and that I am unwilling to let the repeal of this law depend on contingencies, not known or designated and which are to grow out of the acts of foreign Governments.

An honorable gentleman from Virginia, (Mr. LOVE,) who originally voted for the measure, has this day admitted it to be a curse. I concur with him, as

I hope he will now with me, in a vote and prayer for its speedy removal. I believe the embargo to be partial in its operation, oppressive, and, if persisted in, ruinous to the country. These are strong terms, but if gentlemen will lend a patient ear, I will endeavor to convince them of their truth, and I will use as much brevity as is consistent with perspicuity. The view I take of this subject is extensive, but I hope not diffusive.

The resolution proposes to vest the President with power, on the happening of certain European events, to suspend the embargo law. I am against it, because I want an immediate repeal, because it is unconstitutional to vest the President with power to suspend a law, and because it is partial in its operation, oppressive, and ruinous.

It is partial in its operation in two respects—first as it regards the persons on whom it operates, and secondly, as it respects the product operated on.

The district I have the honor to represent is not bounded on navigable water. So far then as it respects my constituents, (and many other districts of different States are in the same situation,) the law executes itself with rigor. From their geographical position, they are excluded the means of selling their surplus produce, while this very law operates as a bounty in effect to the citizens of other parts of the United States. I call the attention of the committee to the northern parts of the State of New York. That State binds on Lake Erie to Niagara, on the whole extent of Lake Ontario, on a great part of the river St. Lawrence, and the Lakes Champlain and George, and has an immediate, direct, easy communication with the British, in Upper and Lower Canada. The whole Genessee country, and the counties lower down, have a steady, constant market, the prices tempting, the access easy, and few or no officers to interrupt the daily supplies given to their British neighbors. We cannot shut our eyes to the fact of this commerce being steadily carried on.

The embargo, so far as it restrains places from exporting their surplus produce, goes to enhance the price of such produce in foreign markets—the enhanced price affords the temptation, and the easy access gives the means to that country to export it, and in fact, by excluding others, gives them a monopoly of supply. Near four hundred miles of northern coast, in proximity to the British settlements, gives to New York upon the lakes a steady market. Vermont binds on lakes which communicate with Canada.

Passamaquoddy openly and publicly furnishes supplies to New Brunswick. In this state of things, and in the mode the law is executed, it is partial and oppressive, and my constituents and others in similar locations so feel and experience it.

But, sir, there is another portion of our fellow-citizens, on whom this law executes itself with peculiar severity, I mean the frugal, hardy, laborious and valuable fishermen of the Eastern States. I see gentlemen smile at a member of the Middle States supporting the interests of the fishermen; but, sir, I should think myself illy entitled to a seat in this House, if I did not know the value of that class of men to society and the Union. I wish, sir, their numbers, character, and usefulness, were better known and understood than I fear they are. And as on this subject my opinions may not be orthodox, I will refer to the head of the church.

Mr. Chairman, in the year 1791, the now President of the United States, then Secretary of State, made an able and luminous report on our fisheries. These are his words: first, as to the annual value of a fisherman's labor, secondly, as to the situation and value of the whale fishery as carried on from a sand bar—

“About 100 natives on board 17 ships (for there were 150 Americans engaged by the voyage) came to 2,255 livres, or about \$416 66 a man.”

“The American whale fishery is principally followed by the inhabitants of the island of Nantucket—a sand bar of about fifteen miles long and three broad—capable of maintaining by its agriculture about twenty families; but it employed on the fisheries, before the war, between five and six thousand men and boys; and in the only harbor it possesses it had one hundred and forty vessels—one hundred and thirty-two of which were of the large kind—as being employed in the southern fishery. In agriculture, then, they have no resources; and if that of their fishery cannot be pursued from their own habitations, it is natural they should seek others from which it can be followed, and prefer those where they will find a sameness of language, religion, laws, habits, and kindred. A foreign emissary has lately been among them, for the purpose of renewing the invitations to a change of situation; but, attached to their native country, they prefer continuing in it, if their continuance there can be made supportable.”—*Mr. Jefferson's report, January 10, 1791, on the subject of the fisheries.*

I call the attention of the committee to every letter of this report, and then let each member ask himself the situation of the fishermen under the embargo law.

Sir, by the Treasury report laid on our desks it appears that the exportation of dried fish alone, in the last year, amounted to 473,924 quintals; and the whole product of the fisheries amounted to \$2,300,000—a sum equal to the one-eighteenth part of the whole agricultural produce of the United States: thus in effect, in point of product, adding another State to the Union. Is this class of men, whose farm is the ocean and whose crop is its fish, to have their whole or nearly their whole interests sacrificed by the unequal operation of the embargo? I hope not, sir. I trust gentlemen will see the oppression of the law, and its partial operation, and remove it.

Again, sir, as, to the product, how does this law operate? The cotton planter and the tobacco planter have their articles little deteriorated by time. The embargo, to them, suspends the use of their capital only; but to those who have flour or fish, the embargo, if continued for a few months, destroys

their capital—the thing itself. In this respect the embargo works partially; and in reference to its operation on particular portions of our country, on particular classes of people, or on the product, it ought to be repealed at once, and without delay.

Sir, it is a very remarkable fact, and not more remarkable than true, that if you compare the number of fishermen with the product of their labor, and the number employed in agriculture with the product of agriculture, that the value of the former to the latter is as ten to one—a people whose habits and manners are in consonance with republican institutions, and who are as valuable as the agriculturists. God has given them a noble estate in the ocean, most bountifully stocked, and diligently do they work it, with profit to themselves and advantage to their country.

THURSDAY, April 14.

Suspension of the Embargo.

Mr. D. R. WILLIAMS felt that the question which was about to be decided was one of so much importance, every member of the House must be specially responsible for his vote on it; and, laboring under that responsibility, he felt it a duty to state some of the reasons for the vote he should give. I shall vote against the resolution, said Mr. W., and in so doing shall not be influenced by the reasons assigned by my friend from Virginia, (Mr. RANDOLPH,) nor by those of the gentleman from Maryland. When this resolution was first presented to us, I felt very much inclined to vote for it; but upon considering it more maturely I cannot. This I regret exceedingly, because I shall perhaps differ from a large majority of the friends to the embargo. Gentlemen themselves who advocate it, if all the consequences which certainly attach to it are deliberately considered, will I hope give it up. What is the object of the resolution, or rather of the embargo itself, for I presume it is intended either to fix the day or the circumstances on which it shall be suspended? [Mr. RANDOLPH observed that while up he had forgot to propose an amendment to the resolution so as to declare it expedient to repeal the embargo.] No, sir, said Mr. W., it is not expedient. This amendment, however, has cut in upon me unexpectedly; but as the debate has heretofore been a kind of general battle, partaking of war, army,

embargo, treaty, resolution, and amendment,—I shall be in order on any point, it has taken so wide a range.

The resolution is pernicious, and for this reason: the embargo is not designed to affect our own citizens, though I confess it operates hard on them; but to make an impression on Europe; and beyond all question, the firmer you stand, the more likely is your measure to have effect. What is the opinion inferable from the adoption of such a resolution? Does it not tell the belligerent powers of Europe with whom you are contending, that you are tired of the embargo; that you are sick of it, and will accept any modification of their general principles (I would rather say practice, for they have no principle) so hostile to your neutral rights, rather than submit to it any longer? I hope this consideration will have weight with gentlemen, who, like myself, are friendly to the embargo, for assuredly it is entitled to it. Besides, are gentlemen aware of the embarrassment they will not be able to avoid in framing a law on such a subject? It will be scarcely possible to define the circumstances on which you will permit the suspension to take place, without incurring one of two risks; either too precise to admit the President's acting, for being a law its letter must be fulfilled, or so general as to invest him with a discretionary power altogether inexpedient. I cannot conceive a situation more disagreeable than would be the President's with such a power. Though I subscribe to what I consider the sound part of the declarations of the gentleman from Virginia, (Mr. RANDOLPH,) the other day, as to the tendency this resolution will have to throw a monstrous and unusual power into the hands of the President, yet I do not believe it unconstitutional; nor can I subscribe to the arguments of my friend with respect to the constitutionality of the laws laying an embargo; for, sir, if they prove any thing they prove quite too much; and did I possess but a moiety of the eloquence and ability of that gentleman, I could certainly confute them. I contend that the power to lay an embargo is granted in the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." If you cannot prohibit commerce with a particular port or nation, of what avail is the power to regulate it? The law prohibiting all trade with St. Domingo is authorized by the same clause of the constitution, and yet it never was supposed to be unconstitutional. Will it be questioned that you can prohibit exportation from the United States in the vessels of any particular nation? Will it be questioned that you have a right to exclude foreigners from trading with the Indian tribes within your

jurisdictional limits? Most assuredly you have these rights, and all derived from the same general power to regulate commerce. The embargo is not an annihilation, but a suspension of commerce, to regain the advantages of which it has been robbed; it follows that it is a constitutional regulation of commerce. The gentleman read my name among others in the negative on the passage of the section in the bill to authorize the President to suspend the non-importation law. I will not undertake to say what were the reasons of the gentleman for voting against that section, but I know that my reason was, it vested the President of the United States with power to suspend the law at the time when we ourselves should be in session. I thought then as I do now, that it is inexpedient, under any circumstances, to give the President power to suspend the operation of a law during the session of Congress.

Mr. G. W. CAMPBELL said, I will now return to the subject before the House. The gentleman last up, (Mr. D. R. WILLIAMS,) has rendered it unnecessary for me to enter into a discussion of a part of this subject, which might otherwise have claimed more particular notice. With that gentleman I agree, in almost every thing he has said, except as to the effect which this resolution would have upon foreign nations. If I had supposed that this measure held out to foreign powers the slightest pretext for believing that we are so tired of the embargo as to be induced to repeal it, under any circumstances whatever, except such as are consistent with the honor and dignity of the nation, I would be the last man to propose it to this House. But under a conviction that this resolution can have no such effect, that it holds to foreign powers a language directly opposite to this, and that they will see in it the only object which its supporters can be fairly supposed to have, to put it in the power of the Executive to remove, a pressure, as soon as circumstances will render it proper, which is acknowledged to bear hard on the American people, and must continue so to do so long as the causes that produce it remain unchanged, I have brought it before the House, and under this impression alone am I disposed to support it. So far, sir, from thinking that it will induce foreign nations to believe we are disposed to remove the embargo, before the causes that produced it are first withdrawn, I am clearly of opinion that this resolution will convince them that we are determined the embargo laws never shall be repealed, until they revoke their orders and decrees, or until we shall have determined to appeal to war, the last resort of an injured nation. They will see, in this measure, what is

believed to be the true principle that ought to direct our conduct—a firm determination to persevere in the embargo until they are brought to a sense of justice, or until that crisis in our affairs has arrived, that will make it our interest and our duty to resort to arms in vindication of those rights which have been so grossly violated—and then the embargo may not be necessary. War and an embargo at the same time are seldom supposed to be necessary; an embargo frequently precedes war, but scarcely ever accompanies it. These remarks are made, because so many misrepresentations have gone abroad with respect to the objects, the effects, and probable duration of the embargo, and the views of those who imposed it. Some considered its operations directed against one nation alone, to wit, Great Britain; while others of the same party declared it could do that power no injury. The first of these positions is not founded on any facts to support it, the laws imposing the embargo being general in their operation; and the result, as far as we can judge from the best information that has yet reached us from that nation, proves the latter to be totally incorrect. Some pretended to state it as a measure that was to be permanent, and forever unalterable, and on that ground opposed it; while others on the same side pronounced it a temporary expedient, a mere chimerical experiment, that was not designed to be persevered in for any time, and therefore declared it useless, and likely to produce no good. In answer to such contradictory objections, it would seem almost unnecessary to say any thing. The one would appear to destroy the other. Those who made them have been equally incorrect in stating the views of those who imposed the embargo, as they have been unfortunate and inconsistent in the grounds upon which they have opposed it. No one could reasonably suppose the embargo was intended to remain forever, to be a permanent, unalterable measure, or to continue longer than the existence of the causes that produced it. Neither ought it to be supposed that it would be removed during the existence of those causes, unless some alternative was resorted to in its place. These representations, or rather misrepresentations, are therefore futile, not founded in fact, and calculated only to deceive and mislead the public mind.

The objects of the embargo have already been stated to you. These were, among others, to take a stand previous to an expected war, to prepare the nation to meet it; to collect and preserve at home our resources and our seamen, from being captured by foreign powers; to produce a pressure on those foreign powers, that might make them sensible of the advantages they

derived from our trade, and, by making them feel the want of it, bring them to a just estimate of their own interests, and a sense of justice toward us; and also to pause for a short time in order to determine what system we ought to pursue. These were, it is believed, the principal objects of the embargo. The time has not yet arrived that puts it in the power of this nation decisively to determine with which of the belligerent powers we must go to war, if, indeed, it be necessary to go to war with either. The conduct of those powers has not been such as to induce us to consider either the one or the other friendly disposed toward us—and it might be hazarding too much to go to war with both at the same time. It is not, therefore, the proper time, either on the ground of peace or on that of war, to remove the embargo, as has been insisted upon by those who have been opposed to the measure. But it has been contended by some who are friendly to the embargo, that the resolution before you holds out to the belligerent powers a ground for believing that we will repeal the embargo laws, without any change being first made in their measures relative to our commerce. I am unable to see any thing in the resolution that justifies such an opinion, or that presents to those powers any prospect of their removing the embargo, until they revoke their orders and decrees, or change them in such a manner as to render our commerce safe. What does the resolution say to the belligerent powers? Is not its language clear and explicit? It says to them you must act first, before the embargo shall be removed. The Council of the Nation have solemnly so determined; your orders and decrees have produced the embargo, and it shall continue until you withdraw them. It is announcing to those nations in the strongest language in our power that we are determined not to shrink from the ground we have taken; that we will not relinquish the measures we have adopted, until they first withdraw their measures so destructive to our commerce, and then the embargo shall be removed—then the commercial world will be unshackled, and trade restored to its usual channels, to its full liberty. This resolution will turn the eyes of the American people to the real source of their present difficulties—the conduct of the belligerent powers, in passing their orders and decrees, by which they have bound in chains or rather annihilated the commerce of the civilized world; in these they will see the true cause of the embargo, the reasons that render it essentially necessary to save our trade from certain ruin; and to these they must look to unbind the chains and permit trade to return to its usual channels, and

pursue its natural course. On these grounds, and with this view, this measure was brought forward, and is now supported by me.

FRIDAY, April 15.

Death of Mr. Crowninshield.

As soon as the Journal was read—

Mr. BACON said: I rise with feelings of the deepest sensibility, to perform a solemn and painful duty. It is to announce to the House the death of my friend and colleague, Mr. CROWNINSHIELD, who expired this morning at six o'clock.

Whereupon, on motion of Mr. FISK,

Resolved, unanimously, That a committee be appointed to take order for superintending the funeral of JACOB CROWNINSHIELD, late a Representative from the State of Massachusetts.

Ordered, That Mr. CUTTS, Mr. TAGGART, Mr. QUINCY, Mr. COOK, Mr. GREEN, Mr. ELY, and Mr. BACON, be appointed a committee, pursuant to the said resolution.

On motion of Mr. D. R. WILLIAMS,

Resolved, unanimously, That the members of this House will testify their respect for the memory of JACOB CROWNINSHIELD, late one of their body, by wearing crape on the left arm for one month.

On motion of Mr. NEWTON,

Resolved, unanimously, That the members of this House will attend the funeral of the late JACOB CROWNINSHIELD, to-morrow morning at ten o'clock.

On motion of Mr. SMILIE,

Resolved, unanimously, That a message be sent to the Senate to notify them of the death of JACOB CROWNINSHIELD, late a member of this House, and that his funeral will take place to-morrow morning at ten o'clock.

SATURDAY, April 16.

The House met at nine o'clock, and after reading the Journal, adjourned till twelve o'clock, in order to attend the funeral of Mr. CROWNINSHIELD.

The House met accordingly at twelve o'clock.

TUESDAY, April 19.

Suspension of the Embargo.

Mr. RANDOLPH said that they had lately gotten into a strange habit of calling things by their wrong names. The other day, said he, we received a bill from the Senate for making an addition to the Peace Establishment, without limitation; we christened the bill by the style and title of a bill to raise for a limited time an additional military force. Here is a bill authorizing the President of the United States, under certain conditions, to suspend the operation of the embargo; and for certain conditions certainly none ever were nearer uncertainty than these are. What are the conditions? They are not positive, and of these, such as they are, the President at last is to determine. The President, under certain conditions, is to suspend the embargo, and when you inquire what those conditions are, you find them uncertainties—contingencies of which, when they happen, he is the sole and exclusive judge. Now if we do authorize the President to suspend the embargo under certain conditions, let us ascertain them. Let them not be uncertain. Let him not have a discretion whether he will suspend the embargo or not.

It is not my purpose now to recapitulate my former argument on this subject; but I do say that if the President of the United States is to have a discretion at all, it ought to be absolute and unqualified, not only

substantially so, but nominally so; and the objection to this bill is, that under the pretence of qualification to discretion, under the mask (not by this intending any disrespect to the other branch of the Legislature) of restricting the power, you do in fact give him an unqualified power; and no gentleman who reads the bill can for a moment hesitate to acknowledge the correctness and soundness of the doctrine. I rise not so much to enter into discussion (for I feel myself unable) as to offer an amendment, which, if it be lost in Committee of the Whole, I will reiterate in the House to ascertain its sense. I move therefore to strike out from the enacting clause in the first section to the end of it and insert:

“That the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, shall be repealed, so far as they prohibit trade with France and her dependencies, and States associated in common cause with her, as soon as the United States shall be exempted from the operation of her decrees of the 21st November, 1806, and December, 1807, and the President of the United States shall have officially been notified thereof, and shall have received assurances that the existing stipulations between the United States and France will be respected by her.

“And be it further enacted, That the said acts shall be repealed, so far as they prohibit trade with Great Britain, her dependencies, and States associated in common cause with her, as soon as her Orders of Council of November last shall be revoked, so far as they affect the commerce of the United States, and the President of the United States shall have received official assurances thereof, and that the neutral rights of the United States shall be respected by them. And the President of the United States shall be and he is hereby authorized and required, on the receipt of such assurances from either of the two belligerents, to notify the same forthwith by proclamation; whereupon the embargo shall be removed in regard to such belligerents. And if such assurances be received from both belligerents, proclamation shall in like manner be forthwith issued; whereupon the acts aforesaid, and the several acts supplementary thereto, shall cease and determine.”

I will state in a few words why I have not inserted in that amendment any condition respecting reparation for the affair of the Chesapeake. It was not because the bill from the Senate contains no such principle; but because the embargo has never been considered, that I recollect, certainly it was not so considered by the gentleman who moved the resolution, as a reaction on our part in consequence of that outrage; because the step was not taken till some time after that outrage; and because it was taken before we knew whether reparation would be made for the outrage or not. In fact it was never said by any gentleman who advocated it, to have any connection with that transgression, which stood on its own demerits. The embargo grew out of the French decrees and British proclamations, and if justified by the British proclamation, was assuredly yet more justified by the Orders of Council which followed it. It was then a measure intended to meet the aggressions on our commerce by the two belligerents; and not a measure of resentment in consequence of the aggression on the Chesapeake. It is therefore that I have thought proper not to mingle subjects which at all times ought to have been, and I understand now are kept separate and distinct.

Mr. QUINCY.—Mr. Chairman, the amendment proposed to this bill by the gentleman from Virginia (Mr. RANDOLPH) has for its object to limit the Executive discretion in suspending the embargo to certain specified events—the removal of the French decrees; the revocation of the British Orders. It differs from the bill, as it restricts the range of the President's power to relieve the people from this oppressive measure. In this point of view, it appears to me even more objectionable than the bill itself. To neither can I yield my sanction. And as the view which I shall offer will be different from any which has been taken of this subject, I solicit the indulgence of the committee.

A few days since, when the principle of this bill was under discussion, in the form of a resolution, a wide field was opened. Almost every subject had the honors of debate except that which was the real object of it. Our British and French relations, the merits and demerits of the expired and rejected treaty, as well as those of the late negotiators, and of the present Administration; all were canvassed. I enter not upon these topics. They are of a high and most interesting nature; but their connection with the principle of this bill is, to say the least, remote. There are considerations intimately connected with it, enough to interest our zeal and to awaken our anxiety.

The question referred to our consideration is, shall the President be authorized to suspend the embargo on the occurrence of certain specified contingencies? The same question is included in the proposed amendment and the bill. Both limit the exercise of the power of suspension of the embargo to the occurrence of certain events. The only difference is, that the discretion given by the former is more limited; that given by the latter is more liberal.

In the course of the former discussion a constitutional objection was raised which, if well founded, puts an end to both bill and amendment. It is impossible, therefore, not to give it a short examination. It was contended that the constitution had not given this House the power to authorize the President at his discretion to suspend a law. The gentleman from Maryland (Mr. KEY) and the gentleman from Virginia, (Mr. RANDOLPH,) both of great authority and influence in this House, maintained this doctrine with no less zeal than eloquence. I place my opinion, with great diffidence, in the scale, opposite to theirs. But as my conviction is different, I must give the reasons for it—why I adhere to the old canons; those which have been received as the rule, both of faith and practice, by every political sect which has had power, ever since the adoption of the constitution, rather than to these new dogmas.

The Constitution of the United States, as I understand it, has in every part reference to the nature of the things and the necessities of society. No portion of it was intended as a mere ground for the trial of technical skill or verbal ingenuity. The direct, express powers, with which it invests Congress, are always to be so construed as to enable the people to attain the end for which they were given. This is to be gathered from the nature of those powers, compared with the known exigencies of society and the other provisions of the constitution. If a question arise, as in this case, concerning the extent of the incidental and implied powers vested in us by the constitution, the instrument itself contains the criterion by which it is to be decided. We have authority to make “laws necessary and proper for carrying into execution” powers unquestionably vested. Reference must be had to the nature of these powers to know what is “necessary and proper” for their wise execution. When this necessity and propriety appear, the constitution has enabled us to make the correspondent provisions. To the execution of many of the powers vested in us by the constitution, a

discretion is necessarily and properly incident. And when this appears from the nature of any particular power, it is certainly competent for us to provide by law that such a discretion shall be exercised. Thus, for instance, the power to borrow money must in its exercise be regulated, from its very nature, by circumstances, not always to be anticipated by the Legislature at the time of passing a law authorizing a loan. Will any man contend that the Legislature is necessitated to direct either absolutely that a certain sum shall be borrowed, or to limit the event on which the loan is to take place? Cannot it vest a general discretion to borrow or not to borrow, according to the view which the Executive may possess of the state of the Treasury, and of the general exigencies of the country, particularly in cases where the loan is contemplated at some future day, when perhaps Congress is not in session, and when the state of the Treasury, or of the country, cannot be foreseen? In the case of the two millions appropriated for the purchase of the Floridas, such a discretion was invested in the Executive. He was authorized, "if necessary, to borrow the sum, or any part thereof." This authority he never exercised, and thus, according to the argument of gentlemen on the other side, he has made null a legislative act. For so far as it depended upon his discretion, this not being exercised, it is a nullity. The power "to pay the debts of the United States" will present a case in which, from the nature of the power, a discretion to suspend the operation of a law may be necessary and proper to its execution. Congress by one law direct the executive to pay off the eight per cent. stock. Will gentlemen seriously contend that by another it may not invest him with a general discretion to stop the payment; that is, to suspend the operation of the former law, if the state of the Treasury, or even more generally if the public good should in his opinion require it? An epidemic prevails in one of our commercial cities; intercourse is prohibited with it; Congress is about to terminate its session, and the distemper still rages. Can it be questioned, that it is within our constitutional power to authorize the President to suspend the operation of the law, whenever the public safety will permit? Whenever, in his opinion, it is expedient? The meanest individual in society, in the most humble transactions of business, can avail himself of the discretion of his confidential agent, in cases where his own cannot be applied. Is it possible that the combined wisdom of the nation is debarred from investing a similar discretion, whenever, from the nature of the particular power, it is necessary and proper to its execution?

The power of suspending laws, against which we have so many warnings in history, was a power exercised contrary to the law, or in denial of its authority, and not under the law and by virtue of its express investment. Without entering more minutely into the argument, I cannot doubt but that Congress does possess the power to authorize the President by law to exercise a discretionary suspension of a law. A contrary doctrine would lead to multiplied inconveniences; and would be wholly inconsistent with the proper execution of some of the powers of the constitution. It is true that this, like every other power, is liable to abuse. But we are not to forego a healthy action, because, in its excess, it may be injurious.

The expediency of investing the Executive with such an authority, is always a critical question. In this case, from the magnitude of the subject, and the manner in which the embargo oppresses all our interests, the inquiry into our duty in relation to it, is most solemn and weighty. It is certain some provision must be made touching the embargo, previous to our adjournment. A whole people is laboring under a most grievous compression. All the business of the nation is deranged. All its active hopes are frustrated. All its industry stagnant. Its numerous products hastening to their market, are stopped in their course. A dam is thrown across the current, and every hour the strength and the tendency towards resistance is accumulating. The scene we are now witnessing is altogether unparalleled in history. The tales of fiction have no parallel for it. A new writ is executed upon a whole people. Not, indeed, the old monarchical writ, *ne exeat regum*, but a new republican writ, *ne exeat rempublicam*. Freemen, in the pride of their liberty, have restraints imposed on them, which despotism never exercised. They are fastened down to the soil by the enchantment of law; and their property vanishes in the very process of preservation. It is impossible for us to separate and leave such a people, at such a moment as this, without administering some opiate to their distress. Some hope, however distant, of alleviation must be proffered; some prospect of relief opened. Otherwise, justly might we fear for the result of such an unexampled pressure. Who can say what counsels despair might suggest, or what weapons it might furnish?

Some provision then, in relation to the embargo, is unavoidable. The nature of it, is the inquiry. Three courses have been proposed—to repeal it; to stay here and watch it; to leave with the Executive the power to suspend

it. Concerning repeal I will say nothing. I respect the known and immutable determination of the majority of this House. However convinced I may be, that repeal is the only wise and probably the only safe course, I cannot persuade myself to urge arguments which have been often repeated, and to which, so far from granting them any weight, very few seem willing to listen. The end to which I aim will not counteract the settled plan of policy. I consider the embargo as a measure from which we are not to recede, at least not during the present session. And my object of research is, in what hands, and under what auspices it shall be left, so as best to effect its avowed purpose and least to injure the community. Repeal, then, is out of the question. Shall we stay by and watch? This has been recommended. Watch! What? "Why, the crisis!" And do gentlemen seriously believe that any crisis, which events in Europe are likely to produce will be either prevented or meliorated, by such a body as this, remaining, during the whole summer, perched upon this bill?

To the tempest which is abroad we can give no direction; over it we have no control. It may spend its force on the ocean, now desolate by our laws, or it may lay waste our shores. We have abandoned the former, and for the latter, though we have been six months in session, we have prepared no adequate shield. Besides, in my apprehension, it is the first duty of this House to expedite the return of its members to their constituents. We have been six months in continued session. We begin, I fear, to lose our sympathies for those whom we represent. What can we know, in this wilderness, of the effects of our measures upon civilized and commercial life? We see nothing, we feel nothing, but through the intervention of newspapers, or of letters. The one obscured by the filth of party; the other often distorted by personal feeling or by private interest. It is our immediate, our indispensable duty, to mingle with the mass of our brethren and by direct intercourse to learn their will; to realize the temperature of their minds; to ascertain their sentiments concerning our measures. The only course that remains is to leave with the Executive the power to suspend the embargo. But the degree of power with which he ought to be vested, is made a question. Shall he be limited only by his sense of the public good, to be collected from all the unforeseen circumstances which may occur during the recess; or shall it be exercised only on the occurrence of certain specified contingencies? The bill proposes the last mode. It also contains other provisions highly exceptionable and dangerous; inasmuch as

it permits the President to raise the embargo, “*in part or in whole*,” and authorizes him to exercise an unlimited discretion as to the penalties and restrictions he may lay upon the commerce he shall allow. My objections to the bill, therefore, are—first, that it limits the exercise of the Executive as to the whole embargo, to particular events, which if they do not occur, no discretion can be exercised, and let the necessity of abandoning the measure be, in other respects, ever so great, the specified events not occurring, the embargo is absolute at least until the ensuing session; next, that if the events do happen, the whole of the commerce he may in his discretion set free, is entirely at his mercy; the door is opened to every species of favoritism, personal or local. This power may not be abused; but it ought not to be trusted. The true, the only safe ground on which this measure, during our absence, ought to be placed is, that which was taken in the year 1794. The President ought to have authority to take off the prohibition, whenever, in his judgment, the public good shall require; not partially, not under arbitrary bonds and restrictions; but totally, if at all. I know that this will be rung in the popular ear, as an unlimited power. Dictatorships, protectorships, “shadows dire will throng into the memory.” But let gentlemen weigh the real nature of the power I advocate, and they will find it not so enormous as it first appears, and in effect much less than the bill itself proposes to invest. In the one case he has the simple and solitary power of raising or retaining the prohibition, according to his view of the public good. In the other he is not only the judge of the events specified in the bill, but also of the degree of commerce to be permitted, of the place from which and to which it is to be allowed; he is the judge of its nature, and has the power to impose whatever regulation he pleases. Surely there can be no question but that the latter power is of much more magnitude and more portentous than the former. I solicit gentlemen to lay aside their prepossessions and to investigate what the substantial interest of this country requires; to consider by what dispositions this measure may be made least dangerous to the tranquillity and interests of this people; and most productive of that peculiar good, which is avowed to be its object. I address not those who deny our constitutional power to invest a discretion to suspend, but I address the great majority, who are friendly to this bill, who, by adopting it, sanction the constitutionality of the grant of fresh authority to whom, therefore, the degree of discretion is a fair question of expediency. In recommending that a discretion, not limited by events, should be vested in the Executive, I can

have no personal wish to augment his power. He is no political friend of mine. I deem it essential, both for the tranquillity of the people and for the success of the measure, that such a power should be committed to him. Neither personal nor party feelings shall prevent me from advocating a measure, in my estimation, salutary to the most important interests of this country. It is true that I am among the earliest and the most uniform opponents of the embargo. I have seen nothing to vary my original belief, that its policy was equally cruel to individuals and mischievous to society. As a weapon to control foreign powers, it seemed to me dubious in its effect, uncertain in its operation; of all possible machinery the most difficult to set up, and the most expensive to maintain. As a mean to preserve our resources, nothing could, to my mind, be more ill adapted. The best guarantees of the interest society has in the wealth of the members which compose it, are the industry, intelligence, and enterprise of the individual proprietors, strengthened as they always are by knowledge of business, and quickened by that which gives the keenest edge to human ingenuity—self-interest. When all the property of a multitude is at hazard, the simplest and surest way of securing the greatest portion, is not to limit individual exertion, but to stimulate it; not to conceal the nature of the exposure, but, by giving a full knowledge of the state of things, to leave the wit of every proprietor free, to work out the salvation of his property, according to the opportunities he may discern. Notwithstanding the decrees of the belligerents, there appeared to me a field wide enough to occupy and reward mercantile enterprise. If we left commerce at liberty, we might, according to the fable, lose some of her golden eggs; but if we crushed commerce, the parent which produced them, with her our future hopes perished. Without entering into the particular details whence these conclusions resulted, it is enough that they were such as satisfied my mind as to the duty of opposition to the system, in its incipient state, and in all the restrictions which have grown out of it. But the system is adopted. May it be successful! It is not to diminish, but to increase the chance of that success, I urge that a discretion, unlimited by events, should be vested in the Executive. I shall rejoice if this great miracle be worked. I shall congratulate my country, if the experiment shall prove, that the old world can be controlled by fear of being excluded from the commerce of the new. Happy shall I be, if on the other side of this dark valley of the shadow of

death, through which our commercial hopes are passing, shall be found regions of future safety and felicity.

Among all the propositions offered to this House, no man has suggested that we ought to rise and leave this embargo until our return, pressing upon the people, without some power of suspension vested in the Executive. Why this uniformity of opinion? The reason is obvious; the greatness of comparison. If the people were left six months without hope, no man could anticipate the consequences. All agree that such an experiment would be unwise and dangerous. Now, precisely the same reasons which induce the majority not to go away without making some provision for its removal, on which to feed popular expectation, is conclusive in my mind that the discretion proposed to be invested should not be limited by contingencies.

The embargo power, which now holds in its palsying gripe all the hopes of this nation, is distinguished by two characteristics of material import, in deciding what control shall be left over it during our recess. I allude to its greatness and its novelty.

As to its greatness, nothing is like it. Every class of men feels it. Every interest in the nation is affected by it. The merchant, the farmer, the planter, the mechanic, the laboring poor; all, are sinking under its weight. But there is this peculiar in it, that there is no equality in its nature. It is not like taxation, which raises revenue according to the average of wealth; burdening the rich and letting the poor go free. But it presses upon the particular classes of society, in an inverse ratio to the capacity of each to bear it. From those who have much it takes, indeed, something. But from those who have little, it takes all. For what hope is left to the industrious poor, when enterprise, activity, and capital are proscribed their legitimate exercise? This power resembles not the mild influences of an intelligent mind, balancing the interests and condition of men, and so conducting a complicated machine as to make inevitable pressure bear upon its strongest parts. But it is like one of the blind visitations of nature; a tornado or a whirlwind. It sweeps away the weak; it only strips the strong. The humble plant, uprooted, is overwhelmed by the tempest. The oak escapes with the loss of nothing except its annual honors. It is true the sheriff does not enter any man's house to collect a tax from his property. But want knocks at his door and poverty thrusts his face into the window. And what relief can the rich extend? They sit upon their heaps and feel them moulding into ruins

under them. The regulations of society forbid what was once property, to be so any longer. For property depends on circulation; on exchange; on ideal value. The power of property is all relative. It depends not merely upon opinion here, but upon opinion in other countries. If it be cut off from its destined market, much of it is worth nothing, and all of it is worth infinitely less than when circulation is unobstructed.

This embargo power is therefore of all powers the most enormous, in the manner in which it affects the hopes and interests of a nation. But its magnitude is not more remarkable than its novelty. An experiment, such as is now making, was never before—I will not say tried—it never before entered into the human imagination. There is nothing like it in the narrations of history or in the tales of fiction. All the habits of a mighty nation are at once counteracted. All their property depreciated. All their external connections violated. Five millions of people are engaged. They cannot go beyond the limits of that once free country; now they are not even permitted to thrust their own property through the grates. I am not now questioning its policy, its wisdom, or its practicability, I am merely stating the fact. And I ask if such a power as this, thus great, thus novel, thus interfering with all the great passions and interests of a whole people, ought to be left for six months in operation, without any power of control, except upon the occurrence of certain specified and arbitrary contingencies? Who can foretell when the spirit of endurance will cease? Who, when the strength of nature shall outgrow the strength of your bonds? Or if they do, who can give a pledge that the patience of the people will not first be exhausted? I make a supposition, Mr. Chairman—you are a great physician; you take a hearty, hale man, in the very pride of health, his young blood all active in his veins, and you outstretch him on a bed; you stop up all his natural orifices, you hermetically seal down his pores, so that nothing shall escape outwards, and that all his functions and all his humors shall be turned inward upon his system. While your patient is laboring in the very crisis of this course of treatment, you, his physician, take a journey into a far country, and you say to his attendant, “I have a great experiment here in process, and a new one. It is all for the good of the young man, so do not fail to adhere to it. These are my directions, and the power with which I invest you. No attention is to be paid to any internal symptom which may occur. Let the patient be convulsed as much as he will, you are to remove none of my bandages. But, in case something external should happen; if the

sky should fall, and larks should begin to appear, if three birds of Paradise should fly into the window, the great purpose of all these sufferings is answered. Then, and then only, have you my authority to administer relief.”

The conduct of such a physician, in such a case, would not be more extraordinary than that of this House in the present, should it adjourn and limit the discretion of the Executive to certain specified events arbitrarily anticipated; leaving him destitute of the power to grant relief should internal symptoms indicate that nothing else would prevent convulsions. If the events you specify do not happen, then the embargo is absolutely fixed until our return. Is there one among us that has such an enlarged view of the nature and necessities of this people as to warrant that such a system can continue six months longer? It is a presumption which no known facts substantiate, and which the strength and the universality of the passions such a pressure will set at work in the community, render, to say the least, of very dubious credit. My argument in this part has this prudential truth for its basis: If a great power is put in motion, affecting great interests, the power which is left to manage it should be adequate to its control. If the power be not only great in its nature, but novel in its mode of operation, the superintending power should be permitted to exercise a wise discretion; for if you limit him by contingencies, the experiment may fail, or its results be unexpected. In either case, nothing but shame or ruin would be our portion.

But I ask the House to view this subject in relation to the success of this measure, which the majority have justly so much at heart. Which position of invested power is the most auspicious to a happy issue?

As soon as this House has risen, what think you will be the first question every man in this nation will put to his neighbor? Will it not be—“What has Congress done with the embargo?” Suppose the reply should be—“They have made no provision. This corroding cancer is to be left absolutely on the vitals six months longer.” Is there a man who doubts but that such a reply would sink the heart of every owner of property, and of every laborer in the community? No man can hesitate. The magnitude of the evil, the certain prospect of so terrible a calamity thus long protracted, would itself tend to counteract the continuance of the measure by the discontent and despair it could not fail to produce in the great body of the people. But suppose in reply to such a question, it should be said—“The removal of the embargo depends upon events. France must retrace her steps. England must

apologize and atone for her insolence. Two of the proudest and most powerful nations on the globe must truckle for our favor, or we shall persist in maintaining our dignified retirement.” What then would be the consequence? Would not every reflecting man in the nation set himself at work to calculate the probability of the occurrence of these events? If they were likely to happen, the distress and discontent would be scarcely less than in the case of absolute certainty for six months’ perpetuation of it. For if the events do not happen, the embargo is absolute. Such a state of popular mind all agree is little favorable either to perseverance in the measure, or to its ultimate success. But suppose that the people should find a discretionary power was invested in the Executive, to act as in his judgment, according to circumstances, the public good should require. Would not such a state of things have a direct tendency to allay fear, to tranquillize discontent, and encourage endurance of suffering? Should experience prove that it is absolutely insupportable, there is a constitutional way of relief. The way of escape is not wholly closed. The knowledge of this fact would be alone a support to the people. They would endure it longer. They would endure it better. We would be secure of a more cordial co-operation in the measure, as the people would see they were not wholly hopeless, in case the experiment was oppressive. Surely nothing can be more favorable to its success than producing such a state of public sentiment.

We are but a young nation. The United States are scarcely yet hardened into the bone of manhood. The whole period of our national existence has been nothing else than a continued series of prosperity. The miseries of the Revolutionary war were but as the pangs of parturition. The experience of that period was of a nature not to be very useful after our nation had acquired an individual form and a manly, constitutional stamina. It is to be feared we have grown giddy with good fortune; attributing the greatness of our prosperity to our own wisdom, rather than to a course of events, and a guidance over which we had no influence. It is to be feared that we are now entering that school of adversity, the first blessing of which is to chastise an overweening conceit of ourselves. A nation mistakes its relative consequence, when it thinks its countenance, or its intercourse, or its existence, all-important to the rest of the world. There is scarcely any people, and none of any weight in the society of nations, which does not possess within its own sphere all that is essential to its existence. An individual who should retire from conversation with the world for the

purpose of taking vengeance on it for some real or imaginary wrong, would soon find himself grievously mistaken. Notwithstanding the delusions of self-flattery, he would certainly be taught that the world was moving along just as well, after his dignified retirement, as it did while he intermeddled with its concerns. The case of a nation which should make a similar trial of its consequence to other nations, would not be very different from that of such an individual. The intercourse of human life has its basis in a natural reciprocity, which always exists, although the vanity of nations, as well as of individuals, will often suggest to inflated fancies, that they give more than they gain in the interchange of friendship, of civilities, or of business. I conjure gentlemen not to commit the nation upon the objects of this embargo measure, but by leaving a wise discretion during our absence with the Executive, neither to admit nor deny by the terms of our law that its object was to coerce foreign nations. Such a state of things is safest for our own honor and the wisest to secure success for this system of policy.

Mr. KEY said he well knew how painful it was to address gentlemen who had already made up their minds; but the magnitude of this important constitutional question compelled him to trespass for a few moments on the patience of the House. I shall, said he, confine myself to the constitutionality of the bill from the Senate, in hopes that if the House feel the impressions on the subject which I feel, they will reject it; or at least word it so, that the power given to the President shall be constitutional. I was in hopes, from the talents of the gentlemen who spoke the other day, that I should have heard some reply, some attempt made to defeat the constitutional objections which I offered to the resolution; if they did not meet them with fair argument, that they would at least have shown what part of the conclusions which I had drawn were incorrect. Gentlemen say the argument is not true. They must either allow my deductions, or show wherein I am incorrect in drawing them. I call upon the understanding of the House, and their attachment to the constitution, to follow me but for a few moments, and see whether we can vest the power contemplated by the bill.

All the respective Representatives of the people of the States at large, and the sovereignty in a political capacity of each State, must concur to enact a law. An honorable gentleman from Tennessee (Mr. CAMPBELL) admitted that the power to repeal must be coextensive with the power to make. If this be

admitted, I will not fail to convince you that in the manner in which this law is worded we cannot constitutionally assent to it. What does it propose? To give the President of the United States power to repeal an existing law now in force—upon what? Upon the happening of certain contingencies in Europe? No; but if those contingencies when they happen in his judgment shall render it safe to repeal the law, a discretion is committed to him, upon the happening of those events, to suspend the law. It is that discretion to which I object. I do not say it would be improperly placed at all; but the power and discretion to judge of the safety of the United States, is a power legislative in its nature and effects, and as such, under the constitution, cannot be exercised by one branch of the Legislature. I pray gentlemen to note the distinction: that whenever the events happen, if the President exercise his judgment upon those events, and suspend the law, it is the exercise of a legislative power; the people, by the constitution of the country, never meant to confide to any one man the power of legislating for them.

Is the suspension of the law a legislative act? Can any man doubt it? It is as much a legislative act as to repeal or make a law; and the same power which can give any man a right to suspend a law, can give him an equal right to make a law. I ask if these principles are not clear and manifest to any one who will consider them? Is the power to suspend a law a legislative act? Certainly; because it changes the law to a new rule of conduct. For instance—the law is in full force; no ship or vessel can depart from our ports. That prohibition ceases and a new rule is established by the suspension of the law. Hence the suspension of a law, by repealing an old rule of conduct and establishing a new one, is unquestionably a legislative act. If I am correct—and I call upon gentlemen to show in what respect I am not correct; I call upon them by argument or reasoning to prove that the power of suspending a law is not the power of repealing one—I then beg of you to lay your hand on the Constitution of the United States, and say where is the power of confiding the enactment (repeal and enactment requiring the same power) of laws to any individual whatever? None can be found; and till some can be found, we must recognize it as a sacred truth that under the constitution none does exist.

I have endeavored to show that it is a legislative power, and my reason for doing so was, to testify to a gentleman from Massachusetts (Mr.

QUINCY) that with this explanation I will give an easy understanding of this question. I do not say that we cannot give the President upon certain predicated events a power by which the embargo may be taken off. Such may be done. But when it is done, a repeal or suspension must be the act of the Congress of the United States, operating upon events or facts to which the President by his proclamation may give publicity. Very different is this bill from that; and from the idea of a gentleman who the other day said that the President was only to judge of the fact. Of what fact? Not of the happening of the events solely; for after they do happen, he is to exercise his exclusive judgment whether it will comport with the safety of the United States to suspend the embargo.

The gentleman does not seem to think that I draw a fair conclusion. I think the bill does not restrict the power of the President to suspend the law upon the happening of certain events. The President is to exercise his sole judgment, upon the happening of these events, whether it is consistent with the safety of the United States to remove the embargo. Is he bound upon the happening of these events to take off the embargo? If not, something more is to be done. He is to exercise a sound discretion whether the trade of our country may be safely prosecuted. He is not even then bound to suspend the whole of the embargo act; but to suspend the whole or in part, under certain exceptions or restrictions. Who is to make these exceptions and restrictions? The President of the United States. Then when under this power of suspension, he makes restrictions to which you are bound to adhere, does he not make the suspension a law of the land? Most manifestly. If he does, is not the suspension an actual imposition of new circumstances? He exercises a legislative act by the suspension, and by fixing terms and conditions on which the commerce of the United States may be afterwards carried on. In both cases he exercises a legislative not an Executive power.

I said the other day that to give the President of the United States power to suspend any law, was equal to giving him power to suspend all laws. And I ask any gentlemen attached to the constitution, where they will find that power. For if it be true in part it is true in the whole as to the power; though we may not in our discretion confide the exercise of the whole power to him. Now, I ask where the constitution gives us a power to enable him to suspend any law. Of all the powers on earth, even were it clear that we possess it, it ought to be exercised with the greatest hesitation. It was

perhaps the most dangerous prerogative ever claimed by the Crown for several centuries in England—the power of suspending the effects of laws enacted by the people. I call the attention of gentlemen to recollect that when the last of the unfortunate race of Stuart was about to abdicate the throne, one of the greatest reasons for the abdication was his suspending laws; that he undertook to suspend the penal laws respecting the Catholic system, and introduce Popery. The courtiers of those days attempted to justify the power not only as a prerogative of the Crown, but as often given to it by the people; and in ransacking the history of England, but two precedents were found. No sooner did the patriot convention meet, but in the most solemn manner they declared that such a power did not exist; and governed as that Parliament are now by corruption and intrigues, there never since has been an attempt to give the King the power of suspending laws. My observations flow from no want of confidence in the Executive. I am in conscience and conviction opposed to our having the right to impart a legislative power at all. In England it might be done, because the Legislature is omnipotent; but we are limited within the sphere of our constitution; and if the power is not there to be found, it can nowhere exist. Hence I state that in forming this constitution it was declared that all laws to be enforced must have the assent of the three branches representing three distinct interests of the community; and to repeal them the same formality is required.

It has been said, that powers analogous to that now attempted to be given, have been exercised. One in the case of the non-importation law; where the power to suspend was contained in the body of the law itself. I can satisfy the gentleman from Massachusetts that the powers which he refers to were all Executive, capable of being exercised by any one as well as by the President. If we have authority to give the President of the United States the power of suspending a law, have we not a right to select any other man in society, and give him the same power? We cannot transfer it anywhere. I ask the gentleman if we are capable of giving power to the President of the United States to suspend a law, can we not to any officer of Departments? If we cannot, what limits us? How are we bound? By what clause in the constitution, and on what principle? The President, it is true, is the person to whom, if we had the power, it would be most properly confided; but there is nothing which confines us exclusively to him, or which prevents us, if we have authority to delegate the power at all, from giving it to another.

The honorable gentleman from Massachusetts (Mr. QUINCY) observed that there is a distinction to be taken in the construction of the constitution, from nature and necessity. I sit so remote from him that I could not distinctly hear him. But I cannot see how there can be any distinction in our power from the nature of things, the whole constitution being in writing, containing limitations to our power; nor from necessity, for if that is to have any weight, the constitution is a perfect panacea. The constitution has limited our power, and never even thought of nature and necessity; but told you to revolve in the sphere prescribed to you. As to legislative power, there can be no distinction in it on earth; it is a simple unique power—the right to make, suspend, or repeal laws. There are powers created by that legislative authority; and there the gentleman ought to have taken his distinction. The legislative authority may communicate power to any man in the country to be exercised. They may direct a survey of the country to be made, and empower the President to appoint the person to execute it. This is a power created by the Legislature to be exercised by the Executive, not involving a legislative power at all. So by borrowing money. The power of borrowing money was an authority given to Congress to enable them to pledge the faith of the United States, as a guarantee to inspire confidence in those who might lend. When a law passes for borrowing money you may constitute any person in the country an agent to execute the bond which may be given, to negotiate a loan, or to receive the money in the Treasury. Is there in transacting this business any thing of a legislative power? Certainly not. If by this bill the President of the United States was limited upon the happening of certain specified events to issue his proclamation, and thereupon that the law should cease and determine, I should have no objection to it. I will read my ideas, which might have met the ideas of the house, and will go far to explain to what point I would go and where I would stop. [Mr. KEY then read an amendment somewhat similar to that offered by Mr. RANDOLPH; that in the event of peace or official notification of the rescinding the orders and decrees of the belligerents, &c., the President should issue his proclamation declaring the fact, and thereupon the law imposing an embargo should be repealed.] This, said he, is a legislative repeal or suspension of the act laying an embargo, upon the happening of certain events; involving no power or discretion of any one human being. The suspension or repeal follows by the constitutional exercise of our power, upon the happening of those events which the

Executive by proclamation shall notify. And let any gentleman show any further power can constitutionally be given.

Other cases were mentioned, where impliedly or directly the President might or must have power to suspend our laws. I agree with the gentleman that we may give these powers in the manner which the constitution requires. The President may have power to suspend our intercourse with any port or country in the case of contagion. In this case it depends upon the phraseology of the law whether the power be constitutionally exercised or not. If we state in an intercourse law, that if a disease shall exist in any of the West India Islands or elsewhere, and that upon proclamation of the existence of such disease the law shall be suspended, the provision made is entirely different from that contemplated by the present bill. I say if gentlemen will attend to the distinction they will find that it is as plain as the sun at noon-day. It requires but little discernment to perceive that in the present case you devolve a power of suspension or repeal; while, in the case adduced as parallel, the law suspends itself. It requires but little distinction of ideas to mark a difference between a case in which we ourselves by law suspend an act upon the happening of an event yet in the womb of time, and a case in which we give the Executive a power to suspend the law *ad libitum* when that event does occur.

I therefore do give the bill from the Senate my decided opposition, on the ground that we cannot pass the bill as sent to us; not that I am unwilling to raise the embargo, for I wish an immediate repeal.

Mr. HOLLAND said, when this subject had been first introduced he had conceived it to be one of those plain cases which would require no illustration. He had no idea the power could be doubted. He was dissatisfied with the gentleman from Tennessee, because he had taken up some time to show that they did possess the power; he then thought all the time taken up on the subject was time lost. It had never been before questioned; the power had been exercised from the commencement of the Government to the present time, and never before doubted; and therefore he had been dissatisfied with the gentleman from Tennessee, because he took up a few minutes to show that they possessed the power. I am yet, said he, unable to see that the principle of the bill is shaken by the arguments I have heard against it, although much ingenuity has been exercised on the subject by one or two gentlemen; but, when we come to examine their arguments, they

are far from being plausible, certainly not solid. The gentleman from Maryland supposes that the maxim will not be contradicted, that it takes the same power to repeal a law that it does to make it. None will contradict it; but does it apply to this case? Do we vest a power to repeal a law? It is correct that it requires the same power to destroy as to create; that the power creating always has power over the thing which it creates, and can modify it in any manner. If then the power which makes a law, says at what particular period and under what particular circumstances this law shall cease to operate, does it follow that the power of suspension given to an agent is an unconstitutional power? If a power be given by the creating power to suspend a law, does it follow that this power has subverted the original intention of the creator? When a power is invested to suspend the operation of a law, the person who exercises this authority acts in an Executive capacity, and only does what the law enjoins to be done. If I am correct in this, all the arguments of gentlemen in opposition to the bill fall to the ground. One gentleman says, that in relation to the non-importation law, the power to suspend was contained within the law itself. Does he mean to say, because this power was not contained in the original embargo law, that we cannot give it by a subsequent act? Certainly the gentleman does not mean this, because this if passed will be a part of the same law; as it is a known principle that all laws on the same subject shall be considered in the same manner as though connected together. It is not material then whether the power of suspension of a law be given in the body of the law itself, or by a subsequent act. The gentleman from Virginia who proposed the amendment under consideration says, if you will authorize a suspension until twenty days after the commencement of the next session of Congress, why not give him power to repeal it altogether? There is some reason why it should not be repealed altogether; for, were it to be repealed, it might be necessary to reinstate it, which would give us the trouble of reenacting the law; and Congress will be better able then to judge whether it shall be repealed or not, than they are now.

Mr. FINDLAY said, that when this subject was discussed formerly, he had been prepared to make some observations on it, but the floor being sufficiently occupied, he had declined rising, and had intended to have done so now, but for reasons which he would mention.

On the former discussion, the embargo was declared to be unconstitutional. It was boldly asserted that the Government was not authorized to lay an embargo, &c. He was indeed astonished to hear such an assertion, especially coming from the quarter it did. He had apprehended, however, that on that occasion it had been so ably refuted by others that it would not be introduced again; but it having been again introduced to-day, and the proposed transfer of the power of suspending the operation on the embargo to the President objected to on the same ground, he claimed the attention of the committee for a short time. His object was to state the observations he had early made on this subject and the precedents that existed. In doing so, he would not follow gentlemen's arguments, on the other side, in detail, but would state facts and draw some very concise conclusions. In doing this, he would confine himself to proving the constitutional authority of Congress to lay an embargo, and the constitutionality and expediency of the proposed transfer of the provisional suspending power to the Executive and the expediency of the measure.

From the arguments which had been offered on this subject, he was induced to suspect that gentlemen differed in opinion about the meaning of the word *embargo*. He understood an embargo to be a stopping of trade generally, or of any article of trade or commerce, either by land or water; this he said was the definition of that term, such as he found it in the best authorities; but if there could be any reasonable doubt of laying embargoes being included in the power of regulating commerce, which he thought there could not, it was clearly deducible from other powers taken in connection with this. Here he read and applied the power to provide for the common defence and general welfare of the United States, and the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, &c. He said he agreed with gentlemen on the other side, that this only authorized Congress to carry into effect the powers therein before enumerated, and vested no new power in Congress, but demonstrated beyond a doubt that Congress had power to apply these regulations of commerce to an embargo, if in their opinion it was necessary for the common defence and general welfare of the United States. He said that considering an embargo as incidental, or necessary, either as a substitute of prevention or aid in prosecuting war, the power was beyond dispute; but on this he would not enlarge, it being sufficiently evident

otherwise, but he would, by stating the exercise of that power heretofore, illustrate the subject.

That Congress, by the constitution, are the official interpreters of that instrument, as far as it relates to legislative power, must be admitted by all, and has never been denied by any. No other authority can interfere with the exercise of this power, even admitting the power of the judiciary to decide on the constitutionality of laws to the most extravagant extent that ever has been suggested. Yet even on that ground the legislative construction must be held good till a court of justice has decided otherwise. Embargoes have been frequently laid, and no measure can possibly afford more evident or more numerous cases for bringing the constitutionality of the law before a court of justice, but though counsel has been employed in embargo cases, yet none has ever questioned the authority of the law as unconstitutional.

In 1794, three embargoes were authorized by Congress, two of them were in full operation during the period prescribed. No doubt the circumstances were different then from what they are now; but circumstances relate to the expediency of the measure, not to the authority of the Legislature. This affords three precedents of the exercise of the constitutional authority of laying an embargo. Numerous other instances may be given. He had already stated that every stoppage of any usual trade by law was an embargo, for less or more did not change the principle. The Congress which met in 1793, stopped the exportation of arms and ammunition, that is to say, laid an embargo on them; he believed this had been done on other occasions, and these were now included in the embargo. An embargo had been laid several years on all trade with St. Domingo, which still continues, and this had till then been a usual and very beneficial trade; but every prohibition of a usual trade being an embargo to the extent of the prohibition, it was not necessary to enumerate them all. He would only add, that at the last session of Congress a law was enacted for laying a complete embargo on the slave trade, a trade which had been carried on between Africa and the British colonies, now United States, without legal interruption, for more than two hundred years, but though that embargo was laid without limitation of time, it might be repealed.

The first embargo laid by Congress was soon after the constitution had undergone a critical and severe scrutiny in every State in the Union, not only by the press, but by the State conventions, a member of one of which

he had been, and had assisted in examining it, not with the most delicate hand; but neither that convention nor any other, it was believed, censured the transfer of the power of laying an embargo to the General Government, nor challenged the want of it, nor moved to have it excepted out of the general powers of regulating commerce, as the power of taxing exports had been. The third Congress was also in a considerable degree composed of such as had not long before been members of the General or State conventions, or both. Such was the President, WASHINGTON, who recommended the first embargo, and he was no mean judge of the extent of the constitutional powers. Almost every Congress since that period had exercised the same power in a greater or lesser degree. He admitted that this Congress had an equal right to judge of the extent of the powers granted by the constitution as any former Congress, but they possessed no superior advantages to enable them to judge more correctly.

The constitutionality of the embargo being demonstrated, the direct question before the committee was, are we not constrained by the constitution, or at least by the nature of the Government, from transferring the power of suspending its operation, on any terms, to the President, and is it expedient to do so? Mr. F. said the first was a question of some delicacy, about which good men might very much differ; the constitution, however, was silent on the subject, and theory, by some called the spirit of the Government, such as that it consists of three separate and distinct branches, could never be perfectly carried into effect, but only in a limited degree. This was demonstrated by all the American constitutions and by the experience and practice of all other Governments. The common theory, that though Executive power may be transferred, legislative power cannot, has also its limitation in practice; these theories are good general rules, but like all other general rules they have their exceptions in practice. He admitted, with the gentleman from Maryland, (Mr. KEY,) that suspending or changing the embargo, as it changed the rule of conduct, was a legislative act, but not in the full sense of that term. If Congress were to adjourn leaving the embargo as it is, in full operation, and the President during the recess was to suspend or change it, solely by his own authority, this would be an assumption of legislative authority, and a complete legislative act, in opposition to which the gentleman's arguments would apply with great force, but they do not apply against the transfer proposed in the bill. In the bill before the committee, Congress express its will that the embargo should

be suspended as soon as the causes from which it originated ceases, or modified in its operations agreeably to the change of those causes over which we have no control. These changes depending wholly on the will of the belligerent powers, it impossible for Congress to prescribe the contingencies that may produce these changes, so it impossible to prescribe the specific contingencies on which it would be proper to modify or suspend the embargo; therefore it is only the power of applying the law to cases which are yet uncertain that is proposed to be transferred to the President. This is not strictly transferring a legislative power, but a latitude of discretion in the execution of the law, a latitude which arises solely from the nature and necessity of the case, and must be justified from that necessity.

Passing other examples in our own administration that might be mentioned, he would introduce one precedent that applied completely to the case. In 1794, after the British orders of November, 1793, the execution of which had induced President Washington to recommend an embargo, had been restrained, and after it was discovered that the embargo distressed other nations against whom it was not intended to operate, and after negotiation was determined on, the embargo which had existed sixty days, was dropped, even while some of the first commercial cities were petitioning for its continuance, and none for its removal; but a law was passed which authorized the President, at his discretion—[Here Mr. F. read the law]—it authorized the President to lay, to regulate, and to raise an embargo, as, during the recess of Congress, he, in his discretion, should judge expedient. By this law he was authorized to apply the embargo to ships of all nations, or to our own only; by the bill before us, no power is given to lay an embargo, but only to suspend the operation of that already laid; and that law, from the Journals, appears to have passed unanimously. He said that he recollected well, that he himself voted for it on the principles which he just mentioned. There had been a difference of opinion about the expediency of laying an embargo when it was recommended. Some were apprehensive that it would lead to actual war, and all the alarms of the distress and ruin to be occasioned by it, were displayed with shut doors, as well on that occasion as this, but not so perseveringly; such, however, was the different spirit of party between that time and this, that to prevent the impression going abroad that we were a divided people, the minority did not call the yeas and nays on any of the questions respecting it;

indeed, party spirit had not then assumed the same form it has done since, nor the same temper.

Mr. ROWAN.—The pressure and weight of the embargo should not have influence in deciding this question. It seems that the feelings of gentlemen are interested in it. The gentleman from Massachusetts wishes to be relieved from it. As you regard civil liberty and the rights of individuals, take it off before you go, sit till you will take it off, or go away and come back to do it. Do not be influenced by sympathy for the people suffering under the pressure of the embargo to make a sacrifice of the rights of these very people under color of sympathy for whom you are about to pursue this course. These evils may not be the immediate consequence of this course, but you are not less responsible for it from the remoteness of its consequence. We are answerable for all the proceedings of future Legislatures upon this precedent. That is the misfortune of it. We cannot see what consequences are attached to it. It may be improved upon by our successors further and further, till it is impossible for them to retrace their steps; and it is in that point of view that I am strongly opposed to the vestiture of this power. Is it possible that, in this early state of our Government, this thing should be deliberately done? We know very well the popularity of our first President, when the first precedent of this kind was set. It is unfortunate for the happiness and well-being of society, that there sometimes are men whose opinions have such a weight as to overturn deliberation. We need no longer deem so extravagant the custom of ostracism, which banished every man whose popularity and influence was too great. Strip this question of men, and resort to the constitution, and it will be impossible to sustain the bill. Even its advocates do not deny that it is unconstitutional. It is not to be found in the fountain of our power; they go back to precedent for authority to pass it, and the resort to precedent is itself one of the strongest arguments against it. They do not find a specific delegation to us of authority to transfer our power. The true ground is abandoned, and those materials resorted to, as a substitute for argument, which have always ruined republican governments—precedent and feeling. Judgment is silenced by feeling, and then precedent is called in to aid the overthrow of principle. Instead of looking into the constitution, and deriving our authority from the fountain, we agree that others shall have thought for us. Here are precedents; the persons who formed them were republicans; no doubt they examined the constitution; we will confide in

them, and bottom our decision on their opinion. The first attribute of freedom is to act for yourself; and when others think for you, you evince that you are ready to be governed by them—for, if others think for you, and act for you, you have little else than vassalage left.

I am opposed to the bill, then, upon principle. I will join heartily in any constitutional mode of repealing the law. I would say to the gentlemen who passed the embargo law, “I have no doubt that you meant to serve the country by passing it; upon you rests the responsibility; and I will act with you to repeal it in any way which shall be constitutional.”

There is a provision in this bill which is more dangerous still. It not only belongs to Congress to regulate commerce, but to declare war. Pass this bill, and the Executive has it in his power to declare war—for he is to take off the embargo when, in his judgment, the interests of the nation require it; and then, under such restrictions as his judgment shall dictate, determine with which of the powers of Europe he will go to war, or whether with both—for he may so exercise the power which you shall give him as not to leave it optional in the nation whether it will declare war or not. Our honor may be assailed in such a manner in consequence of it, as not to leave us at liberty to inquire whether properly or not. The power, if given at all, should be confined to a total repeal, and not put it in the power of the President to say with whom we shall be embroiled. How do gentlemen reason? I have not heard any reasoning, though I have heard it said, and, no doubt, a course of reasoning might have served to prove it, that this bill only confers Executive power. What did Congress more when they laid the embargo than that which they now authorize the Executive to do—to legislate upon existing circumstances and probable events? He is to exercise his judgment, whether the embargo shall be suspended upon ratification of a treaty of peace, suspension of hostilities, &c., and the modification of the suspension rests with him. If this be not legislation, I am at a loss to know what is. Enforcing a law constitutes an Executive duty; but not exercising a judgment upon the circumstances which form the basis of a law, and then acting upon it. The Executive cannot combine in himself two powers which the constitution declares shall be forever separate. Reason and the constitution direct that the Executive and legislative departments shall be kept separate and distinct.

Being young in legislation, I may learn to repose upon the opinion of others, and not be governed by own interpretation of the constitution; I have not as yet, however, learned it, and must be governed by my own understanding.

Mr. LYON moved that the committee now rise. Negatived—58 to 13.

The question was then taken on Mr. RANDOLPH's amendment, and negatived—ayes 14.

Mr. LEWIS moved to amend the bill so as to repeal the embargo from and after the passing of this bill.

Mr. RANDOLPH said that this motion of his colleague's went pretty directly to the root of the evil. There had been a variety of propositions before the committee. For myself, I have no hesitation in saying, that if we must grant a discretion to the President of the United States, I should wish that discretion, so far as it relates to the suspension of the embargo, to be as ample as possible; for, if the constitution is to be violated, the greatest good attending that violation should flow from it, if indeed good can flow from the violation of the constitution. But I think that benefits have flowed from constitutional violations, and why should they not again? Our body politic is not of so tender a nature as to die outright even of so violent an assault as this; there are stamina in it which will ultimately restore it to its wonted vigor. I understand that the gentleman from Virginia who makes this motion, does it from the apprehension that an idea will go forth that he is not in favor of raising the embargo, although he voted against it originally. I conceived it impossible that such an idea should go forth. Is it possible that those who voted against laying the embargo can now be insensible to its pressure? What is the operation of the embargo, and what will be the operation of this confidence which we are about to repose in the Executive of the United States? Why, when the embargo was laid, there were those who made money on it, because they got earlier intelligence of it than their fellow citizens; and now, when the embargo is in operation, there are those who do not suffer under it. I have it from good information, that at least 100,000 barrels of flour have been shipped from Baltimore alone since it was laid. It may be recollected, that the gentleman from Maryland, who, the other day, gave us so able an illustration of the question, urged as an argument against it, that the embargo operated unequally. I should be sorry

to put myself on a par with that gentleman in any knowledge, much less could I assume to possess a better knowledge of his own district than he himself possesses; but I believe it has been said by a gentleman said to be possessed of commercial knowledge, that many thousand barrels of flour had been shipped from that gentleman's district alone through Baltimore. I was in hopes that this reply would have been made before, because, coming from the quarter whence it must have come, it would have operated as an argument to estimate the value of this measure on the West India Islands; and it is evident, that nothing but an evasion of this kind would keep up the price, low as it is—for, when I single out Baltimore, I have no doubt the same game is going on elsewhere—at Eastern Point and Passamaquoddy particularly. The operation of the embargo is to furnish rogues with an opportunity of getting rich at the expense of honest men. The man who is hardy enough to give bond and leave his security in the lurch, can make great returns; whereas the honest merchant and planter are suffering at home, and bearing the burden. It is for the benefit of the dishonest trader—for the planter is out of the question, as he cannot be a partner in the act which contravenes the law of the land. Is this all the operation of the embargo? No; for I will tell you another operation it has; that while the sheriff is hunting the citizen from bailiwick to bailiwick with a writ, his produce lying on his hands worth nothing, your shaving gentry—accommodation men, five per cent. per month men—are making fifty or sixty per cent. by usury; or making still more by usury of a worse sort—buying the property of their neighbor at less than one-half its value: and well they may afford to appropriate their money to such profitable uses, supposing character, morals, religion, honor, and every thing dear to man, trodden under foot by Mammon. Are these alone the effects which result from the embargo? No, sir; you are teaching your merchants, on whose fidelity, on whose sacred observation of an oath, when the course of events returns to its natural channel, your whole revenue depends; you are putting them to school, and must expect to take the consequences of their education. You are, by the pressure of the embargo, which is almost too strong for human nature, laying calculations and snares in the way, teaching them to disregard their oath for the sake of profit; and do you expect your commerce to return to its natural channel without smuggling? You may take all your Navy, and gunboats into the bargain, with all which you cannot stop them. Those men who now export so many barrels of flour from our

markets, will not pay the high duties on wines and groceries when they can avoid it by evasion of the laws; for they will have learned the art of evading laws; they will have taken their degrees in the school of the embargo. This is the necessary result. You lay temptations before them too strong for their virtue to resist, and then, having cast your daughters into a brothel, you expect them to come out pure and uncontaminated. It is out of the question, and I venture to predict that the effect of this measure upon our imposts and our morals too, sir, will be felt when not one man in this assembly shall be alive. Every arrival from the West Indies tells you of the cargoes of flour daily carried in, until it becomes a point of honor not to tell of one another.

Mr. LEWIS's amendment was then negatived—ayes 22.

The bill having been reported to the House by the Committee of the Whole, the House then proceeded to consider it, and several motions made to amend it, all of which were rejected.

The bill was then ordered to a third reading—ayes 56, noes 27. Tomorrow being named for the day, was lost—yeas 28. It was then ordered to be read this evening, without a division. And having been read a third time,

The question was then taken (half-past ten) by yeas and nays—yeas 60, nays 36, as follows:

YEAS.—Lemuel J. Alston, Willis Alston, jun., Ezekiel Bacon, David Bard, Joseph Barker, Burwell Bassett, William Blackledge, John Blake, junior, Adam Boyd, Robert Brown, William A. Burwell, William Butler, Joseph Calhoun, George W. Campbell, Matthew Clay, Howell Cobb, Richard Cutts, John Dawson, Josiah Deane, Daniel M. Durell, John W. Eppes, William Findlay, James Fisk, Peterson Goodwyn, Isaiah L. Green, J. Heister, James Holland, David Holmes, Daniel Ilsley, Richard M. Johnson, William Kirkpatrick, John Lambert, Robert Marion, William McCreery, John Montgomery, Nicholas R. Moore, Jeremiah Morrow, John Morrow, Thomas Newbold, Thomas Newton, Wilson C. Nicholas, John Porter, John Pugh, Jacob Richards, Matthias Richards, Samuel Riker, James Sloan, Dennis Smelt, John Smilie, Jedediah K. Smith, Henry Southard, Clement Storer, George M. Troup, James I. Van Allen, Daniel C. Verplanck, Jesse Wharton, Isaac Wilbour, Alexander Wilson, James Witherell, and Richard Wynn.

NAYS.—William W. Bibb, Thomas Blount, Epaphroditus Champion, John Culpepper, Samuel W. Dana, John Davenport, jun., William Ely, Francis Gardner, James M. Garnett, Charles Goldsborough, John Harris, William Hoge, John G. Jackson, Walter Jones, Philip B. Key, Joseph Lewis, junior, Edward Lloyd, Matthew Lyon, Nathaniel Macon, Josiah Masters, William Milnor, Daniel Montgomery, jun., Jonathan O. Mosely, Timothy Pitkin, jun., Josiah Quincy, John Randolph, John Rhea of Tennessee, John Rowan, Samuel Smith, Richard Stanford, Lewis B. Sturges, Samuel Taggart, Benjamin Tallmadge, John Taylor, Abram Trigg, Archibald Van Horn, Killian K. Van Rensselaer, and David R. Williams.

Mr. RANDOLPH then moved to strike out of the bill the words “under certain conditions;” for nothing could be more certain than that the bill contained no certainty.—Negatived without a division.

Ordered, That the Clerk of the House do carry the said bill to the Senate, and inform them that it has passed the House without amendment.

On motion, the House then adjourned.

WEDNESDAY, April 20.

Judge Innes.

On motion of Mr. ROWAN, the House took up for consideration the report of the committee appointed to inquire into the conduct of Harry Innes—56 to 26.

Mr. SMILIE moved that the report be committed to a Committee of the Whole, with a view to let it lie over until the next session. The select committee in considering the testimony before them, which consisted of those documents before the House, had thought they did not contain sufficient matter on which to ground an impeachment; at the same time that they felt a disposition to pursue the inquiry if other testimony could be had, which did not appear possible to be had during the present session. A postponement of the subject would give an opportunity to procure testimony *pro* and *con*.

Mr. ROWAN was opposed to commitment, as he thought it could answer no purpose but to delay a decision. For himself he was of opinion that the documents already before the House were abundantly sufficient for the conviction of Judge Innes; at least sufficient on which to ground an impeachment. It certainly was not for the interest of the community, if this man were guilty, that he should be continued in the exercise of his high authorities longer than could be avoided, and therefore, in justice to the United States, and to the people of Kentucky, an early decision should be had.

Mr. R. then took a view of the testimony contained in the report of the committee of the Legislature of Kentucky in the case of Judge Sebastian, on which he dwelt at some length, stating more than one fact proved by it, which he thought would of itself be a sufficient ground for removal from office of a judge of the United States.

Nothing could be gained, he said, by sending the subject to a committee. The people of Kentucky were alive to the subject. They had manifested their anxiety in regard to it, and their attachment to the Union by sending forward to this body a solemn resolution expressive of their desire for a full inquiry, and on this subject he thought the zeal of the State should not outstrip that of the nation. This commitment and consequent postponement would be a manifest disregard of the act of an honorable State, to whom the House should not show disrespect. He concluded by hoping that Kentucky would be permitted to have a judge who was truly an American; one who could not tamper with the enemies of his country, and about whom should be such an atmosphere of repulsion as to prevent him from being selected as a fit object for corruption. Such a judge as this Kentucky wanted.

Mr. SMILIE said neither his respect for the State of Kentucky, nor yet any suspicious circumstances, should affect his feelings; he wanted testimony to satisfy his mind of the guilt of the man. None but legal testimony could be received on trial for impeachment, and such he wished to see before he voted for commencing an impeachment. Setting all other considerations aside, the House had now but four days to sit, and it would occupy the whole of that time at least to discuss the subject, were it now to be decided.

Mr. TAYLOR had been one of the select committee, and in the minority on the report which they agreed upon. Whatever might be the opinion of the

committee, he thought the House were bound, from the respectable source from which the subject had been presented, to act upon it during the present session. With respect to the evidence necessary to prove a misdemeanor, it was not necessary that they should put their finger on the statute book to find the offence, for common sense would decide it. A judge of the United States had been dismissed from office for drunkenness, much less a misdemeanor than conferring with the agent of a foreign Government for purposes injurious to his country. It was said that Judge Innes had, instead of being as he ought to have been the preserver of peace in the community, suffered a foreign agent to make communications to him, and then to pass quietly out of his jurisdiction. The House had now ground sufficient to commence a process of impeachment, for the simple oath of a person saying that he has good cause to believe such an one guilty of any offence was sufficient ground for a judge to commence a prosecution against the person accused, and so also good ground of suspicion was sufficient for the institution of an impeachment or incipient process in this case. He thought, therefore, that there was no occasion for commitment, as it was moved with a view to postpone the subject.

Mr. FISK was averse to a hasty decision on this subject. He was by no means convinced of the guilt of Judge Innes; for although the Legislature of a State had declared an opinion on the subject, States as well as individuals might err, and it did not become this body to found its decisions on popular prejudice or reports, but to examine impartially.

Mr. F. then went over the evidence contained in Judge Innes's deposition in the case of Judge Sebastian. It did not appear, he said, that Judge Innes had personal knowledge of the facts which he stated in his deposition, but from common report, for they were notorious in Kentucky, and were known in Massachusetts at the same time. He said he wished, as much as the gentleman from Kentucky, to see our judicial springs pure; but he wished not to oppress when there was no hope of conviction, nor to harass when there was no hope of punishing.

MONDAY, April 25.

General Wilkinson.

Mr. CLARK said it would be recollected by the House, that he had some time since been directed to make a statement in relation to General Wilkinson. He now held in his hand a correspondence with the Spanish Government, which he would lay upon the table, as it went to substantiate the facts contained in that statement.

These papers were read, and consist chiefly of memoranda in the handwriting of Philip Nolan, and purporting to be instructions from General Wilkinson to Thomas Power, and of answers from Thomas Power.

Mr. RANDOLPH moved that they be printed.

Mr. SMILIE opposed the printing, as, if it were indeed testimony, this House was not the tribunal to decide upon it.

Mr. RANDOLPH said it was certain, that from the noise in the House, or some other cause, the papers as read could not be understood. They appeared to embrace a correspondence of Philip Nolan, said to be the agent of General Wilkinson, with Power, and in the course of them there was a recommendation that General W.'s handwriting should not be used. He presumed that gentlemen felt more interested in these than in the papers every day laid on their table and printed.

Mr. SMILIE said they had had enough of this business of denunciation, and he wished no more of it. He was willing that the papers should be sent to the court of inquiry, but he would go no further.

Mr. RANDOLPH called for the yeas and nays on the motion for printing.

Mr. RHEA supported the motion for printing.

The question was then taken by yeas and nays on printing, and carried, 52 to 30.

On motion of Mr. KELLY,

Resolved, That the papers and information relative to the conduct of General James Wilkinson, which have been this day communicated to this House by DANIEL CLARK, Esq., be transmitted to the President of the United States.

Five o'clock, P. M.

Non-Importation.

The bill from the Senate to authorize the President, under certain contingencies, to suspend the non-importation law, having been called up, and a motion having been made to postpone it indefinitely,

Mr. NEWTON begged the House to consider one moment before they postponed this bill. They had already passed a law authorizing the President of the United States to suspend the operation of the embargo law, in the event of a general peace, or such accommodation to neutrals as should render the commerce of the United States safe. Now, in the event of that law being suspended, it might also be proper to suspend this.

Mr. NELSON said he should never vote for the repeal or suspension of this law. He hoped to see the time when it should become a permanent regulation; he would not yield to any of the powers of Europe, and he wished to be independent of them. There were many things now imported from Europe which could as well be made in our own country. If they could be as well made, he considered it sound policy to give a preference to our own manufactures, and so far to prohibit theirs as to effect a preference of our own. Whether in this principle I am right or wrong, said he, I am certainly right in this: That at this late period of the session it is impossible to discuss such a question as this, and therefore I wish the motion to prevail.

Mr. BURWELL said he would add but a single observation to those of the gentlemen just sat down. He was in favor of postponing the bill indefinitely, because he wished it to be understood that we have a right to make all regulations we please respecting our commerce, or trade, or aught else, without consulting the dispositions of any power whatever. He wished it to be understood here and elsewhere, and therefore he was in favor of postponement of this bill.

Mr. MARION said he was one of those who originally voted for the non-importation law, and he had never repented his vote; but he voted for it under a firm persuasion that it would go into operation. It had been afterwards suspended because there was a negotiation pending and a prospect of accommodation; but if it were the determination never to suffer it to go into operation, he had much rather see it repealed. If it were to be kept in suspension, hung up like a rod *in terrorem*, it would merit ridicule.

What cause could there be for suspending it at present? Any negotiation pending? He believed not. If it were the understanding of a majority that the bill should not go into operation, he hoped they would propose a repeal of it.

Mr. EPPES said it appeared that the question of suspension of the non-importation act was very different from that of a suspension of the embargo. The former was a measure of coercion on Great Britain, and whether it had that effect or not, he believed at the time the law was passed that the only way which we could operate on that power was by commercial restrictions; and he felt now free to declare, that if ample reparation were made for the outrage on the Chesapeake, if the decrees were withdrawn and every injury redressed, that he would hold on upon the non-importation act so long as the impressment of our seamen remained. Whenever you take off this, said he, you have nothing to enforce your rights as to impressment, nor as to that system of commercial pillage which has been adopted by Great Britain. We know that the embargo was imposed as a measure of safety. It was to give us time to make preparation to meet the event. If the decrees which produced the embargo are withdrawn, the embargo may be withdrawn with propriety. But let me ask any gentleman whether he believes that any circumstances which produced the non-importation act will be removed? Whether they believe that Great Britain will give up her system of impressing seamen? If he does, let him look at the course she has adopted. After appointing a Minister to negotiate with you, she has issued a proclamation, establishing the right of impressment on its broadest footing. Shortly after, it was declared by the King, at the opening of Parliament, to be one of those rights which never could nor ever would be admitted. I was originally in favor of the non-importation law, and I am still so. If gentlemen take into consideration all the circumstances which produced the law, I will venture to say that there is not a man in the House originally in favor of it who can now vote for its suspension. It has never yet been fairly in operation. It is now indeed a law of the land, but its operation is virtually suspended by the embargo. I am in favor of its going into operation, and never will consent to its suspension till its intended effect be fulfilled, or the experiment is made.

The question of indefinite postponement was carried—58 to 29.

Home Manufactures.

Mr. BIBB said, that notwithstanding the difference of opinion which had taken place occasionally between the members of this House during the present session, on questions of policy, he was pleased to perceive that no difference of sentiment existed in regard to the injuries done us by foreign nations. He believed that but one spirit actuated the people of the United States—that they were attached to their country, and to their country alone. He wished not only by professions, but by practice, to show foreign nations that we can live without them. He therefore offered the following resolution:

Resolved, That the members of the House of Representatives will appear at their next meeting clothed in the manufactures of their own country.

Mr. MACON would never agree to a resolution which they could not enforce. Congress have nothing to do with this subject. He could not conceive what effect this resolution could have. If it was intended as a pledge, he was not willing to give it; if to have force, he denied their authority to enforce it.

Mr. RHEA said, if the House adopted the resolution, he should pay no regard to it. He would appear in what clothing he chose, this resolution to the contrary notwithstanding.

Mr. EPPES admitted that the resolution could have no force; it was intended to express the feelings of the House. He should rejoice to see every member of the House and every man in the nation, clothed entirely in the manufactures of this country. It would establish an independence of the best kind. The proposition was a valuable one, and he wished to God that the ladies could be placed in a situation to adopt a similar resolution. If he were to appear in the manufactures of his own State, he must be confined to a homely garb; but if the resolution passed, he would, before the next season, have cloth manufactured for his use in his own family. Mr. E. calculated that a million of men in the United States wore broadcloth coats, and if they were all manufactured in this country the saving would be immense.

Mr. MACON did not conceive it fair that those who like him had no wives at home to make them coats, should not only be reproached for their misfortune, but pointed at as sinners. He had during this session bought himself a suit, but he was not able to obtain American manufacture. His friend from Maryland (Mr. NELSON) had procured him a hat, and that was all that he could obtain of American manufacture. As to the ladies, if they were to legislate on the subject he did not believe that the gentleman from Virginia, (Mr. EPPES,) fond as he is of the ladies, would persuade one in the House, or in the nation, to agree to such a resolution. Had I a wife, I should be willing to see her dressed to her own satisfaction. The ladies have a right to dress as they please, and he did not care who knew it. The gentleman from Virginia reminded him of a neighbor who used often to say, O, how rich we might be, if it was not for the expense of eating and clothing!

Mr. BIBB said he had hoped that the resolution would be at once adopted unanimously. He did not wish to provoke debate, and therefore withdrew his resolution.

Adjournment.

Mr. G. W. CAMPBELL, from the committee appointed on the part of this House, jointly with a committee appointed on the part of the Senate, to wait on the President of the United States and inform him of the proposed adjournment of Congress, reported that the committee had performed that service, and that the President had signified to them that he had no further communication to make to Congress during the present session.

A message from the Senate informed the House that the Senate, having completed the legislative business before them, are now ready to adjourn.

Ordered, That a message be sent to the Senate to acquaint them that this House, having finished the business before them, are now about to adjourn until the day appointed by law for the next meeting of Congress; and that the Clerk of this House do go with the said message.

The Clerk accordingly went with the said message, and, being returned, Mr. SPEAKER adjourned the House until the first Monday in November next.

FOOTNOTES

[1] This paragraph is entitled to the careful consideration of all who aspire to a practical knowledge of the principles of our Government, and an intimate acquaintance with its early working. Louisiana had been ceded to the United States by the French Government: the treaty for the cession was now to be submitted for the ratification and the legislation which were necessary to carry it into effect: and the President sets out with showing that he had legislative authority for what he had done—that the sanction of Congress had been given to the acquisition beforehand—before the negotiation had been instituted. It was Congress—the legislative authority—which had given that previous sanction, held so vital by Mr. Jefferson: and, notwithstanding that previous sanction, the treaty, after ratification by the Senate, was to be submitted to the legislative power, for the exercise of their functions, as to those conditions which the constitution had vested in Congress. What these functions were, in the understanding of Mr. Jefferson's political school, was to give, or refuse the appropriation according to the dictates of their own discretion, uncontrolled by the treaty stipulation.

[2] *Boundaries of the Province of Louisiana, as contained in a paper communicated by Mr. Jefferson to Congress.*

The precise boundaries of Louisiana, westward of the Mississippi, though very extensive, are at present involved in some obscurity. Data are equally wanting to assign with precision its northern extent. From the source of the Mississippi, it is bounded eastwardly, by the middle of the channel of that river, to the thirty-first degree of latitude; thence, it is asserted, upon very strong grounds, that, according to its limits, when formerly possessed by France, it stretches to the east as far, at least, as the river Perdido, which runs into the bay of Mexico, eastward of the river Mobile.

It may be consistent with the view of these notes to remark, that Louisiana, including the Mobile settlements, was discovered and peopled by the French, whose monarchs made several grants of its trade, in particular to Mr. Crozat, in 1712, and some years afterwards, with his acquiescence, to the well-known company projected by Mr. Law. This company was relinquished in the year 1731. By a secret convention, on the 3d November, 1762, the French Government ceded so much of the province as lies beyond the Mississippi, as well as the island of New Orleans, to Spain; and, by the treaty of peace which followed in 1763, the whole territory of France and Spain, eastward of the middle of the Mississippi, to the Iberville, thence, through the middle of that river and the lakes Maurepas and Pontchartrain to the sea, was ceded to Great Britain. Spain having conquered the Floridas from Great Britain, during our Revolutionary war, they were confirmed to her by the Treaty of Peace of 1784. By the Treaty of St. Ildefonso, of the 1st of October, 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic, six

months after the full and entire execution of the conditions and stipulations therein contained, relative to the Duke of Parma, “the colony or province of Louisiana, with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States.” This treaty was confirmed and enforced by that of Madrid, of the 21st of March, 1801. From France it passed to us by the Treaty of the 30th of April last, with a reference to the above clause as descriptive of the limits ceded.

[3] The bill thus passed was in these words:

“That the President of the United States be, and he is hereby, authorized to take possession of, and occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the thirteenth day of April last, between the two nations, and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army or navy of the United States, and of the force authorized by an act passed the third day of March last, entitled “An act directing a detachment from the militia of the United States, and for erecting certain arsenals,” which he may deem necessary; and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

“SEC. 2. *And be it further enacted*, That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil, and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion.”

From the terms of this act, and especially of the second section, it is seen that the Spanish system of government was continued in the ceded territory after it became the property of the United States, and that the military, the civil, and judicial powers of the Spanish Intendants (for France never took possession of the country except to deliver it to the United States), were transferred by law to such persons as the President should appoint. The powers of the Spanish Intendants, as all know, were an emanation of the despotic power of the kings of Spain, and wholly incompatible with our constitution—a very clear declaration of Congress that the constitution did not extend to the territory, and that its inhabitants could claim no rights under it: and this declaration was in consonance with all the previous acts for the government of territories, all of which were inconsistent with the constitution.

[4] The practice of pronouncing eulogiums on deceased members, adjourning the two houses, and attending the funeral in procession, had not then been adopted. A mourning for thirty days (which was the length of time which the children of Israel wept for the death of Moses in the Valley of Moab), was the simple and expressive sign of respect.

[5] The following is the act:

That the act of Congress passed on the fourth of April, one thousand eight hundred, entitled "An act to establish a uniform system of Bankruptcy throughout the United States," shall be, and the same is hereby, repealed: *Provided, nevertheless*, That the repeal of the said act shall in no wise affect the execution of any commission of bankruptcy which may have been issued prior to the passing of this act, but every such commission may and shall be proceeded on and fully executed as though this act had not passed.

[6] This act, as passed, asserted full power in Congress to legislate upon slavery in the Territories without regard to the constitution, or any of its provisions in relation to the States, or the rights of the States within themselves, or between each other. Thus: 1. It prohibited the foreign importation of slaves into the Territory at once, which, with respect to a State, could not be done before 1808. 2. It prohibited the domestic importation of any slave into the Territory which had been imported from abroad since the year 1798. 3. It prohibited the carrying of any slave whatever into the Territory, except by a citizen of the United States removing into it for actual settlement, and being at the time the *bona fide* owner of such slave. These were three provisions which could not be adopted towards the States; and for their violation a fine was incurred by the importer, and freedom attached to the slave—penalties which Congress could prescribe within no State.

The following is the section containing these prohibitions and penalties:

"SEC. 10. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in importing or bringing any slave or slaves. And every person so offending, and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought, shall thereupon become entitled to and receive his or her freedom. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves, which shall have been imported since the first day of May, one thousand seven hundred and ninety-eight, into any port or place within the limits of the United States, or which may hereafter be so imported from any port or place without the limits of the United States; and every person so offending and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought from without the United States, the sum of three hundred dollars, one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and no slave or slaves shall directly or indirectly be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive his or her freedom."

This section applied to Lower Louisiana, called the Territory of Orleans. No provision on the subject of slavery was made in the act for the government of Upper Louisiana, afterwards called the Territory of Missouri. And thus, by legislating fully on the subject in one Territory, and not at all in the other, Congress asserted its right to do as it pleased with slavery in such places, uncontrolled by any power but its own will.

[7] At the time of passing the second bankrupt act in 1841—that is to say, after the lapse of forty years—it was shown that there was still property of bankrupts in the hands of assignees, the estate being so administered as to pay expenses, yielding nothing to the creditors, and leaving nothing to the debtors.

[8] There are three grades of Territorial government, all based upon the idea of pupillage in the Territory, and of sovereignty and guardianship in the Federal Government. The first grade, as in the case of mere children, allowed the inhabitants no voice in their own government: a Governor and Judges, appointed by the Federal Government, adopted laws from the codes of the States, and executed them. The second grade, as in the case of children advancing towards the years of discretion, (to whom a father allows some latitude of will,) admitted the inhabitants to some share in their government, by giving them a Council composed of their own citizens, (but appointed by the President,) to act with the Judges in adopting the laws. The third grade, as in the case of children arrived at the years of discretion, but not yet of full age, allowed them a Territorial Legislature, consisting of a House of Representatives, elected by themselves, a Council appointed by the President, and liberty to originate and enact laws; but all their acts as in those of the two other grades, subject to the approbation of Congress. From this grade the Territory, on attaining the population which would give a right to one Representative in Congress, would pass into the class of States, on an equal footing in all respects with the other States, and entitled of *right* to all the benefits of the federal constitution. Before this transition, the Territories had no *rights* under the constitution. They were governed independently of the constitution, and contrary to it. They had no benefits from it, except such as Congress, in its discretion, chose to extend to them. They were governed as property: the soil, as a sovereign owner would govern his property; the inhabitants, as a father would take care of his children, looking to their ultimate equality with himself, and preparing them to enjoy that equality as soon as prepared for it. It was this graduated form of Territorial government, in its three regular degrees, to which Mr. Macon was so much attached. It was devised by the “Old Congress,” as he called it—the Congress of the confederation—and received its features from the organizing mind of Mr. Jefferson when he was a member of that Congress in 1784. Neither under the Articles of the Confederation, nor under the Federal Constitution, had the Territories had any *rights*: they were governed as property according to the will of Congress, uncontrolled by any authority, except the limitations and conditions expressed in the deeds of cession from the States, or in the treaties with foreign powers by which they were ceded. All this is abundantly evident in all the legislation of Congress upon the subject, and in none more so than in the government of Lower Louisiana.

[9] The *judicial* power of the Territory remained as provided for in the 4th section, in judges appointed for four years, and without the right of jury trial in civil cases. The *legislative* power was vested in a Governor and council

appointed by the President, and their acts subject to the approval or disapproval of Congress. The following is the section:

SEC. 4. The legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually by the President of the United States from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory or the United States. The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall from time to time report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force.

[10] The yeas and nays were so nearly the same on every question that one set will answer for the whole.

[11] Of the 21 who voted against this bill, almost the whole were from the non-slaveholding States.

[12] The object of this bill was, not to increase the amount of duty, but to increase the list of specific duties by transferring *ad valorem*s to it as a means of diminishing frauds and the expenses of collection.

[13] This was the whole ceremony. No eulogium was pronounced, nor any adjournment moved, and in the House of Representatives the event was not noticed. And this was the custom at that early time.

[14] This was the commencement of Mr. GAILLARD's long Senatorial service, terminated only by death, and during which, from vacancies and absences in the Vice Presidential office, he was almost continually President *pro tempore* of the Senate.

[15] This was after the duel of Col. Burr with General Hamilton, which event probably influenced the negative vote.

[16] A more beautiful or more patriotic address was never delivered. How little could the hearers have supposed that, in three years, the author would be on trial for High Treason.

[17] The interference of the Internal Revenue officers with the politics of the country, was one of the reasons for preferring the system of Custom House Duties to direct taxes; it may be a question whether the concentration of the revenue officers in the Custom Houses, and the vast number which the *ad valorem* system admits of, may not have given to that evil a more dangerous form.

[18] Roads, rivers, canals—their construction or improvement so long the vexed question of Federal power, have been superseded as national questions by the progress of science, and the force of individual enterprise. Railroads have put an end to that question, and with it, all the old maxims of preparing for war in time. They are the largest, cheapest, and most effective preparation for war, that the world ever saw, being the realization of the whole art of war; to wit: The concentration in the shortest time of the greatest number of troops. By these roads the United States would throw millions of citizen soldiers, if needed, on any one point in a very few days.

[19] We understand, that in correspondence with the Parliamentary practice of England, no chair was, previously to the introduction of Mr. Chase, assigned him; but that an informal intimation was made to him, that, on his requesting it, it would be allowed.

[20] During these proceedings, neither the managers nor the House of Representatives were present.

[21] The argumentative parts of the answer are omitted as being reproduced in the pleadings.

[22] Mr. Jefferson.

[23] These words, used by Mr. Randolph as a quotation,—they were quoted from Lord Chatham,—afterwards (during the Mexican war) were repeated as original in the American Senate.

[24] On the 7th February following, Mr. Granger addressed the annexed explanatory letter to the Speaker:—

WASHINGTON CITY, Feb. 7, 1805.

SIR,—My sole object in addressing to Congress my letter of the first of the present month was to gain an opportunity of refuting the charges and insinuations which had been made against me. The little reflection I could give the subject induced me to believe that it was proper, in a respectful manner, to repel the charges publicly, and in the place where they were made. Nor did it occur to me that the right of an officer to defend his character depended upon the office he happened to hold.

If, however, I erred in this, I presume it cannot be wrong, in defence of my reputation, to address you in your private character as a gentleman. I will own that I am desirous of retaining your friendship and confidence. I will own that I am not indifferent to public opinion, and that I seek the confidence and esteem of my fellow-citizens by the even tenor of a well-spent life, and a regular discharge of all the social duties—not by lessening the esteem and confidence to which others are entitled.

Various charges have been made against me for the interest I have in the Georgia grants—for my being an agent of the New England Company, and for my conduct as such agent. As these charges have not yet appeared in print, I cannot give that specific answer which may hereafter become necessary, and for which I pledge myself to the public, in case such necessity should exist.

I now take the liberty of stating how I became interested in the claims, how the agency was accepted, and what has been my conduct as agent.

First, as to my interest.

When the members of the New England Company formed their contract with William Williamson as agent for the Georgia Mississippi Company, in September, 1795, I had not the least interest in the concern. Upon the advice of my friends, and at their solicitation, between that period and the first of December, I agreed to become interested, and accepted of a certain share, which was procured for me by a voluntary relinquishment of a part by several gentlemen for that purpose. In January, 1796, the agents came on from Georgia to give the conveyance, and I was deputed as agent for many of the proprietors near Connecticut river; to discharge which trust I proceeded to Boston. Before the business was closed my principals arrived; a variety of considerations induced me to relinquish the adventure, such as the difference of climate, the distance of the property, the warlike habits of the natives, and the want of capital, and before the time of which I am about to speak, I relinquished my right to two friends from Connecticut. Thus my concern with the Georgia lands, as I thought, was closed for ever. But on the evening of the Sunday next preceding the second Tuesday of February, 1796, Ashbel Stanley, then of Coventry, in Connecticut, applied to Oliver Phelps, Esq., and myself, and requested us to become surety for him and Jeremiah Ripley, Esq., of said Coventry, (they being partners in trade,) to the Georgia agents, for the space of sixty days, to the amount of \$75,000, and assigned for reason that the agents would not take notes signed in the name of the firm, and that he only wanted our names till he could have an opportunity to procure the name of Judge Ripley as an endorser to his notes. The great esteem I had for Judge Ripley, and a knowledge of his ability, induced me to give Mr. Phelps, as I was about to return to Connecticut, a written engagement to assume one-third of the risk, in case he should think it best to make the endorsement. Mr. Phelps made the endorsement for Stanley, and took into his hands, as security, Stanley's conveyance of seven hundred and fifty thousand acres of Georgia Mississippi Company's land, for which the endorsement was given; and, also, an assignment by Stanley of one hundred thousand acres more, which Seth Wetmore assigned to Stanley. Stanley failed. Judge Ripley denied the authority of Stanley to use his name in a land contract, and Mr. Phelps and myself, as endorsers, had to meet the \$75,000. On the fourth day of May, one thousand seven hundred and ninety-eight, we satisfied these obligations, and they were cancelled and delivered up. To acquire the means of satisfying these endorsements, we were compelled to dispose of 670,000 acres of his land, besides a vast deal of other property. When we called for the scrip on the two thousand acres, conveyed by Wetmore to Stanley, and by Stanley to Phelps, we found that Wetmore had conveyed the same land to Israel Munson, merchant in Boston. Here a new difficulty presented itself, which has been but lately removed. On the 30th of August, 1803, Mr. Phelps, to enable me to close this dispute, gave me a conveyance of these one hundred thousand acres; and on the 8th of September, in the same year, I effected a final settlement with Mr. Munson, of his claim for the joint benefit of Phelps and Granger. This explains the conveyances from Mr. Phelps and Mr. Munson to me, and these facts can be proved by these gentlemen, and by Judge Ripley, Amasa Jackson, Esq., of New York, Joseph Lyman, Esq., of Northampton, Massachusetts, Clerk of the Supreme Court, John Peck, &c.

On record will also be found a conveyance of one hundred thousand acres, of December 8th, 1803, from John Peck to me. In this property I have not the least interest. It is deposited in my hands in lieu of special bail, in two cases, in favor of Eli Williams, of Hagerstown, against John Peck, of Boston, now pending before the court in this district. John Thompson Mason, Esq., knows this fact.

Finally, I have never been a dealer in this property, nor otherwise than is herein stated, interested therein; excepting only that in one instance I have received some scrip of a gentleman, whose fortune was consumed by his adventuring in the property, for a demand which was subsisting before the 13th of February, 1796.

Secondly, As to my accepting the agency. On the 17th day of February, 1803, the Commissioners on the part of the United States reported to Congress in favor of a compromise of these claims and Congress afterwards, in the same session, made an appropriation of the 5,000,000 acres of land, to satisfy such demands as Congress might think best to provide for. Thus stood the business without a single objection within my knowledge to a compromise, when, in August, 1803, one of the directors of the New England Mississippi Company, solicited me to accept an agency in the business. Although I could not see any objection to it, as I was personally interested, and the duties of my office had not the least possible relation to the business, still I was not willing to accept the agency without advice. Accordingly I stated the case to the last Attorney-General, who suggested that he would not be understood to give any opinion on the subject, but for his part he could not perceive the least objection to my acceptance. After this the agency was accepted, and I can with the greatest truth aver, that I then had not the least idea of any objection on the part of Congress. The only difficulty contemplated was that of bringing the claimants and the Commissioners to an agreement.

Lastly. As to my conduct as agent. I acknowledge that I have, in an open, fair, and plain manner, vindicated the rights of the company I represent. But I deny my attempting to make use of any kind of influence.

Here I appeal to the Commissioners, whether I have ever attempted to press any thing in relation to the business. I make the same appeal to you, sir, and to every other member of the two Houses of Congress. If I have been guilty of what is charged upon me, there must be some one ready to rise up, and bear testimony against me. I trust I have virtue enough not to attempt improperly to influence any man. If not, I hold the members of Congress in too high respect to deem them capable of yielding to any improper influence.

For the truth of this statement, I appeal to the Author of my existence; and, in support of it, I pledge my character to you and to my country. I cannot close this letter without offering my ardent desire for an investigation of my conduct.

I am, sir, with high esteem and respect, your humble servant,

GIDEON GRANGER.

[25] An act of Congress has since passed to prevent members from taking government contracts; but the act did not extend to their sons, brothers, and nephews, and the spirit of it has been often eluded.

[26] Mr. Randolph was the great opposer of these claims in Congress, and General Jackson their great opposer in Georgia. It was he who roused the feeling which overthrew the General Assembly who made the grant, and elected the legislature which annulled their act, and burnt the record of it. He was in the Senate of the U. S. with Mr. James Gunn, the Senator alluded to in the debate as being engaged in the fraud, and lost his life in the last of the many duels which his opposition to this measure brought upon him.

[27] With this session ended the first term of Mr. Jefferson's administration, and the end of that term presents a natural occasion for reviewing the working of the Government in its point of chief contact with the people—*receipts and expenditures*. These were kept at the lowest point. The internal taxes had been repealed: the custom house duties had not been increased. For, though the change of many articles from the *ad valorem* to the specific list, had the effect of increasing the revenue, yet it did not increase the duty, the object being to prevent frauds and to simplify and cheapen the collection. The duties themselves, both the specific and the *ad valorem*, remained at the low and moderate rates which characterized the early periods of our Government. The average of the specifics, on the leading articles, were: on spirits, 29 cents per gallon; on wines, 32 cents per gallon; on teas, 16 cents per pound; on coffee, 5 cents per pound; on sugars, 2½ cents per pound; on molasses, 5 cents per gallon. The *ad valorems* were simplified to three rates, which in fact were but two, the third and highest rate only applying to luxuries, which were but little imported; and the lowest rate applying to the bulk of the importations. Thus the highest rate (20 per centum) in an importation of near forty million dollars worth of merchandise paying *ad valorem* duties, only fell upon \$425,000 of that quantity, while the 15 per cent. fell upon \$7,640,000 worth, and the 12½ per cent. rate fell upon 31 millions of dollars worth. The average of all the *ad valorems* was about 13 per centum; and such was the cheapness of this simplicity of impost, that the cost of collection was only about 4 per centum, and the revenue cutter service almost null. The net revenue yielded was twelve millions and a quarter, of which there went to the principal and interest of the public debt, about eight millions; to the army and navy, about two millions; miscellanies, about half a million; tribute to Algiers, near \$200,000; diplomatic intercourse, \$60,000; and about \$600,000 to the civil list—comprehending the entire *support* of the Government in all its branches—executive, judicial, and legislative. And thus the moderate duties of that time, upon the moderate importation of that time, with the economy of that time, produced nearly twenty times the amount of revenue which the *support* of the Federal Government required.

[28] Okefonokee Swamp, covering one-fourth of Georgia, 15,000 square miles—the great refuge of fugitive slaves, white outlaws, and depredating Indians.

[29] The whole object of the bill was the purchase of Florida, but it not being desirable to avow that purpose, the object was covered up in the vague phrases of extraordinary expenses in foreign intercourse. The following is the act as passed:

That a sum of two millions of dollars be, and the same is hereby appropriated towards defraying any extraordinary expenses which may be incurred in the intercourse between the United States and foreign nations, to be paid out of any

money in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States, who shall cause an account thereof to be laid before Congress as soon as may be.

[30] The Marquis de Casa Yrujo. He was recalled.

[31] This expunging was so complete that no vestige of the expunged matter appears in the Journal; but it is otherwise well known what it was. The two named persons had presented memorials, which had been received and read, stating that they were under a criminal prosecution, now depending in the Circuit Court of the United States for the district of New York, for an alleged offence against the laws of the United States, in which, if guilty, they have been led into error by the conduct of officers of the Executive Government, who now intend to bring upon the memorialists the penalties of the laws, to sacrifice their characters, fortunes, and liberty, in expiation of their own errors, or to deprecate the vengeance of foreign Governments, by offering the memorialists as victims to their resentment: that they have also experienced great oppression and injustice in the manner of conducting the said prosecution; and praying such relief therein as the wisdom of Congress may think proper to grant.

The prosecution was for an alleged breach of the neutrality laws, in fitting out a vessel from New York against a Power with whom the United States were at peace, to wit, the King of Spain. The vessel was the *Leander*, and built for General Miranda, then engaged in his South American expedition. The implications of the Executive Government which the memorials charged, were voted, by the House of Representatives, to be unsupported and reprehensible, and ordered to be returned to the parties from whom they came. The following was the resolve, adopted nearly unanimously, on the motion of Mr. Early:

Resolved, That the charges contained in the memorials of S. G. Ogden and William Smith are, in the opinion of this House, unsupported by any evidence which, in the least degree, criminate the Executive Government of this country; that the said memorials appear to have been presented at a time and under circumstances insidiously calculated to excite unjust suspicions in the minds of the good people of this nation against the existing Administration of the General Government, and that it would be highly improper in this House to take any step which might influence or prejudice a cause now pending in a legal tribunal of the United States. Therefore, *Resolved*, That the said memorials be by the Clerk of this House returned to those from whom they came.

[32] The constitutional power of Congress to prohibit the importation of slaves into States, did not accrue till the year 1808; but Territories not being States, the constitutional prohibition had no application to them.

[33] This was the public commencement of Mr. Randolph's separation from the Administration of Mr. Jefferson; but his dissatisfaction had begun before, at the retention of Mr. Granger, Postmaster-General, in the Cabinet, after it was known that he was the agent of the New England Mississippi Land Company.

[34] Since the statute of 13th William the Third, the British Judges are removable upon the joint address of the two Houses of Parliament, notwithstanding they are commissioned, since that statute, during good

behaviour—*quamdiu se bene gesserint*. Before that time they were commissioned during the royal pleasure—*durante bene placito*: and it was usual, during profligate reigns, when convictions of obnoxious persons were required, to remove such of the judges as could not be relied on, and appoint a subservient set in their place. The act of William the Third made them independent of the King, but not of the Parliament representing the country. Their independence of the crown was completed by the statute 1 George III., which prevented the vacation of their commissions on the demise of the sovereign.

[35] This is the true view of the constitution, and of our policy, and the motive to the confederation of 1778, and to Union of 1787. Defence was the object, and the policy—so declared in the instruments of confederation and of Union, and so proclaimed by every consideration of policy. And for defence, the United States are the strongest power in the world. Her railroads in a few days would place a million of volunteers, if needed, on any point of land attack: her privateers would clear the seas of the enemy's commerce. And these two great means of defence would be as cheap as effective; superseding the old expensive policy of "*preparing for war in time of peace*."

[36] The practice of pronouncing funeral eulogiums over deceased members had not been yet adopted. Attending the funeral, and wearing the badge of mourning, were deemed the adequate honor; and well worthy was General James Jackson of it. He was a man of marked character, high principle, and strong temperament—honest, patriotic, brave—hating tyranny, oppression, and meanness in every form; the bold denouncer of crime in high as well as in low places; a ready speaker, and as ready with his pistol as his tongue, and involved in many duels on account of his hot opposition to criminal measures. The defeat of the Yazoo fraud was the most signal act of his legislative life, for which he paid the penalty of his life—dying of wounds received in the last of the many duels which his undaunted attacks upon that measure brought upon him.

[37] The item for contingent expenses of the Navy, comprises commissions to agents to foreign countries and in the United States, officers' travelling expenses, expense of conveying seamen from one port to another, as for instance where seamen are entered in Philadelphia or Baltimore to join a vessel fitting out at Washington, the expense of nautical instruments, such as compasses, quadrants, spy-glasses, &c., charts, books, models, drawings, signals, lanterns, oil, candles, clamps, fuel, hammocks, trumpets, glass, cisterns, cases, mess kids, axes, gridirons, tea kettles, galleys, shovels, tongs, charcoal, sulphur, saltpetre, fire engines, fire buckets, bread bags, and an infinite variety of other such articles, not expressly provided by law.

[38] Two frigates.

[39] The item for ordnance comprises cannon, carronades, swivels, blunderbusses, muskets, pistols, swords, boarding-pikes, cutlasses, cannon ball of every description, musket and pistol ball, cannon, musket, pistol and priming powder, powder horns, priming horns, flannel and paper cartridges, cartridge boxes, slow match, lint stocks, worms, rammers, sponges, wads, gun-locks, screw-drivers, flints, cartridge thread, &c.

[40] The error which now prevails (with so many) on the subject of the fishing bounties and allowances, is one which strongly illustrates the evil in our

legislators, of not being sufficiently acquainted with our early Congressional history. They are now held by many—by enough to prevent their repeal—to be bounties out of the Treasury for the encouragement of the fisheries as a nursery of seamen, when their whole history proves that they were denied when asked on that ground, (bounties out of the Treasury to any branch of industry being equally unconstitutional and impolitic,) and only granted on the principle of drawback—as a refunding of duty paid on foreign salt exported on fish; and as such applied at first to all salted provisions, both beef and pork as well as to fish. And as such drawback these bounties and allowances rose and fell with the salt tax as long as national legislation was under the control of our earlier generation of statesmen; but since near thirty years this dependence of the bounties and allowances upon the salt tax has ceased to be known, and, while the duty has been undergoing reductions, the bounties and allowances have remained at the highest rate they ever attained when the salt duty was at its highest rate. The want of this knowledge has cost the public treasury some millions of dollars; and is still costing it some hundreds of thousands annually.

[41] The application of steam power to the propulsion of boats on water and cars on land, under the enterprise of private individuals, has superseded all the old ideas of federal internal improvement by roads, rivers, and canals.

[42] This is the first appearance of Mr. Clay in either House of Congress.

[43] The following are the letters:

NASHVILLE, Jan. 8, 1807.

SIR: I received your instructions, dated the 2d instant, and agreeably thereto, I delivered your letter, addressed to General Thomas Johnson, to Colonel Cheatham, and it was forwarded to him immediately. I arrived at Centreville on the 4th instant; heard a report there that Colonel Burr had gone down the river with one thousand armed men; arrived at the mouth of Cumberland river that evening, and made inquiry concerning Colonel Burr, and was informed that he left that place on the 28th December, 1806, with ten boats, of different descriptions; had sixty men on board, but no appearance of arms. I left there on the 5th instant, and arrived at Fort Massac that evening; delivered your letter to Captain Bissel, and received his answer; made some inquiries of him, and was informed that Colonel Burr had left that place on the 30th December, 1806, with ten boats. He likewise informed me that he had been on board the boats, and seen no appearance of arms or ammunition. On my return to the mouth of Cumberland river, I was informed that three boats had been stopped at Louisville, with a quantity of ammunition. There are about fifty men stationed at the mouth of Cumberland, under command of Colonel Ramsey.

I remain, with the highest esteem, yours,

JOHN MURRELL.

GEN. ANDREW JACKSON.

FORT MASSAC, Jan. 5, 1807.

SIR: This day, per express, I had the honor to receive your very interesting letter of the 2d instant; I shall pay due respect to its contents; as yet I have not

received the President's Proclamation alluded to, nor have I received any orders from the Department of War relative to the subject matter of your letter.

There has not, to my knowledge, been any assemblage of men or boats, at this or any other place, unauthorized by law or precedency; but, should any thing of the kind make its appearance, which carries with it the least mark of suspicion, as having illegal enterprises or projects in view, hostile to the peace and good order of Government, I shall, with as much ardor and energy as the case will admit, endeavor to bring to justice all such offenders.

For more than two weeks last past I have made it a point to make myself acquainted with the loading and situation of all boats descending the river. As yet there has nothing the least alarming appeared. On or about the 31st ultimo, Colonel Burr, late Vice President of the United States, passed this with about ten boats, of different descriptions, navigated with about six men each, having nothing on board that would even suffer a conjecture, more than a man bound to market; he has descended the rivers towards Orleans. Should any thing, to my knowledge, transpire, interesting to Government, I will give the most early notice in my power.

I have the honor to be, respectfully, sir, your obedient servant,

DANIEL BISSEL.

GENERAL ANDREW JACKSON.

[44] With this agreed the practice of all the free States at that time, and the laws of several of them—as New York and Pennsylvania—in the former of which nine months, and in the latter six months, was allowed to the sojourner and traveller to depart with his slave, with the alternative of taking the character of a resident if he remains longer, and thereby subjecting his slave to the emancipation laws of the State.

[45] The bill was passed through the House with only five dissenting votes, and through the Senate with nearly equal unanimity. The following is a copy of the act:

That, from and after the thirtieth day of June next, the act, entitled “An act laying an additional duty on salt imported into the United States, and for other purposes,” passed the eighth day of July, one thousand seven hundred and ninety-seven, shall be, and the same hereby is, repealed, and that, from and after the thirty-first day of December next, so much of any act as lays a duty on imported salt be, and the same hereby is, repealed; and, from and after the day last aforesaid, salt shall be imported into the United States free of duty: *Provided*, That for the recovery and receipt of such duties as shall have accrued, and on the days aforesaid, respectively, remain outstanding, and for the recovery and distribution of fines, penalties, and forfeitures, and the remission thereof, which shall have been incurred before and on the said days, respectively, the provisions of the aforesaid act shall remain in full force and virtue.

SEC. 2. *And be it further enacted*, That, from and after the first day of January next, so much of any act as allows a bounty on exported salt, provisions and pickled fish, in lieu of drawback of the duties on the salt employed in curing the same, and so much of any act as makes allowance to the owners and crews of

fishing vessels, in lieu of drawback of the duties paid on the salt used by the same, shall be, and the same hereby is, repealed: *Provided*, That the provisions of the aforesaid acts shall remain in full force and virtue for the payment of the bounties or allowances incurred or payable on the first day of January next.

☞ Throughout the entire debate on the bill, there was not a word of objection to the bounties and allowances falling with the salt tax.

[46] The motion to “reject” a bill is one of indignity to it. It is equivalent to declaring that it is unworthy of consideration, and therefore to be driven out of the House on learning what it is from the first reading, (which is only for information,) without going to the second reading, which is for consideration.

[47] Only five dissentients, and they both from free and slave States, and dissenting upon matters of detail. So that the prohibition of the trade itself may be considered unanimous.

[48] The bill from the Senate to suspend the privilege of the writ of *habeas corpus* had been rejected in the House, and this movement was for the better securing the privilege in future. Although prospective in its terms and object, the debate upon it was chiefly retrospective, looking back to the arrest of persons in New Orleans as accomplices of Burr; and thus possesses a double interest, as connecting itself with history while discussing a question of the greatest interest to the liberty of the citizen.

[49] This alludes to the early conspiracy to separate Kentucky from the Union, while the Spaniards held the mouth of the Mississippi, and, with it, a check upon the exports of the West. The conspiracy existed—the Spanish Governor General at New Orleans, and some leading citizens of Kentucky, the parties. Spanish money was paid to some of these citizens—some were even stipendiaries, receiving annual sums for their treacherous service to Spain. General Wilkinson had the misfortune to be implicated in this conspiracy, but the proof of it was never made out.

[50] He had been tried at Richmond, Va., (Chief Justice Marshall presiding,) on two indictments—one, for high treason, in levying war against the United States; the other, for a misdemeanor in setting on foot, within the United States, a military expedition against a power with whom the United States were at peace, *to wit*, Spain; and had been acquitted on both trials, under instructions from the Court. First. That the acts proved under the treason indictment, did not amount to levying war against the United States. Second. That the military expedition against Spain was set on foot in Ohio, and not in Virginia, and therefore not triable in Virginia. Col. Burr was recognized to appear and answer to this charge in Ohio, but forfeited the recognizance, and the United States for many years.

[51] It was dated 29th July.

[52] Joseph Hamilton Daviess, of Kentucky, the able lawyer, brilliant pleader, and ardent patriot, killed at Tippecanoe at the head of a night charge upon the Indians.

[53] YEAS.—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland,

Smith of New York, Smith of Ohio, Smith of Vermont, White, and Wright—18.

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[54] In consequence of this vote Mr. Smith withdrew from the Senate, and resigned his place in a letter (affirming and arguing his innocence) to the Governor of Ohio.

[55] This contested election, as involving a point of constitutional law, to wit, whether a State Legislature can add to, or diminish, the representative qualifications which the constitution prescribes? rises above a question between individuals, and becomes an exception to the general rule of this abridgment, to omit reports, debates, and proceedings on contested elections. The report of the committee, after extended debate, was agreed to by the House, almost unanimously—89 to 18.

[56] This is a sensible speech, and its recommendations have since been adopted in practice by all the States, except in the classification of the militia and the estimate of volunteers. Experience—that of the war of 1812, and the late war with Mexico—has since proved that volunteers may be relied upon for all *active* service in the United States, either at home or abroad; and that, with the facilities of railroad transportation, such accumulated masses may be thrown upon any point as to crush any invading force. In fact, with railroads and volunteers, the idea of invasion has become obsolete, and the word never mentioned except from habit and past associations.

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92

FISHER AMES.

country." In 1788 he was chosen to the State legislature, in which assembly he advocated important educational measures, in view of elevating the character of the great mass of the people, and rendering them capable of higher enjoyments. In 1789 he was elected a member of the first Congress under the constitution, in which body he remained during the eight years of Washington's administration. He was a strong advocate of the federal policy, and on every question of importance took an active part. He opposed the commercial resolutions of Mr. Madison, because he thought "that commerce could not be served by regulations, which should oblige us to

‘sell cheap and buy dear,’ and he inferred that the effect of the resolutions could only be to gratify partialities and resentments, which all statesmen should discard.” In April, 1796, he delivered his celebrated speech on the appropriation for Jay’s Treaty, a production full of the deepest pathos and richest eloquence.^[A] At the termination of the session of Congress, Mr. Ames travelled at the south for his health, which had for many months been gradually sinking. On his partial recovery, he took his seat at the next session, and entered upon the duties of his office. At the end of this session he returned to his home at Dedham, and declining a re-election, took upon himself the practice of his profession. He continued writing political essays during the remainder of his life, all of which bear the mark of the statesman and ripe scholar. In the year 1804 he was called to the chair of the presidency of Harvard College, which honor he declined on account of failing health, and a consciousness that his habits were not adapted to the office. On the morning of the Fourth of July, 1808, he expired, having just completed the fiftieth year of his age.^[B]

MADISON’S RESOLUTIONS.

The House of Representatives, on the third of January, 1794, resolved itself into a Committee of the Whole, on the report of Mr. Jefferson, Secretary of State, “On the nature and extent of the privileges and restrictions of the commercial intercourse of the United States with foreign nations, and the measures which he thought proper to be adopted for the improvement of the commerce and navigation of the same,” when Mr. Madison introduced a series of resolutions, proposing to impose “further restrictions and higher duties, in certain cases, on the manufactures and navigation of foreign nations, employed in the commerce of the United States, than those now imposed.”^[C] On these resolutions Mr. Ames addressed the committee, on the twenty-seventh of January, as follows:

MR. CHAIRMAN: The question lies within this compass: is there any measure proper to be adopted by Congress, which will have the effect to put our trade and navigation on a better footing? If there is, it is our undoubted right to adopt it, (if by right is understood the power of self-government, which every independent nation possesses,) and our own as completely as

^[A] Dr. Charles Caldwell, in his autobiography, thus speaks of Ames’s eloquence: “He was decidedly one of the most splendid rhetoricians of the age.

Two of his speeches, in a special manner—that on Jay’s treaty, and that usually called his ‘Tomahawk speech’ (because it included some resplendent passages on Indian massacres)—were the most brilliant and fascinating specimens of eloquence I have ever heard; yet have I listened to some of the most celebrated speakers in the British Parliament—among others, to Wilberforce and Mackintosh, Plunket, Brougham, and Canning; and Dr. Priestley, who was familiar with the oratory of Pitt the father and Pitt the son, and also with that of Burke and Fox, made to myself the acknowledgment that, in his own words, the speech of Ames, on the British treaty, was the most bewitching piece of parliamentary oratory he had ever listened to.”

[B] In the preparation of this sketch, the editor has relied mainly on Mr. Kirkland’s chaste memoir of Mr. Ames, which is attached to the published works of that eminent orator.

[C] Mr. Madison, in explanation of his motives and views, spoke of the security and extension of our commerce as a principal object for which the federal government was formed. He urged the tendency of his resolutions to secure to us an equitable share of the carrying trade; that they would enable other nations to enter into competition with England for supplying us with manufactures; and in this way he insisted that our country could make her enemies feel the extent of her power, by depriving those who manufactured for us of their bread. He adverted to the measures enforced by a certain nation contrary to our maritime rights, and out of the proceeds of the extra impositions proposed, he recommended a reimbursement to our citizens of their losses arising from those measures. He maintained that if the nation cannot protect the rights of its citizens, it ought to repay the damage; and that we are bound to obtain reparation for the injustice of foreign nations to our citizens, or to compensate them ourselves.—*Ames’s Works*, page 24.

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